

आयकर अपीलिय अधिकरण "SMC" न्यायपीठ मुंबई मे ।

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 721/Mum/2018

(निर्धारण बर्ष / Assessment Year 2007-08)

Mani Jewel 34, NandbhuvanInd Estate, Mahakali Caves Road, Andheri East, Mumbai-400 093	Vs.	The Income Tax Officer, Ward 24(2)(1), Piramal Chamber, Parel, Mumbai, 400 412
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
PAN No. AAIFM4858N		

Assessee by : Narendra K Patel, AR

Revenue by : V Vidhyadhar, DR

Date of hearing: 07-05-2018 Date of pronouncement : 07-05-2018

आदेश / ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-3, Mumbai [in short CIT(A)], in appeal No. CAS/3/108/U/s.154/2015-16 dated 29.12.2017. The Assessment was framed by the Income Tax Officer, Ward 3(3)(3), Mumbai (in short 'ITO') for the A.Y. 2006-07 vide order dated 30.03.2015 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').



2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in estimating the profit at the rate of 25% of the bogus purchases. For this assessee has raised the following ground No. 1: -

“The Commissioner of Income Tax Appeals -3, Surat "CIT(A)-3, Surat", erred in confirming action of The Income Tax Officer Ward 3(3)(3), Surat, terming purchases amounting to Rs. 6,01,275 as non-genuine from certain parties without appropriate reasons/basis and adding 25% of the same to income. Without verifying facts based on documents and explanation provided during the course of assessment and allowed the same. The appellant prays it be held that above purchases are in accordance with law and thus additions be deleted.”

3. The facts of the case are that a search and seizure action was corned out by the Investigation wing Mumbai in the Gautam Jain & others group of cases on 03.10.2013, which resulted in collection of evidences and other findings, which conclusively proved that the said Shri Gautam Jain and others had through a web of benami concerns, run and operated by them, provided accommodation entries to various parties in respect of bogus unsecured loans and bogus purchases. Various evidences found and seized from the premises of the said Shri Gautam Jain and others, which proved the above facts. Thus, these diamond concerns are only on papers with no real business activities of diamond. This group has indulged in giving such accommodation entries and the Directors/proprietors of such paper companies/concerns admitted the entire nature of bogus transactions in their statements recorded on oath. The investigations made by the investigation wing revealed that actual



importers of rough diamonds import part of their diamond requirement through benami entities operated by Shri Gautam Jain & others, which ensures benefit of suppression of turnover, profits and capital requirement of the former. It was also established during the search that these concerns import rough diamonds in their hands at the behest of third persons/interested parties. The consignments are sent on credit by the suppliers in the names of these benami entities at the instance of the actual importers and on receipt of the imported consignments from Customs, through CHA, the consignment is handed over to the actual importer and the bogus stock is entered in the books of the benami entities and the same is not recorded in the books of the actual importer. These benami entities of Shri Gautam Jain & others thereafter issue bogus bills against the bogus stock. Thus, all the entities of Shri Gautam Jain & others of this group was operated solely with the purpose of facilitation of fraudulent transactions which includes providing accommodation entries of unsecured loans and bogus sale bills to interested parties. Thus, such entity of these groups provide bogus purchases to the diamond concerns, who do not want to import diamond in their own hands or through their books of account. From the details and evidences made available through the above referred letter dtd. 13.03.2014 of the Director of Income Tax (investigation), Mumbai it is seen that the following entities of Shri. Gautam Jain & others have given accommodation entries of bogus purchases as under, during A.Y. 2007-08 to Krisna Diam / Krishna Diamond Pvt. Ltd. The same were involved in providing accommodation entries by issuing non-genuine bills and had found that the assessee. M/s Mani Jewell, Surat was also one of the beneficiaries of this entire non-genuine transaction for the amount of Rs.6,01,275/- during the P.Y. 2006-07 and relevant to A.Y.2007-08. The AO confronted the material to the assessee who could not establish that



the purchases are genuine. Accordingly, the AO added 25% of the bogus purchases as profit, which comes to ₹ 1,52,569/-. Aggrieved, assessee preferred the appeal before CIT(A). The CIT(A) also confirmed the action of the AO. Aggrieved, now assessee is in appeal before Tribunal.

4. I have heard the both the sides and going through the facts and circumstances of the case. Admittedly, these parties are in hawala parties and the assessee is unable to bring movement of goods i.e. transportation of goods for purchase of these items. Now before me, the learned counsel for the assessee only requested for setting aside of the issue to the file of the AO to prove the movements of goods i.e. to prove the genuineness of purchases, the assessee will provide every evidence of movements of goods from the seller to the purchaser. Accordingly, I set aside the issue to the file of the AO, who will examine the issue in entirety and will decide as per evidences. The matter is restored back to the file of the AO and the appeal of the assessee's is allowed for statistical purposes.

5. In the result, the appeal Assessee is allowed for statistical purposes.

Order pronounced in the open court on 07-05-2018.

आदेश की घोषणा खुले मे दिनांक 07-05-2018 को की गई ।

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 07-05-2018
Sudip Sarkar /Sr.PS



ITA No. 721/Mum/2018

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.
//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI