+आयकर अपीलीय अधिकरण,सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL SURAT BENCH, SURAT
श्री सी.एम.गर्ग, न्यायिक सदस्य तथा श्री ओ.पी.मीना, लेखा सदस्य के समक्ष
BEFORE SHRI C.M.GARG, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER

I.T.A. No.2423/Ahd/2016/SRT: Assessment Year: 2008-09

Shri Sudeep Mahendrabhai Shah, 807, Sterling Apartment, Nr. Priya Hotel, Athwalines, Surat – 395 0041. **PAN: AHHPS 2944M**	**Vs.**	Income Tax Officer, Ward-1(3) (5), Surat.
अपीलार्थी Appellant		**प्रत्यर्थी/Respondent**

निर्धारिती की ओर से /Assessee by	Shri Rasesh Shah, CA
राजस्व की ओर से /Revenue by	Mrs. R. Kavitha JCIT, Sr. D.R.
सुनवाई की तारीख/ Date of hearing:	04.05.2018
उद्घोषणा की तारीख/Pronouncement on	29.05.2018

आदेश /O R D E R

PER O. P. MEENA, ACCOUTANT MEMBER:

1. This appeal by the Assessee is directed against the order of learned of Commissioner of Income tax (Appeals)-2, Surat (in short "the CIT (A)") dated 04.07.2016 pertaining to Assessment Year 2008-09 which has in turn arisen by assessment order of Income Tax Officer, Ward-1(3)(5) Surat(in short "the AO") dtd. 18.03.2016 passed under section 143 r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act').

2. Additional ground of appeal: During the currency of appeal, the assessee has raised an additional ground of appeal stating that the learned Assessing Officer has erred in issuing notice under section 148 of the Act and passing order under section 147 of the Act.

3. The learned counsel for the assessee has pointed out that the additional ground raised by the assessee involve a point of law for which necessary facts are on record and therefore, the same be admitted for adjudication. The learned counsel for the assessee placed reliance in the case of National Thermal Power Co. Ltd. v. CIT [1998] 229 ITR 383 (SC) : [1999] 157 CTR 249 (SC) as well as in the case of Jute Corporation of India Ltd. v. CIT [1991] 187 ITR 688 (SC): [1990] 53 Taxman 85 (SC). In so far as the admission of additional ground is concerned, there is no serious opposition by the ld. DR except pointing out that these aspects were otherwise not raised before the lower authorities.

4. Be that as it may be, in our considered opinion, following the ratio of judgement of the Hon`ble Supreme Court in the case of National Thermal Power Co. Ltd. v. CIT [1998] 229 ITR 383 (SC) : [1999] 157 CTR 249 (SC) as well as in the case of Jute Corporation of India Ltd. v. CIT [1991] 187 ITR 688 (SC): [1990] 53 Taxman 85 (SC), the additional ground raised before us deserves to be admitted for adjudication in as much as

the issue involved in impugned assessment order is legal one, goes to the root of the matter and does not require any further or fresh investigation of facts. Accordingly, additional ground is allowed to be admitted for adjudication and accordingly, the rival parties were heard on merits.

5. Now we will proceed to decide the additional ground on merit.

6. Brief facts are that an information was received from Director General of Income-tax (Inv)-Mumbai that a search and seizure operation was carried out on 01.10.2013 in the case of Shri Pravin Kumar Jain and his group, wherein statement recorded under section 132(4) of the Act, it was admitted that the group has provided accommodation entries in which the assessee is also one of the beneficiaries. The assessee has received accommodation bills of Rs.23,02,662 from M/s. Mohit International Proprietary Concern of Shri Nilesh Parmar, an employee of Shri Pravin Kumar Jain who was running this bogus concern in the name of his employee. Based on this information the case was reopened u/s.147 of the Act and after properly recording reasons, a notice under section 148 of the Act was issued on 12.03.2015.

