

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य एवं
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष।
[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER]

आयकर अपील सं./I.T.A. Nos.653, 654, 1464 & 1465/CHNY/2017.
निर्धारण वर्ष /Assessment years : 2009-10, 2011-12, 2007-08 &
2008-09

M/s. VBC Jewellery,
No.78, G.N. Chetty Road,
T. Nagar,
Chennai 600 017

vs. The Deputy Commissioner of
Income Tax,
Non Corporate Circle 2,
Chennai.

[PAN AAFV 5601N]

आयकर अपील सं./I.T.A. Nos.655/CHNY/2017.
निर्धारण वर्ष /Assessment year : 2009-10

M/s. VBC Jewellers,
No.76, G.N. Chetty Road,
T. Nagar,
Chennai 600 017.

vs. The Deputy Commissioner of
Income Tax,
Non Corporate Circle 2,
Chennai.

[PAN AAFV 2851D]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. S. Sridhar, Advocate
प्रत्यर्थी की ओर से /Respondent by : Shri. AR.V. Sreenivasan, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 23-10-2018
घोषणा की तारीख /Date of Pronouncement : 24-10-2018

आदेश / ORDER**PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER**

Appeal Nos. 653/CHNY/2017, 654/CHNY/2017, 1464/CHNY/2017 & 1465/CHNY/2017, are of assessee M/s. VBC Jewellery directed against orders dated 30.12.2016 and 31.03.2017 of Id. Commissioner of Income Tax (Appeals)-2, Chennai. Appeal No. 655/CHNY/2007 is of the assessee M/s. VBC Jewellers, for assessment year 2009-10 is directed against an order dated 30.12.2016 of Id. Commissioner of Income Tax (Appeals)-2, Chennai.

2. Facts relating to these appeals lie in a short compass. Both the assessee's were engaged in jewellery business. Pursuant to a search conducted in the premises of one M/s. Bhanwarlal Jain Group on 03.10.2014, Revenue was having information that one Shri. Bhanwarlal Jain alongwith Shri. Rajan Bhanwarlal Jain and Shri. Manesh Bhanwarlal Jain were running a number of dummy concerns and companies, which were controlled by them and such concerns/companies were providing accommodation entries in the nature of loans, advances and sales to various parties, against commission. It seems Investigation Wing of the Department examined the directors/partners/ proprietors of such concerns and companies controlled by Bhanwarlal Jain and family. As per the Investigation Wing bank accounts of these concerns were managed by Shri. Bhanwarlal

Jain, Shri. Rajan Bhanwarlal Jain and Shri. Manesh Bahnwarial Jain. Further, as per such reports, evidence coming out of the records proved that the above group was providing accommodation entries in the nature of bogus purchases and bogus loans through seventy benami concerns. It seems such benami concerns included one M/s. Mohit Enterprises, M/s. Maan Diamonds, M/s. Rajan Diamonds and M/s. Marvin Enterprises which were all located in Surat. Assessee M/s. VBC Jewellery had claimed purchases of ₹ 3,90,780/- from M/s. Rajan Diamonds during the previous year relevant to assessment year 2007-08, ₹6,52,300/- from M/s. Mohit Enterprises during the previous year relevant to assessment year 2008-09, ₹19,58,551/- from M/s. Mohit Enterprises during the previous year relevant to assessment year 2009-10 and ₹23,42,050/- from M/s. Maan Diamonds during the previous year relevant to assessment year 2011-12. Assessee M/s. VBC Jewellers had claimed purchases of diamond worth ₹2,72,320/- from one M/s. Marvin Enterprises during the previous year relevant to assessment year 2009-2010.

3. Ld. Assessing Officer was of the opinion that Investigation done by the Department clearly indicated the above purchases to be bogus. Assesseees were put on notice. Reply of the assesseees were that the purchases were supported by proper invoices and delivery of the items recorded in its stock register. As per the assesseees, they

had received the material and effected sales therefrom. Assessee also pointed out that the payments were effected through bank and suppliers had both GST and TIN. Thus, as per the assessee, purchases were not bogus, but true and genuine.

4. Ld. Assessing Officer thereupon required the assessee to produce the intermediaries through whom the purchases were effected. Assessee thereupon intimated that intermediaries were not traceable due to lapse of time. Ld. Assessing Officer then issued show cause notices to the assessee, requiring it to explain why 25% of the unverifiable purchases should not be considered as unexplained income of the assessee. Assessee replied that the gross profit earned by them from their trading never exceeded 3% and therefore estimation of 25% of the purchases was not justified. Assessee also relied on a judgment of Hon'ble Gujarat High Court in the case of *Sanjay Oil Cake Industries vs. CIT, 316 ITR 274*, for its contention that additional profit in excess of 5% could not be assessed.

5. However, Ld. Assessing Officer was not impressed by the above reply given by the assessee. According to him, assessee's could not prove the genuineness of the purchases nor produce intermediaries through whom the purchases were made. Further, according to him, statements recorded from various persons of M/s.

