

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "H", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**

**ITA.No. 3854, 3855, 3856, 3857, 3858, 3859 & 3864 /MUM/2017  
(A. Ys: 2012-13, 2011-12, 2010-11, 2009-10, 2008-09, 2007-08 & 2013-14)**

M/s. Sejal Exports (India)  
DC-7221, Bharat Diamond Bourse,  
'G' Block, Bandra Kurla Complex,  
Bandra (E), Mumbai – 400 051

v. Dy. Commissioner of Income-tax,  
Central Circle – 1 (2)  
Room No. 906, 9<sup>th</sup> Floor,  
Old CGO Building Annexe,  
M.K. Road, Mumbai – 400 020

**PAN NO: AAAFS 7201 B**

**(Appellant)**

**(Respondent)**

**ITA.No. 4685, 4686, 4687, 4688, 4689, 4690 & 4691/MUM/2017  
(A. Ys: 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13 & 2013-14)**

Dy. Commissioner of Income-tax,  
Central Circle – 1 (2)  
Room No. 906, Pratistha Bhavan,  
10<sup>th</sup> Floor, Old CGO Building  
Annexe, Mumbai – 400 020

v. M/s. Sejal Exports (India)  
DC-7221, Bharat Diamond  
Bourse, 'G' Block, Bandra Kurla  
Complex, Bandra (E),  
Mumbai – 400 051

**PAN NO: AAAFS 7201 B**

**(Appellant)**

**(Respondent)**

**ITA.No. 3865, 3866, 3867, 3868, 3669 & 3870/MUM/2017  
(A. Ys: 2008-09, 2009-10, 2010-11, 2011-12, 2012-13 & 2013-14)**

M/s. Ariha Diamond Jewellery Pvt. Ltd.,  
301, Panchratna, Opera House,  
Mumbai – 400 004

v. Dy. Commissioner of Income-tax,  
Central Circle – 1 (2)  
Room No. 906, 9<sup>th</sup> Floor,  
Old CGO Building Annexe,  
M.K. Road, Mumbai – 400 020

**PAN NO: AAECA 1142 N**

**(Appellant)**

**(Respondent)**

**ITA.No. 4692, 4693, 4694, 4695 & 4696/MUM/2017  
(A.Ys: 2008-09, 2009-10, 2010-11, 2012-13, 2013-14)**

Dy. Commissioner of Income-tax,  
Central Circle – 1 (2)  
Room No. 906, Pratistha Bhavan,  
10<sup>th</sup> Floor, Old CGO Building  
Annexe, Mumbai – 400 020

v. M/s. Ariha Diamond Jewellery  
Pvt. Ltd., 62-64b, Raja Bahadur  
Bansillal Building, Girgaum  
Road, Mumbai – 400 004

**PAN NO: AAECA 1142 N**

**(Appellant)**

**(Respondent)**

**ITA.No. 3871/MUM/2017 (A.Y: 2008-09)**

M/s. Sejal Gems Pvt. Ltd.,  
301, Panchratna, Opera House,  
Mumbai – 400 004

v. Dy. Commissioner of Income-tax,  
Central Circle – 1 (2)  
Room No. 906, 9<sup>th</sup> Floor,  
Old CGO Building Annexe,  
M.K. Road, Mumbai – 400 020

**PAN NO: AADCS 2096 Q**

**(Appellant)**

**(Respondent)**

**Assessee by : Shri Neelkanth Khandelwal**  
**Revenue by : Ms Pooja Swaroop**

**Date of Hearing : 06.04.2018**

**Date of Pronouncement : 04.07.2018**

**ORDER**

**PER BENCH**

1. All these appeals are filed by various assessee's of same group as well as Revenue for different Assessment Years. Since the issue is common in all these appeals, all the appeals are clubbed and heard

together and the same are being disposed off by this common order for the sake of convenience.

2. First we take up the assessee's appeals in the case of M/s. Sejal Exports (India) for the Assessment Years 2007-08 to 2013-14 and the cross appeals filed by the Revenue.

3. Since these are cross appeals on same issue of bogus purchases, in so far as the appeals for the Assessment Years 2007-08 & 2008-09 are concerned the assessee challenged the reopening of assessment made u/s. 147 of the Act. The contention of the assessee was that these assessments were reopened beyond four years and the reason for reopening the assessment was stated to be that there is inflation in expenditure. Ld. Counsel for the assessee referring to the Page No. 2 of the Assessment Order submitted that though the reasons for reopening the assessment was stated that there is inflation in expenditure while making the assessment the Assessing Officer estimated the Gross Profit on such alleged bogus purchases at the rate at which the assessee has shown the Gross Profit. Therefore, the contention of the assessee was that the basis for making addition is not adhered to. It was also contended that in the reasons it was mentioned that assessee was one of the beneficiaries of the accommodation bills/unsecured loans, but without

finalizing the assessment, only Gross Profit addition was made. Therefore, it is contended that basis for making addition was not adhered to by the Assessing Officer. Hence, reopening of assessments are bad in law. It was further contended that in the reasons Assessing Officer has not mentioned the failure on the part of the assessee to furnish the details in completing the assessment. Therefore, for this reason also it was submitted that the reopening of assessment is bad in law.