7. The learned counsel for the assessee submitted that the notice under section 148 of the Act has been issued solely on the basis of information received from Investigation Wing without considering vital

facts and evidences and applying independent mind before forming his own belief. It was claimed that the AO acted mechanically and reopened the assessment on retracted statement of third party, without any verification of records is very bad in law, hence, the notice issued u/s 148 of the Act is bad in law. Further, the AO has not supplied the copy of statement on which he has reason to believe that the income chargeable to tax has escaped assessment. The reasons recorded only contained name of M/s. Mohit International whereas the AO has also made addition in respect of other parties also. The AO has failed to disclose that what are the evidence collected and what are the other findings and in what manner and how the evidenced collected have helped him in forming his reason to believe for reopening of assessment. In such situation, the basic condition for reasons to believe are missing and the reasons given by the Ld. AO are just reason to suspect, therefore, the reopening on the basis *of* such suspect is bad in law. Learned counsel for the assessee placing reliance on the judgement of Hon`ble Delhi High Court in the case of Sabh Infrastructure Ltd. v. ACIT [WP(C)1357/2016 dated 25.09.2017] (copy filed) contended that the Revenue Authorities while communicating reasons for reopening the assessment, should provide a copy of standard form used by the AO for obtaining approval, report of Investigation Wing,

reference of document and disposed of the objection to the reopening of assessment by dealing all objections. Since the Assessing Officer has failed to observe the procedure laid down for reopening of assessment hence, reopening is not valid and in accordance with law. Therefore, it was requested to quash the reassessment proceedings.

8. On the other hand, the ld. Sr. D.R. submitted that at the time of issue of notice under section 148, sufficiency and correctness of information is not material. The ld. Sr. DR further supported her view by placing reliance on the Jugal Kishor Mahendra Biyani v. ITO [I.T.A. No. 1462 & 1696/Ahd/2013 dtd.07.02.2018 - Surat Tribunal] wherein placing reliance in the case of Peass Industrial Engineering (P) Ltd. v. DCIT [2016] 73 taxmann.com 185 (Gujarat) of Hon'ble Gujarat High Court it was held that information received from Investigation Wing, was held to be sufficient information to constitute the reasons to believe for reopening even in the case where scrutiny assessment has been completed earlier. Thus, the information received from Investigation Wing was held to be sufficient material for reopening of assessment. The Ld. Sr. D.R. further relied in the case judgement of Hon'ble Gujarat High Court in the case of Pavankumar Sanghvi v. ITO [Tax Appeal No. 1037 of 2017] dated 12.02.2018 wherein order of tribunal was confirmed by holding that the

Tribunal has appreciated the evidences on record and that factual in nature and sustained the addition made under section 68 on account of loans received by the assessee. The ld. Sr. DR further submitted that it would be seen whether there was prima-facie material to form belief as held by the Hon`ble Supreme Court in the case of *Raymond Woollen Mills Ltd.* v. *ITO [1999] 236 ITR 34 (SC)*, the Hon`ble Supreme Court held that in determining whether commencement of reassessment proceedings was valid, it has only to be seen whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at such stage. Therefore, it was contended that reopening of assessment is in accordance with law.

9. We have heard the rival submissions and perused the relevant material on record. The plain language employed in section 147 makes it clear that two conditions have to be satisfied before an Assessing Officer acquires jurisdiction to issue a notice under section 148 in respect of an assessment. These are: (1) the AO must have reason to believe that income chargeable to tax has escaped assessment; and (2) he must have reason to believe that such escapement was occasioned by reason of omission or failure on the part of the assessee to disclose fully and truly

all material facts necessary for the assessment. Thus, the two conditions must co-exist in order to confer jurisdiction on the AO. It is also imperative for the AO to record his reasons before initiating reassessment proceedings as required by section 148(2). Thus, section 147 authorizes and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word reason in the phrase reason to believe would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers. We find that an information was received from DGIT (Inv) Mumbai, which clearly mentioned that the assessee has taken accommodation entries from M/s. Mohit International of Rs.23,02,662/- as admitted in search, and seizure operation carried on in the case of Shri Pravin Kumar Jain group that they have provided accommodation entries. Further Shri Nilesh Parmar, proprietor of M/s. Mohit International has also