Bhanwarlal Jain Group clearly proved that they were issuing bogus sales bills for accommodation entries and the assesseees were also beneficiaries of such accommodation entries. He made an addition of 25% of what was considered by him unverifiable purchases. Apart from this, Id. Assessing Officer also made an addition u/s.69C of the Income Tax Act, 1961 (in short "the Act") estimating a commission of ₹5,000/- to have been paid for each of the accommodation bill. Summary of the additions made for the impugned assessment years were as under:-

ITA	Assessee	A.Y.	Purchases disbelieved	Addition of 25%	Addition for commission u/s.69C
653/CHNY/17	VBC Jewellery	2009-10	M/s. Mohit Enterprises, Surat ₹19,58,551/-	4,89,638/-	10,000/-
654/CHNY/17	VBC Jewellery	2011-12	M/s. Maan Diamonds, Surat, ₹23,42,050/-	5,85,513/-	5,000/-
1465/CHNY/17	VBC Jewellery	2008-09	M/s. Mohit Enterprises, Surat ₹6,52,300/-	1,63,075/-	5,000/-
1464/CHNY/17	VBC Jewellery	2007-08	M/s. Rajan Diamonds, Surat ₹3,90,780/-	97,695/-	5,000/-
655/CHNY/17	VBC Jewellers	2009-10	M/s. Marvin Enterprises, Surat ₹2,72,320/-	68,080	5,000/-

6. Aggrieved, both the assesseees moved in appeal before Id. Commissioner of Income Tax (Appeals). Id. Commissioner of Income Tax (Appeals) however confirmed the addition made by the Id.

Assessing Officer observing that there were material evidence on record for considering the purchases claimed by the assesseees as bogus. Further, according to him, judgment of Hon'ble Gujarat High Court in the case of Sanjay Oil Cake Industries (supra) supported the addition made by the Id. Assessing Officer.

7. Now before us, Id. Authorised Representative strongly assailing the orders of the lower authorities submitted that gross profit returned by the assesseees for the impugned assessment years varied between 8.91% to 20.88%. According to him, even if 25% markup was presumed on the alleged unverified purchases, addition should be restricted to difference between gross profit rate declared by the assessee and adopted percentage of 25. In support of the above, Id. Authorised Representative placed reliance on the following table.

VBC Jewellery						
Asst. Year	Unverified purchases	Gross profit (declared)	Deemed sale (with markup of 25%)	Further addition (%)	Addition to be made as per Jaipur ITAT decision (₹)	Addition made by Assessing Officer (₹)
2007-07	3,90,780	20.47%	5,21,040	5.00%	26,052	97,695
2008-09	6,52,300	18.91%	8,69,733	5.00%	43,487	1,63,075
2009-10	19,58,551	21.16%	26,11,401	5.00%	1,30,570	4,89,638
2011-12	23,42,050	20.88%	31,22,733	5.00%	1,56,137	5,85,513
					3,56,245	13,35,920

VBC Jewellers						
Asst. Year	Unverified purchases	Gross profit (declared)	Deemed sale (with markup of 25%)	Further addition (%)	Addition to be made as per Jaipur ITAT decision (₹)	Addition made by Assessing Officer (₹)
2009-10	2,72,320	20.34%	3,63,093	5.00%	18,155	68,080
					18,155	68,080

According to him, judgment of Hon'ble Gujarat High Court in the case of Sanjay Oil Cake Industries (supra) was one where account payee cheques issued by the assessee were deposited in bank account which were ostensibly in the name of apparent sellers and entire amount were withdrawn by bearer cheques with no trace or identity of the person withdrawing the amount from the bank. As against this, as per the Id. Authorised Representative, in a case similar to that of the assessee, decided by a Co-ordinate Bench viz *Sheetal V. Bhat vs. ACIT (in ITA No.272/Mds/2017, dated 28.06.2017)*, it was held that Id. Assessing Officer, having not taken the steps subsequent to issue of notice u/s.133(6) of the Act, disallowance of purchases and additions made on presumptions could not be upheld. Reliance was also placed on a decision of Mumbai Bench of the Tribunal in the case of *M/s. Ralf Jems Pvt. Ltd vs. ITO (ITA Nos.3707 and 3761 /Mum/2016, dated 11.12.2017)*. As per the Id. Authorised Representative in the case considered by the Mumbai Bench, addition was based on a search

conducted in the very same M/s. Bhanwarlal Jain Group, for alleged accommodation entries. Contention of the Id. Authorised Representative was that sales having not been doubted, purchases could not have been disbelieved. According to him, Mumbai Bench in the case of M/s. Ralf Jems Pvt. Ltd (supra) had held that 6% disallowances of alleged bogus purchases done by Id. Commissioner of Income Tax (Appeals) was appropriate.