4. On the other hand, Ld. DR submitted that assessments were reopened based on a specific information received by the DGIT(Investigation), Mumbai communicating the details of fictitious sales bills and also bogus/unsecured loans provided by the entities floated by Bhanwarlal Jain Group. Ld. DR submitted that the name of the assessee firm was found in the information provided by the DGIT(Investigation) as one of the beneficiaries of such accommodation bills provided by Bhanwarlal Jain Group. Therefore, it was contended that, there was a specific information on record to suggest that the income had escaped assessment as the assessee obtained bogus bills from Bhanwarlal Jain Group companies. It was submitted that in view of this information the Assessing Officer has reason to believe that the income had escaped assessment and has rightly reopened the assessment. Ld. DR strongly

placed reliance on the findings of the Ld.CIT(A) in sustaining the reopening of assessment.

5. We have heard the rival submissions, perused the orders of the authorities below. No doubt the assessments were reopened beyond four years but the reopening was made based on a concrete information which has come on record subsequent to completion of assessments u/s. 143(3) / 143(1) of the Act. When there is a specific and concrete information available with the Assessing Officer after completion of assessment, there is certainly reason to believe that the income had escaped assessment and therefore we do not see any infirmity in the order of the Assessing Officer in reopening the assessments. We also find that there is no considerable force in the submissions of the Ld. Counsel for the assessee that the basis for making of addition is not adhered to. It was also the finding of the Ld.CIT(A) that the information was unearthed during the course of search in the case of Bhanwarlal Jain Group that they were providing bogus accommodation bills to various parties through various companies. Based on this information the assessments were reopened as the Assessing Officer was of the view that there is a reason to believe that income had escaped assessment, there is no change of opinion. Ld.CIT(A) has dealt with this issue and gave a finding that the

assessments were reopened on the material seized subsequent to completion of assessments u/s. 143(3) or issue of intimations u/s. 143(1) of the Act and sustained the re-assessments observing as under: -

*“4.3.1 I have considered the submissions of the appellant and perused the materials available on record including copies of the judicial decisions relied upon by the appellant. The issue for adjudication is whether the A.O. was justified in reopening the assessment u/s.147 of the Act beyond four years of the end of the relevant A.Y. and whether, while doing so, he had complied with the terms of the first proviso to section 147. It is a matter of record that the assessment of the appellant was reopened on the basis of the information received from the DGIT (Inv.), Mumbai vide letter dated 13.03.2014 that the appellant had obtained fictitious purchase bills or accommodation entries to the tune of Rs. 16,74,69,611/- from aforesaid 13 parties and thereby suppressed its true profit for the relevant period. This information is found to have been unearthed in the course of search and seizure action carried out by the Department in the case of Shri Bhanwarlal Jain Group. This shows that the reopening of assessment was based not on subjective opinion or suspicion of the AO but on concrete and credible information received from the Investigation Wing. It is well-settled that the sufficiency or correctness of the material is not a thing to be considered at this stage. It has only to be seen whether there was prima facie some material on the basis of which the Department could reopen the case [Raymond Woollen Mills Ltd. v. ITO 236 ITR 34(SC)]. Therefore, having received the said information from the Investigation Wing of the Department, no independent enquiry or verification was required to be undertaken by the AO before arriving at the prima facie conclusion that income chargeable to tax had escaped assessment in the hands of the appellant.*

*4.3.2 It appears that in the absence of this information, the issue of verification of genuineness of purchases made from the said 13 parties escaped the attention of the AO while making the earlier assessments first u/s.143(3) and later u/s.143(3) r.w.s.153A of the Act on 07.12.2009 and 28.02.2011 respectively. There is nothing to indicate that any query was raised or any information was sought by the then AOs in regard to the purchases made from said 13 parties during the course of assessment. In other words, the issue was not under consideration at all in the course of said assessments. When the matter was not examined by the AO in such assessments, the appellant cannot say that reopening is an attempt to review or reinvestigate the same or that it amounts to change of opinion. In this connection, reliance is placed on judicial precedents in the cases of EMA India Ltd. v. ACIT 226 CTR (All) 659 and Consolidated Photo & Finvest Ltd. v. ACIT 281 ITR 394 (Del.) wherein it has been held that the principle that a mere change of opinion cannot be a basis for reopening completed assessment would be applicable only to situations where the Assessing Officer has applied his mind and taken a conscious decision on particular matter in issue and not where the order of assessment does not address itself to the aspect which is the basis for reopening of the assessment. Following the same legal principle, it cannot be said even in the instant case that there was any application of mind on part of the AO on this issue at the time of previous assessments and, therefore, the reopening of said*

*assessment in these circumstances cannot be said to be based on change of opinion.*

*4.3.3 Finally, it is found that the A.O. had proceeded to reopen the assessment because there was a failure on part of the appellant to disclose fully and truly facts necessary for its assessment. In this connection, it would be pertinent to refer to the judgment of Hon'ble Supreme Court in the case of Phoolchand Bajranglal 203 ITR 456 (SC) wherein it has been held that where on the basis of subsequent information, the transaction itself is found to be a bogus transaction, mere disclosure of that transaction at the time of original assessment proceedings cannot be said to be disclosure of 'true' and 'full' facts of the case and the ITO would have jurisdiction to reopen the concluded assessment in that case. Since in the instant case, the purchases from the above 13 parties were not genuine purchases but in the nature of accommodation entries, it is clear that the disclosure of aforesaid purchases as genuine in the books of account/ return of income could by no means be treated as full and true disclosure of facts necessary for the assessment of the appellant. As regards the appellant's objections to the reopening of its assessment, it is found that the AO had disposed of the same vide a speaking order passed on 16.10.2014. The reasons recorded by the AO are found to be having a live link with the formation of his belief. The belief entertained by the AO was that of an honest and reasonable person based upon reasonable grounds rather than on gossip, rumour or suspicion. Thus, there is no hesitation in holding that the requirements of the first proviso to section 147 were fully satisfied in the present case. In view of the above discussion, I do not find any error or infirmity in the action of the AO in reopening the assessment of the appellant for the A.Y. under consideration based on the above information received from the Investigation Wing and proceeding to reassess the income escaping assessment on this count. Ground No.1 taken up by the appellant is thus found to be devoid of merit and is accordingly dismissed."*