admitted in his statement under section 131 dtd. 02.10.2013 that Shri Pravin Kumar Jain has opened a proprietary concern in his name i.e. Mohit International and all the affairs of the same are managed by Shri Pravin Kumar Jain. He also admitted that this proprietary concern is not genuine and no genuine activities are carried on in this concern and there was no maintenance of stock register and providing bogus accommodation entries. Based on this information and after analyzing the assessment records and the material available on record, the AO has formed an opinion that by reasons of failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment, income chargeable to tax has escaped assessment for assessment year under consideration. Thus, we find that there was prima-facie tangible material available with the AO before to form an opinion. Therefore, the assessment was reopened u/s.147 of the Act by issue of notice under section 148 of the Act, which is valid in the eyes of law. Under these circumstances, it cannot be said that there was no tangible material available with the AO. If the AO has a *prima facie* material to form an opinion/belief that the income chargeable to tax has escaped assessment. The Hon`ble Supreme Court in the case of *Raymond Woollen Mills Ltd.* v. *ITO [1999] 236 ITR 34 (SC)*, held that in **determining**

whether commencement of reassessment proceedings was valid, it has only to be seen whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at such stage. The transactions of the assessee are required to be verified in detail on the basis of the material/evidence collected during the inquiry conducted by the ADIT (Inv). This view is further supported by the judgement of the Hon`ble Allahabad High Court in the case of *Brij Mohan Agarwal v. Assistant commissioner of Income-tax 140 Taxman, 317 (All)* where the catch note read as "***t**he High Court was not pronouncing a final verdict about the allegations in the counter-affidavit. All that the Court had to see at the instant stage was as to whether it could be said that the authority concerned had reason to believe that the assessee had concealed his income or that the correct income of the assessee had escaped assessment. In view of the investigation made by the Investigation Wing of the Department, relevant and very material facts had come before respondent No. 1 that the assessee was concealing his income by indulging in bogus transactions. All that is required at the stage of issuing of notice under section 148 is that the belief of the ITO must be that of an honest and reasonable person*

***based upon reasonable grounds and not on mere suspicion, gossip or rumours*. [Para 16]".**

10. Here in the instant case, there was report of the Investigation Wing that the assessee had indulged in bogus transactions. Hence, ratio of above decision is clearly applicable. We further observed that the Hon`ble Delhi High Court in the case of Midland Fruit & Vegetable Products (India) (P) Ltd. v. CIT [1994] 73 Taxman 30 (Delhi) has laid down that where the letter from ADIT(Inv) regarding bogus transactions was sufficient material for the AO to legitimately form a reasonable belief for initiating the assessment proceedings.

11. Further, the Hon'ble Gujarat High Court in the recent case of Aaspas Multimedia Ltd. v. DCIT-Circle 1(1) [2017] 83 taxmann.com 82 (Gujarat) has held as "the information received from PDIT(Investigation) regarding bogus transaction was sufficient tangible material to form an opinion for reopening of assessment proceedings and that income chargeable to tax has escaped assessment. The Court cannot examine the sufficiency reason. It was further observed by the Hon'ble Gujarat High Court in the case of Aaspas Multimedia Ltd. v. DCIT-Circle 1(1) [2017] 83 taxmann.com 82 (Gujarat) which is reproduced as under:

"Considering the aforesaid decisions of the Hon'ble Apex Court as well as decision of the Division Bench of this Court and Delhi High Court and applying the same to the facts of the case on hand, it cannot be said that there was no material before the AO to reopen the assessment. In the present case, also the reassessment proceedings have been initiated by the AO on the basis of material provided by the Principal Director of Income Tax (Investigation), Ahmedabad. It is also required to be noted that the genuineness of the various companies who made share applications are doubted. The assessee is alleged to have been engaged in bogus share applications from various bogus concerns operated by Shri Pravin Kumar Jain. The assessee is the beneficiary of the said transactions of share application by those bogus concerns. In the wake of information received by the AO, when AO formed a belief that the investment made from the funding of such companies, which are bogus, the AO has rightly assumed the jurisdiction of initiating the reassessment proceedings. AO, on the basis of information subsequently having come to his knowledge, recognized untruthfulness of the facts furnished earlier. In the present case, since both the necessary conditions to reopen the assessment have been duly fulfilled, sufficiency of the reasons is not to be gone into by this Court. Information furnished at the time of original assessment, when by subsequent information received from the Principal Director of Income Tax (Investigation), Ahmedabad, itself found to be controverted, the objection to the notice of reassessment under section 147 of the IT Act must fail."