8. Viz-a-viz, commission payment, Id. Authorised Representative submitted that there was no claim made by the assessee for any commission. Addition was made, according to him purely based on presumption. In any case, according to him, only the profit margin embedded in the alleged bogus purchase could be considered for addition by virtue of judgment of Hon'ble Gujarat High Court in the case of *CIT vs. Bholanath Poly Fab Pvt. Ltd (2013) 355 ITR 290*.

9. Per contra, Id. Departmental Representative strongly supporting the orders of the lower authorities submitted that lower authorities had rightly relied on the judgment of Hon'ble Gujarat High Court in the case of Sanjay Oil Cake Industries (supra). According to him, assessee could not prove the purchases and Investigation wing of

the Department had clearly established that accommodation entries were provided by M/s Bhanwarlal Jain Group through M/s. Mohit Enterprises, M/s. Maan Diamonds, M/s.Rajan Diamonds and M/s. Marvin Enterprises to many concerns including the assessees.

10. We have considered the rival contentions and perused the orders of the authorities below. Purchases made by the assessees, from M/s. Mohit Enterprises, M/s. Maan Diamonds, M/s.Rajan Diamonds and M/s. Marvin Enterprises were considered as bogus, based on Investigation done by the Department on a group headed by one Shri. Bhanwarlal Jain pursuant to a search conducted in their premises on 03.10.2014. What we find is that Revenue had relied on oath statements taken from number of persons connected to the concerns run by Shri. Bhanwarlal Jain for coming to a conclusion that the concerns run by Shri. Bhanwarlal Jain and family, were providing accommodation entries in the nature of bogus purchases. We also find that these statements and the investigation reports relied on by the Id. Assessing Officer, were never put to the assessees, during the course of assessment proceedings. Ld. Assessing Officer had relied on such statements and reports for resorting to a best of judgment assessment and made an addition of 25%, of what was considered by him as bogus purchases. It is not disputed that assessees had

produced invoices from the concerned vendors and said invoices carried TIN as well as GST details of the vendors. It is also not disputed that the receipt of the material were properly recorded by the assesseees in their stock registers. The sales effected by the assesseees was never disbelieved. When the sales are accepted, we cannot say that there were no corresponding purchases. Nevertheless, it is true that assessee despite claiming the purchases to have been effected through some intermediaries, were unable to produce the intermediaries or file confirmations from them. Hence, we cannot say that assessee had made all necessary efforts for proving the purchases claimed to have been made from the parties mentioned in the table above, beyond preponderance of probability. A similar case, where an addition was made disbelieving purchases, based on search operations conducted in M/s. Bhanwarlal Jain Group, had come up before the Mumbai Bench of the Tribunal in ITA Nos.3707 & 3761/Mum/2016, dated 11.12.2017). What was held by the Mumbai Bench at paras 9 & 10 are reproduced hereunder:-

'9. We have heard both the counsel and perused the record. As regards the reopening, we find the Commissioner of Income Tax (Appeals) has passed an apposite order. The reopening has been done on the basis of cogent information regarding the assessee dealing with hawala operators. The case laws referred by the Commissioner of Income Tax (Appeals) are germane and support the validity of reopening in this case.

10. *As regards the merits of the case, facts of the case indicate that the assessee has engaged into obtaining bogus purchase bills. Since, sales have not been doubted; entire disallowance of purchase is not sustainable in light of Hon'ble jurisdictional High Court decision in the case of Nikunj Enterprises. We further note that the Assessing Officer has also himself not done any investigation and enquiry. The assessee's request for cross examination has not been entertained by the Assessing Officer. In these circumstances, 6% disallowance of bogus purchase sustained by the Commissioner of Income Tax (Appeals) is appropriate and does not need any interference on our part. Both the Id. Counsel also fairly agreed to this proposition".*

Assessees have also submitted that its gross profit including that of purchases considered by the lower authorities as bogus, came to 8.91% to 20.88% for the impugned assessment years. Even if we accept the contention of the Revenue that 25% mark up was justified based on the judgment of Gujarat High Court in the case of Sanjay Oil Cake Industries (supra), what could at the best be added is only the shortfall between declared gross profit and the estimated gross profit of 25%, and such shortfall fell within the range of 5 to 6%. In such circumstances, in order to give a quietus to the matter, we are inclined to follow the decision of Mumbai Bench in the case of M/s. Ralf Jems Pvt. Ltd (supra). Addition that are to be made is fixed at 6%, of what is considered as value of the alleged bogus purchases and nothing more. We direct the Id. Assessing Officer to recalculate the addition accordingly.

11. Viz-à-viz, alleged commission, in the first place, assesseees had not claimed any commission payment. Estimate of ₹5,000/- per bill was based on pure surmises. Such additions are therefore deleted.

12. In the result, the appeals of the assesseees are partly allowed.

Order pronounced on Wednesday, the 24th day of October, 2018, at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: 24th October, 2018.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

3. आयकर आयुक्त (अपील)/CIT(A)

5. विभागीय प्रतिनिधि/DR

2. प्रत्यर्थी/Respondent

4. आयकर आयुक्त/CIT

6. गार्ड फाईल/GF