6. In view of the findings of the lower authorities that the assessments of the assessee were reopened based on material unearthed in the course of search in Bhanwarlal Jain Group and Assessing Officer had reason to believe that the income had escaped assessment, we sustain the reopening of assessments and reject this ground of appeal of the assessee.

7. Coming to the additions made towards bogus purchases, Learned Counsel for the assessee submitted that assessee has submitted the

copies of invoices, ledger confirmation, bank statements, where the payments were made through cheques. It is submitted that assessee is also maintaining the stock details/stock records and therefore the purchases made are genuine. The Learned Counsel for the assessee submitted that in the course of Assessment Proceedings Assessing Officer issued notices u/s. 133(6) of the Act and the parties have responded confirming the transaction with the assessee. Ld. Counsel for the assessee referring to Page Nos. 93 to 102 of the Paper Book submitted that these are the details furnished by the parties to the Assessing Officer in response to notice issued u/s. 133(6) of the Act and copy of Income Tax Returns confirming the transaction with the assessee and also reflecting the sale proceeds received by those parties in the Income Tax Return. Therefore, it was submitted that since the parties have confirmed the transactions with the assessee by filing necessary details in response to notices issued u/s. 133(6) of the Act the purchases cannot be treated as bogus. It is further submitted that all the purchases are genuine, beyond doubt and supported by sufficient materials, all the purchases are backed by corresponding sale. The Gross Profit ratio shown by the assessee is quite reasonable, payment for purchases are made by account payee cheques only. It is further submitted that nothing has been brought on record by the Assessing Officer to show that the

money has come back to the assessee to treat the purchases as non-genuine. It is also submitted that the Ld. DR did not provide copy of materials and statements relied upon by him nor allowed any opportunity to the assessee to cross examine those parties who have been believed to have provided alleged entries of purchases.

8. Ld. Counsel for the assessee further submitted that assessee produced necessary documentary evidences before the Assessing Officer such as, order for purchase is being placed after inspection of cut and polished diamonds and mode of dispatch is through office staff and submitted that since weight of the diamonds are light and does not require any mode of dispatch, copy of the ledger of these parties along with relevant invoices and details of payments made to these parties with the copy of bank account from where payment made, the nature of goods does not require transportation by any lorry or railway and there is no octroi on purchase at Surat and subsequently transfer of goods from branch to head office through courier or person. Even otherwise all the goods are exported out of India, Bills serve the purpose of Delivery challan and the goods are being received by the staff. Ld. Counsel for the assessee further submits that the nature of goods does not require weighment slips since cut and polished diamond are weighed in house

and goods received are entered in the stock register and quality is being checked at the time of purchase of goods itself. The receipt of goods is supported by stock register maintained by assessee.

9. Learned Counsel for the assessee submitted that, assessee is maintaining complete stock register of all transactions relating to purchase and export sale and one can know easily where these purchases are exported. Ld. Counsel for the assessee further submitted that, it is quite important to note that without purchase how the export of goods could be completed. All the goods are being checked by the Custom authority at the time of exports. Many times these purchases are being financed by bank under Packing credit loan facility. Learned Counsel for the assessee submitted that goods purchased are covered under block insurance taken by the assessee. In support of producing these parties, assessee submitted the confirmation of these parties confirming the transactions of these purchases. The auditor has given complete details of quantity in carat in the tax audit report.

10. Ld. Counsel for the assessee placed reliance on various decisions which are placed at Paper Book to stress the argument that the purchases are genuine, therefore, no addition is required to be made. Ld. Counsel for the assessee particularly referred to the decision in the case of

M/s. Sharad Construction Pvt. Ltd. v. ACIT in ITA.No. 2812 to 2814/Mum/2015 dated 30.09.2016 and M/s. Vama International v. I.T.O in ITA.Nos. 7315 to 7317/Mum/2016 dated 15.02.2018.

11. Ld. Counsel for the assessee also contended that Gross Profit from these purchases were made without rejecting the Books of Accounts, therefore, profit cannot be estimated without rejection of Books of Accounts. Reliance is placed on the decision of the Hon'ble Madras High Court in the case of Pr. CIT v. Marg Ltd., [396 ITR 580] and the decision of the Hon'ble Karnataka High Court in the case of CIT v. Anil Kumar & Co. [386 ITR 702].

12. Ld. DR strongly placed reliance on the order of the Assessing Officer. Ld. DR submitted that assessee could not prove that the purchases made were genuine and therefore the Assessing Officer rightly estimated the addition from the purchases.