12. Reliance is further placed in the case of Peass Industrial Engineering (P) Ltd. v. DCIT [2016] 73 taxmann.com 185 (Gujarat) where information received from Investigation Wing, Ahmedabad was held to be sufficient material to constitute reason to believe for reopening of assessment even in the case where scrutiny assessment has been completed earlier. This

decision of Hon`ble Jurisdictional High Court also supports the case of Revenue on this score.

13. Thus, in the light of foregoing ruling of Hon'ble Supreme Court, and Hon'ble jurisdictional High Court, the sufficiency of material at this stage in determining whether commencement of proceedings u/s 147(a) was valid, what was to be seen was only the prima facie material; the sufficiency or correctness of the material was not a thing to be considered at that stage. The Hon`ble Supreme Court in the case of *Phool Chand Bajrang Lal v. ITO [1993] 203 ITR 456 (SC)* held that One of the purposes of section 147 is to ensure that a party cannot get away by willfully making a false or untrue statement at the time of the original assessment and when that falsity comes to notice, to turn around and say: "You accepted my lie, now your hands are tied and you can do nothing." It would be a travesty of justice to allow the assessee that latitude.

14. So far reliance on the decision of Hon`ble Delhi High Court in the case of Sabh Infrastructure Ltd. v. ACIT [WP(C)1357/2016 dated 25.09.2017] by the Ld. Counsel for the assessee is concerned, we find that decision was given in the context of share application money in which in-depth inquiry was made in respect of five investor companies

during assessment proceedings who provided shares capital to the assessee and same were accepted a genuine in assessment proceedings conducted under section 143 (3) of the Act and after obtaining details of PAN, ITR, confirmation the AO seems to have satisfied about genuineness as no addition was made. The AO, thereafter, reopened assessment based on statement of directors recorded by Investigation Wing of same five companies' statement, inquiry, but said enquiry report was not made available to the assessee nor was mentioned in the reasons recorded for reopening of assessment. Whereas, in the instant case, the facts are different, as no enquiry whatsoever was conducted during assessment proceedings in the case of the assessee. Further, there was a search and seizure operation carried on 01.10.2013 in the case of Shri Pravin Kumar Jain Group wherein in statement recorded under section 132(4), Shri Pravin Kumar Jain has admitted that they have provided accommodation entries in the name of M/s. Mohit International, a dummy concern of Shri Pravin Kumar Jain in the name of Shri Nilesh Parmar. Further, Shri Nilesh Parmar has also admitted in his statement recorded on 02.10.2013 under section 131 of the Act that this concern is bogus and entry provider only. These facts and enquiry report with annexure was duly mentioned in the reasons recorded by the AO for reopening of assessment. The assessee

has also not objected to reopening of assessment and submitted that return filed by him on 30.09.2008 may be treated as filed in response to notice under section 148 of the Act. Thus, facts are entirely different from the case tallied by the learned counsel for the assessee. Hence, said case is distinguishable on facts of present case. Further, the judgement of Hon`ble Jurisdictional High Court of Gujarat in above mentioned case have held the information received from Investigation Wing is sufficient material for reopening of assessment.

15. Further, the Hon`ble Supreme Court in the case of *CIT* v. *Rajesh* Jhaveri Stock Brokers (P) Ltd. [2007] 161 Taxman 316 (SC), laid down that "if the Assessing Officer has cause or jurisdiction to know or suppose that income has escaped assessment, it can be said to have "reasons to believe" that an income has escaped assessment. The said expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or inclusion. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an in-built idea of fairness to taxpayer".