13. We have heard the rival submissions, perused the orders of the authorities below. Assessing Officer required the assessee to prove the genuineness of the purchases, since the information was received from DGIT(Investigation), Mumbai that assessee was one of the beneficiaries of bogus purchase bills issued by the companies which were maintained

by Bhanwarlal Jain Group as there was search in the case of Bhanwarlal Jain Group. The Revenue came to know that the Bhanwarlal Jain Group was issuing the accommodation entries to various parties through different entities. Assessee submitted copies of invoices, ledger confirmations, bank statements etc., and contended that the purchases are genuine. However, the Assessing Officer rejecting the explanations and submissions of the assessee and ignoring the evidences furnished in the form of invoices, ledger confirmation, bank statements estimated the profit element in the purchases at the rate at which the assessee has declared the Gross Profit for the relevant Assessment Year and the Gross Profit rate stood at about 7% in all Assessment Years. On appeal the Ld.CIT(A) considering the submissions of the assessee and evidences on record concluded that the purchases have been actually made but not from whom these are claimed to have been made and instead they have been purchased from gray market without proper billing or documentation. Therefore, only the profit element embedded therein needs to be brought to tax. He concluded that the profit element estimated by the Assessing Officer at around 7.33% which is the Gross Profit declared by the assessee for the Assessment Year 2007-08 is excessive and unreasonable. He considered fair and reasonable to estimate the profit margin embedded in such purchases @2% observing as under: -

“6.3.1. I have considered the submissions of the appellant and perused the materials available on record including the judicial decisions relied upon by the appellant. The point for determination is whether the AO is justified in making addition of Rs.1,22,75,522/- on account of element of extra profit of 7.33% embedded in the purchases made from the aforesaid 13 concerns. At the outset, it is proposed to take note of couple of judicial precedents having bearing on the issue under adjudication. It is now well-settled that the onus is upon the assessee to prove the genuineness of the purchases [178 CTR (Raj) 420 and 186 CTR (MP) 718]. In the case of CIT v. Precision Finance Pvt. Ltd. 208 ITR 465 (Cal.), it has been held that payment made by account payee cheque is not sacrosanct and it would not make an otherwise non-genuine transaction genuine. This view had also found favour with the Hon'ble Apex Court in the case of M/s.Kachwala Gems, as brought out in the impugned order. It is now proposed to examine whether the appellant has been able to discharge the onus of proving that the purchases amounting to Rs.16,74,69,611/- made by it from the aforesaid 13 concerns are genuine. It is noticed from the record that the AO treated the aforesaid purchases from 13 parties as bogus or non-genuine not merely on the basis of information received from the Investigation Wing but also because the appellant failed to furnish the purchase orders, delivery challans/ angadia receipts etc. in respect of the said purchases of cut and polished diamonds. The absence of these supporting evidences lent credence to the AO's finding that the purchases shown to have been made by the appellant from aforesaid 13 concerns were nothing but accommodation entries without any actual movement or delivery of goods.

6.3.2 A perusal of the relevant invoices reveals that out of aforesaid 13 concerns of Bhanwarlal Jain Group, many concerns were having common addresses, as brought out in the table below: -

<u>Sr.No.</u>	<u>Name</u>	<u>Address</u>
1.	<u>Ankita Exports,</u>	3-M, Ambika Darshan, Moti Kadia Sheri, Saiyadpura, Surat - 395 003
	<u>Milan &amp; Co.</u>	
	<u>Parvati Exports</u>	
2	<u>Laxmi Diamond</u>	204, Vaibhav Chamber, Rughnathpura Main Road, Surat - 395 003
	<u>Marvin Enterprise</u>	
	<u>Prime Star</u>	
3.	<u>Mukti Exports</u>	407, Devratna Apartment, Rampure Main Road, Surat - 395 003
	<u>Mohit Enterprises</u>	
	<u>Pakanj Exports</u>	
	<u>Pushpak Gems</u>	
	<u>Rajan Diamonds</u>	

It is also noticed that the invoices of almost all 13 concerns were prepared on the computer in the same format having the same font type as well as (font) size. It is pertinent to mention that while 1% VAT is leviable on such transactions in Mumbai/ Maharashtra, the diamond sector in Surat/Gujarat is exempted from payment of VAT. Thus, there is a saving of 1% VAT involved in procuring (accommodation) purchase bills of cut and polished diamonds from parties like the aforesaid concerns based in Surat. I am unable to accept the appellant's plea that there is nothing in support of cash purchases of goods from the grey market, because these transactions take place in secret and no direct evidence in this

regard is generally available. It is well-established that such matters have to be considered in the light of surrounding circumstances, normal course of human conduct and preponderance of probabilities. However, it is pertinent to mention that the fact that the appellant was one of the beneficiaries of the accommodation entries obtained from entry providers operating in Mumbai came to light only during the course of search and seizure actions carried out in the case of Shri Bhanwarlal Jain Group. The purchases of cut and polished diamonds shown to have been made from aforesaid 13 parties cannot be regarded as genuine merely because the appellant was not related to the suppliers or because the GP rate shown by the appellant was reasonable or satisfactory and had been accepted in the past. However, since the appellant had furnished copies of account confirmations, purchase invoices, etc. and quantitative details of the principal items of raw materials and finished goods in carat were available in the tax audit report, I am in agreement with the AO's finding that the cut and polished diamonds were purchased by the appellant from the grey market and to give this the colour of genuine purchases, bogus accommodation bills were obtained from aforesaid 13 concerns. It deserves to be noted that the AO had not rejected the books of account of the appellant because he had no material to doubt the genuineness of sales/ exports made by the appellant.

6.3.3 It is now well-established that in a case where the purchases have been actually made but not from the parties from whom these are claimed to have been made and instead may have been purchased from grey market without proper billing or documentation, only the profit element embedded therein needs to be brought to tax. The estimation of rate of profit must necessarily vary with the nature of business and no uniform yardstick can be adopted. It is well-known that if purchases are made from open market without insisting on the genuine bills, the suppliers may be willing to sell those products at a much lower rate as compared to the rate which they may charge in case the dealer has to give a genuine sale invoice in respect of that sale and supply the goods. It is a matter of common knowledge that there is bound to be a substantial difference between the purchase price of unaccounted material and rate of purchase of accounted for goods due to various factors such as saving on account of sales-tax and other taxes and duties leviable in respect of manufacture or sale of goods in question and substantial saving in the income-tax to suppliers in respect of income from sale of unaccounted goods etc. In these circumstances, the diamonds in the grey market are always cheaper than the diamonds sourced from the genuine dealer, because there is an element of discount in case of instant cash purchase. Therefore, the AO has correctly concluded that an addition is required to be made in case of the appellant so as to bring to tax the profit element embedded in such purchases.

6.3.4 Coming now to the estimation of profit margin @7.33% by the AO in the present case, I find merit in the appellant's plea that the extra profit of 7.33% estimated by the AO is excessive and unreasonable. This is so because the AO has not given any basis or justification for adopting the profit element at 7.33%. In this connection, it is pertinent to note that purchase of cut and polished diamonds from open market is made mainly to save 1% VAT levied thereon and in addition, the buyer gets the benefit of lower rate/cash discount. In these circumstances, the addition of extra profit @7.33% of purchases from aforesaid concerns cannot at all be said to be justified. In view of this position, it is considered fair and reasonable

*to estimate the profit margin embedded in such purchases at 2% of the purchase value recorded in the books of account. Since the appellant has shown purchases to the tune of Rs.16,74,69,611/-, the profit element involved therein @2% of the purchase value will come to Rs.33,49,392/- as against Rs.1,22,75,522/- worked out by the AO. Thus, the appellant gets relief of Rs.89,26,130/- (Rs.1,22,75,522-Rs.33,49,392) on this count. Ground No.3 of the present appeal is accordingly allowed to the extent indicated above.”*

14. On a perusal of the order of the Ld.CIT(A) and the findings thereon with reference to the submissions and evidences thereon, we find that Ld.CIT(A) completely ignored the confirmations filed by the parties in response to notices issued u/s. 133(6) of the Act by the Assessing Officer. The parties have confirmed by submitting the copy of ledger account, copy of sales bills, copy of bank statement where the payments were made through cheques and copy of Income Tax Returns reflecting the sale in their Books of Accounts. Ld.CIT(A) lost sight of these evidences which is crucial in these appeals to decide the genuineness of the purchases. When the parties confirmed that they have supplied the goods to the assessee and recorded the sales in their Books of Accounts, we fail to understand how the Ld.CIT(A) concluded that the purchases have been actually made but not from these parties but they have been made from gray market without proper billing or documentation. In our considered view, when the parties have confirmed the transaction by filing necessary details as was done in this case the purchases cannot be treated as non-genuine.

15. Almost identical issue came up in the case of the M/s. Vama International v. I.T.O (supra) wherein the Assessing Officer treated the whole purchases are non-genuine, Ld.CIT(A) estimated the profit element from that purchases @12.5% the Coordinate Bench considering the evidences on record deleted the estimation made by the Ld.CIT(A) observing as under: -

*“16. We have heard the rival submissions, perused the orders of the authorities below. In this case the assessments were reopened based on the information from the DGIT(Investigations), Mumbai that assessee is a beneficiary from the entities operated by Shri Bhanwarlal Jain wherein the search took place and it was found that Shri Bhanwarlal Jain is providing only accommodation entries and there were no actual sale transactions. Assessing Officer observed that the assessee could not prove the movement of goods from the suppliers to the assessee. In the absence of delivery challans and based on the statements of Bhanwarlal Jain that they have provided only accommodation bills, the Assessing Officer has concluded that the assessee has obtained only bogus bills and assessee might have purchased goods in gray market. The Assessing Officer estimated the Gross Profit Margin on such purchases at 12.5% for the Assessment Years 2012-13 and 2013-14. For the Assessment Year 2011-12 the entire purchases were treated as non-genuine. The Ld.CIT(A) taking note of the submissions of the assessee as well as the averments of the Assessing Officer and various case laws estimated the profit element from these purchases at 12.5% for all the Assessment Years 2011-12 to 2013-14. The Ld.CIT(A) in his order observed as under:*

*“11. I have carefully gone through the assessment order passed by the Assessing Officer and the written submissions of the appellant on the issue. I have also considered various case laws relied upon by the appellant. My observations are as under.*

*12. The AO has formed his view about the bogus nature of the purchase made by the appellant from M/s. Daksh Diamonds on the basis of various incriminating documents and evidences seized during the course of search & seizure action in the case of Bhanwarlal Jain Group, which has established that the said group was engaged in providing accommodation entries of bogus sales/purchases/loans to various beneficiaries.*

*13. In my opinion, simply relying upon the information received from the DGIT(Inv.) regarding the default committed by M/s. Daksh Diamonds cannot be taken as the sole basis to treat the entire purchases made from it as bogus or non-genuine. The Assessing Officer has primarily relied on the conclusions drawn by the Investigation Wing on the basis of the*

statement given before the Income tax authorities and heavy reliance on such statement to treat entire purchases made from the above party as bogus, cannot be held to be justified. The information received from the DGIT(Inv.) was a piece of evidence to initiate in-depth independent investigation on the issue, which the Assessing Officer has not fully carried out. Further full enquiry on the given set of facts and circumstances and without appreciating the evidences submitted by the appellant in respect of the purchases made from the alleged bogus party has remained to be carried out before arriving at the conclusion that impugned purchase debited in the books of the appellant are bogus.

14. It is not the case of the Assessing Officer that the above party i.e. M/s. Daksh Diamonds specifically stated that it had made bogus sales to the appellant. The purchase invoices, payments to the parties through cheques and closing stock inventory submitted by the appellant are certain important evidences regarding the purchases made by the appellant that cannot be set aside summarily. Therefore, the conclusion drawn regarding the purchases made from M/s. Daksh Diamonds being entirely bogus, is not justified.

15. In this regard, the ratio was laid down by the Hon'ble High Court of Bombay in the case of CIT v. Nikunj Eximp Enterprises (P.) Ltd., is very relevant, wherein it was held that —

*"When the assessee have filed letter of confirmations of the suppliers, Bank statements highlighting the payment entries through account payee cheque, copies of invoices, stock reconciliation statements before the AO; and merely because the suppliers did not appear before the AO, one cannot conclude that the purchases were not made by the assesses. The AO cannot disallow the purchases on the basis of suspicion because the suppliers were not produced before them."*

16. The facts and circumstances as outlined above, clearly suggest that the purchases by the appellant from M/s. Daksh Diamonds cannot be doubted but a major flaw in these transactions is the unverifiable nature of transactions of these purchases from M/s. Daksh Diamonds as it was not found available at the given address. Thus the purchase prices shown on the invoices are not subjected to verification and as such it was difficult to establish the correctness of the purchase prices paid for the materials purchased from them. Such verification of the sale price shown on the invoices/bills was necessary to ascertain the correctness of the profits shown by the appellant for the period under consideration. This verification was also vital to determine as to whether the purchase prices shown on the bills/invoices, are as per prevailing market prices of the materials purchased and to ascertain that the price paid for the materials purchased from M/s. Daksh Diamonds is not over invoiced. In the absence of any such verification of the correctness of the price paid for the materials purchased by the appellant, the purchase price paid as mentioned on the invoices/bills cannot be accepted as the correct price paid for the goods

*purchased from M/s.Daksh Diamonds. In view of the same, the possibility of over-invoicing of the materials purchased to reduce the profit, 'cannot be ruled out. Therefore, the gross profit rate shown by the appellant for the year under consideration cannot be relied upon. In the circumstances, the correct approach in such transactions would be to estimate the additional benefit or profit earned on these purchases and not to disallow the entire purchases from M/s. Daksh Diamonds. The disallowance of the entire amount of purchases from M/s.Daksh Diamonds would not be logical and would amount to travesty of justice. In my view either the purchases from above mentioned party are over invoiced or the purchases were actually made but not from the said party from which it was claimed to have been made and instead may have been purchased from grey market without proper billing or documentation.*

*17. As of now the issue of bogus purchases has been much discussed and debated by the various courts and tribunals. In many judicial pronouncements on the issue, the courts have taken a consistent view that in case of non-existent parties from whom the purchases are shown to have been made, only part of such purchases can be disallowed, particularly in the cases where the corresponding sales are not doubted. Alternatively, the profit embedded in such sales against the alleged bogus purchase, can only be brought to tax.*

*18. In the case of CIT-1 Vs Simit P. Sheth, ITA no. 553 of 2012, order dated 16.01.2013, while deciding a similar issue the Hon'ble High Court of Gujarat has held that: -*

*"We are broadly in agreement with the reasoning adopted by the Commissioner (Appeals) with respect to the nature of disputed purchases of steel. It may be that the three suppliers from whom the assessee claimed to have purchased the steel did not own up to such sales. However, vital question while considering whether the entire amount of purchases should be added back to the income of the assessee or only the profit element embedded therein was to ascertain whether the purchases themselves were completely bogus and non-existent or that the purchases were actually made but not from the parties from whom it was claimed to have been made and instead may have been purchased from grey market without proper billing or documentation.*

*In the present case, CIT believed that when as a trader in steel the assessee sold certain quantity of steel, he would have purchased the same quantity from some source. When the total sale is accepted by the Assessing Officer, he could not have questioned the very basis of the purchases. In essence therefore, the Commissioner (Appeals) believed assessee's theory that the purchases were not bogus but were made from the parties other than those mentioned in the books of accounts.*

*That being the position, not the entire purchase price but only profit element embedded in such purchases can be added to the income of the assessee. So much is clear by decision of this Court. In particular, Court has also taken a similar view in case of Commissioner of Income Tax-IV vs. Vijay M Mistry Construction Ltd. vide order dated 10.01.2011 passed in Tax Appeal No. 1090 of 2009 and in case of Commissioner of Income Tax-I vs. Bholanath Poly Fab Pvt. Ltd. vide order dated 23.10.2012 passed in Tax Appeal No. 63 of 2012. The view taken by the Tribunal in case of Vijay Proteins Pvt. Ltd. Vs. CIT reported in 58 ITD 428 came to be approved.” (Emphasis supplied)*

19. Similarly while dealing with an identical issue, in the case of CIT v. Bholanath Poly Fab (Purchase) ltd. ITA.No.No. 63 of 2012, in the order dated 23/10/2012, the Hon'ble High Court of Gujarat has held as under: -

*“We are of the opinion that the Tribunal committed no error. Whether the purchases themselves were bogus or whether the parties from whom such purchases were allegedly made were bogus is essentially a question of fact. The Tribunal having examined the evidence on record came to the conclusion that the assesses did purchase the cloth and sell the finished goods. In that view of the matter, as natural corollary, not the entire amount covered under such purchase, but the profit element embedded therein would be subject to tax. This was the view of this court in the case of Sanjay Oilcake Industries v. CIT (2009] 316 ITR 274 (Guj). Such decision is also followed by this court in a judgment dated August 16,2011, in Tax Appeal No. 679 of 2010 in the case of CIT v. KishorAmrutlal Patel. In the result, tax appeal is dismissed.”*

20. In view of the facts and circumstances and the judicial pronouncements cited above; what can be disallowed or taxed in the instant case of the alleged bogus purchases is only the excess profit element embedded in such purchases shown to have been made from M/s.Daksh Diamonds. The appellant has not placed any evidence on record that the goods were purchased from the above party at arms' length price. The appellant has also not placed on record any comparable bills/invoices for purchases of similar items made from other parties to establish that the purchases from M/s.Daksh Diamonds in question was at par with the purchases made from other parties during the period under consideration. The possibility of such purchases from unregistered dealers without invoices cannot be ruled out. Hence possibility of such purchases from unregistered dealers without invoices cannot be ruled out. In view of the above, the correctness of the purchase prices mentioned on such bills/invoices issued by M/s.Daksh Diamonds in question cannot be accepted and some additional profit needs to be estimated on such purchases made from M/s.Daksh Diamonds. As the purchases invoices issued against the alleged bogus purchases remains unverifiable, and part of the profit element on the purchases made from M/s.Daksh Diamonds

*already included in the above gross profit rate shown for the year under consideration, it would be fair and just, if the additional gross profit @ 12.5% is applied on such total alleged bogus purchases amounting to Rs. 1,05,18,970/-, the additional gross profit on such purchases would come to Rs. 13,14,871/- which need to be added to the income of the assessee on account of alleged bogus purchases for the year under consideration and the balance addition made amounting to Rs. 92,04,099/-is hereby deleted. The Assessing Officer is directed accordingly. Hence, grounds no. 1 & 2 are partly allowed.”*

17. As could be seen from the above the Ld.CIT(A) did not agree with the Assessing Officer that the purchases by the assessee are bogus/non-genuine. However, the Ld.CIT(A) observed that purchases made cannot be doubted and there is a major flaw in these transactions is the unverifiable nature of transactions as the parties are not found available in the given address. However, we see that the parties have responded in these cases for the notices issued u/s. 133(6) of the Act, they have filed Ledger Account of the assessee in their books of accounts, Copies of Sales Invoices issued by them, their Bank statements reflecting the payments made by the assessee to them, Copies of acknowledgement of Income-tax Returns filed by them, Audited Profit & Loss A/c and Balance Sheets to show that the transactions of sales made to the assessee are genuine. On a careful consideration of the submissions made by the assessee, we find considerable force in the submissions not to treat the purchases made by the assessee from the parties as non-genuine/bogus.

18. The reason for treating these purchases as non-genuine /bogus is the statements given by Bhanwarlal Jain group and non-submission of delivery invoices by the assessee. It is the submission of the assessee that the statements given by Bhanwarlal Jain group have been retracted by them subsequently and there is a practice of hand delivery of such precious and light weighing materials like Diamonds is prevailing in the industry. Therefore, no adverse conclusion can be drawn merely due to absence of documents proving deliveries. The analysis furnished before us on the Gross Profit margin shown by the assessee also suggest that assessee is consistent in showing overall Gross Profit around 6% in these Assessment Years. The average Gross Profit shown by the assessee stood at 6.04% for these Assessment Years. Therefore even if we go by the submissions of the Ld.DR that the profit element should be estimated at 6% as per the CBDT Circular the assessee has already shown 6.04% of overall Gross Profit during these three Assessment Years. The disallowance/estimation of profit on purchases by treating them as bogus cannot be made only on the statements recorded from third parties, especially when those parties have responded to the notice issued u/s.133(6) of the Act by filing all necessary documents to prove that they have made sales to the assessee. It is also the submission of the assessee that none of the impugned parties have been declared as Hawala dealers or suspicious dealers by the Sales Tax Department and the genuineness of the purchases have been doubted merely on the basis of the statement given by the Bhanwarlal Jain group. The assessee has furnished all necessary evidence to prove the genuineness of the purchases, the parties have also responded to the notices u/s. 133(6) of the Act by filing necessary evidence as to prove that the purchases are genuine. Thus the assessee discharged the onus to prove the

*genuineness of the transactions made by the assessee from the impugned parties. The Assessing Officer completely failed to make further enquiries in these cases. The documents furnished by the supplier of the goods have not been disproved by the Assessing Officer in these matters.*

19. We also find that the Coordinate Bench in the case of *Indo Unique Trading Pvt Ltd. v. DCIT in ITA.No. 6341/Mum/2016* considered almost an identical situation wherein the suppliers have responded to the notices issued u/s. 133(6) of the Act and confirmed the transaction by filing various details before the Assessing Officer, in such circumstances the Coordinate Bench accepted the contentions of the assessee that the purchases cannot be treated as bogus simply relying on the statements in the case of *Bhanwarlal Jain group*. While holding so the Coordinate Bench observed as under: -

*“10. We have heard rival contentions and perused the record. We notice that the assessing officer has reopened the assessment for the second time after expiry of four years from the end of the assessment year, on the basis of information received from the investigation wing about the bogus nature of transactions entered by Shri Bhanwarlal Jain group. Even though the AO has mentioned the reasons that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment, yet he has not specified the manner of failure.*

*11. On the contrary, we notice that the assessee has proved the genuineness of purchases by obtaining confirmation letters in the form of affidavits from all the suppliers. The AO has done independent enquiry during the course of assessment proceedings by issuing notices u/s 133(6) of the Act to all the suppliers. We notice that the notices were duly served upon the suppliers and they have also responded by filing their replies duly confirming the transactions. The AO has rejected the replies by observing that the replies lacked details and they did not mention about the nature of transactions. In our view, the said observations are vague in nature. On the contrary, a perusal of the affidavits furnished by the suppliers would show that they have confirmed the sales effected by them to the assessee. Further they have also verified and signed the ledger account copies as available in the books of account. When the suppliers confirm that the transactions of sales made by them to the assessee are genuine, that too, in response to the notices issued by the AO u/s 133(6) of the Act during the course of assessment proceedings, in our view, the said replies cannot be rejected without bringing on record any material to show that they are not true. We notice that the AO did not bring any material on record and he simply relied upon the report given by the investigation wing. As per Ld A.R, the statement given by Shri Bhanwarlal jain is a general statement only. The assessee, as stated earlier, has furnished confirmation of ledger accounts and also affidavits to prove the genuineness of transactions. We notice that the AO could not controvert those documents.*

*12. In view of the foregoing discussions, we are of the view that the assessee has duly discharged the burden to prove the genuineness of*

*purchases. On the contrary, the AO has simply relied upon the report given by the investigation wing. In this view of the matter, we are of the view that no addition is called for on account of alleged bogus purchases. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the impugned addition.”*

20. *In view of what is discussed above, we are of the view that the assessee has duly discharged its burden of proving the genuineness of the purchases and the Assessing Officer without making proper investigation, simple relied on the statements of third party to treat the purchases as bogus. Assessing Officer could not prove that the information furnished by the suppliers are not genuine so as to treat the sales made by them are only bogus. In the circumstances, we set aside the orders of the lower authorities and delete the disallowance made towards bogus purchases for all these Assessment Years i.e. 2011-12 to 2013-14 which are under appeal before us.”*

16. As could be seen from the above, the facts in the case of the assessee and also the decision referred to above are almost identical. The parties have confirmed by filing replies to notices u/s. 133(6) of the Act along with the ledger account of the assessee in their Books of Accounts, copies of sales invoices issued by them to the assessee, thereby statements reflecting payments made by the assessee to them, copy of acknowledgment of Income Tax Returns filed by them to show that the transaction of sales made to the assessee are genuine. We also find that the Gross Profit margin shown by the assessee is ranging in between 7.02% to 7.62% consistently. Further, the disallowance / estimation of profit of purchases by treating them as bogus cannot be made only on the statements recorded from third parties, especially when the suppliers have responded to the notice u/s. 133(6) of the Act and filed all the necessary documents to prove the genuineness of the purchases

made by the assessee. Thus the grounds raised by the assessee on merits are allowed. As we have allowed the appeals of the assessee on merits for the reasons and discussions made therein, the Revenue's appeals are dismissed.

17. Coming to the appeals in the case of M/s. Ariha Diamond Jewellery Pvt. Ltd., and M/s. Sejal Gems Pvt. Ltd., facts being identical, we reject the grounds raised by the assessee in reopening the assessments beyond four years for the Assessment Years 2008-09 & 2009-10 and on merits facts are almost identical, however, the suppliers though not responded to the notices issued u/s. 133(6) of the Act they have given ledger confirmations which have been furnished to the Assessing Officer to prove the genuineness of the transaction. Hence, in view of the above discussion made in the appeals in the case of M/s. Sejal Exports (India), the decision taken therein applies *Mutatis Mutandis* to the appeals in the case of M/s. Ariha Diamond Jewellery Pvt. Ltd., and M/s. Sejal Gems Pvt. Ltd. Thus, the grounds raised by the assessee on merits are allowed. As we have allowed the appeals of the assessee on merits for the reasons and discussions made therein, the Revenue's appeals are dismissed.

18. In the result, appeals of the Assessee are partly allowed and appeals of the Revenue are dismissed.

Order pronounced in the open court on the 04<sup>th</sup> July, 2018.

Sd/-  
**(RAJESH KUMAR)**  
**ACCOUNTANT MEMBER**

Mumbai / Dated 04/07/2018  
Giridhar, Sr.PS

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

**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,

(Asstt. Registrar)  
**ITAT, Mum**