16. In the light of ratio as laid down by above discussed judgements, we find that the AO was not required to ascertain the final facts for initiating proceedings u/s.147 read with section 148 of the Act. Therefore, the

contention and arguments raised by the learned counsel for the assessee are not tenable in law. Accordingly, the validity of reopening of assessment is held to be sustainable in law, and therefore, upheld.

17. Regular grounds of appeal raised by the assessee as under :

> ***"1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of the assessing officer in making addition of Rs.1,42,56,361/- on account of bogus purchases.***
>
> ***2. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in not admitting the additional evidences furnished by the assessee under rule 46A of the Income Tax Rules while adjudicating the appeal of the assessee."***

18. Ground No. 1 & 2 relates to confirming the action of the Assessing Officer in making addition of Rs.1,42,56,361/- on account of bogus purchases without admitting additional evidence filed under Rule 46A .

19. The short facts are that the assessee earned income from business of trading of diamond in proprietary concern in the name of M/s. Aryan Impex. The details of purchases were called for u/s.133(6) of the Act as per addresses given by the assessee. However, at the first instance, letter issued u/s.133(6) of the Act on the addresses given, had either

been returned with remarks left/not known and in some cases no compliance was made by the purchase parties after substantial time has been lapsed.

20. In response to the notice u/s. 142(1) of the Act, the assessee has supplied the present addresses of the parties, accordingly, letters u/s.133 (6) of the Act were sent on the new addresses as given by the assessee. Considering all facts, a show cause notice was issued to the assessee on 01.03.2016. The AO noted that the assessee has made purchases amounting to Rs.23,02,662/- from M/s. Mohit International of which proprietor was Shri Nilesh Parmar who had been one of the dummy concerns of Shri Pravin Jain group as revealed in the search conducted by Investigation Wing, Mumbai on 01.10.2013. The modus operandi adopted by the said group to provide accommodation entries of various nature like bogus unsecured loans, bogus share application and bogus sale/purchases to the beneficiaries was admitted in his statement recorded on 02.10.2013 u/s.131 of the Act. The question and answers of 3, 8, 9, 15, 16 and 20 have been reproduced by the AO at page 6 of assessment order from which it transpires that Shri Nilesh Parmar an accountant of Shri Pravin Jain has admitted that he is the accountant of Shri Pravin Jain, who has opened a proprietary concern in his name as M/s. Mohit

International of which appears are managed by Shri Pravin Jain himself. In the light of these facts, the AO treated the purchases of Rs.23,02,662/- shown during the year from Mohit International as bogus transactions as per the findings given in para 4.6 & 4.12 of his order.

21. Similarly, the AO found that notices issued u/s.133 (6) of the Act have been returned back from the following parties i.e.

S.N.	***Name of the Purchaser party***	***Remarks***	***Amount of Purchase***
1	*Jivraj Exports*	*Returned with "Not Known" remarks*	*1,86,921/-*
2	*Impex Gems*	*Not yet compiled*	*31,60,038/-*
3	*Daksh Diamond*	*Not yet compiled*	*22,61,173/-*
4	*Jewel Diam*	*Not yet compiled*	*32,33,076/-*
5	*Sun Diam*	*Returned with no remarks*	*1,78,566/-*

22. In view of the facts and observations that despite the assessee has provided with sufficient opportunity, the assessee has failed to establish the purchases made from the above concerns and same were treated as bogus. Similarly, the AO noted that the assessee has made purchases from the following concern who are bogus and dummy concerns i.e. Shri Rajendra Jain, Shri Sanjay Chowdhury and Shri Dharmichand Jain Group in which search action was also conducted by Mumbai Investigation Wing on 03.10.2013 such parties are as under :

S.No.	*Name of the purchaser party*	*Amount of purchase*
1	*Sparsh Export Pvt Ltd*	*1,98,852/-*
2	*Sun Diam*	*1,78,566/-*
3	*Mani Prabha Impex Pvt. Ltd.*	*18,39,738/-*
4	*Dharam Impex*	*8,95,335/-*
	Total	***31,12,491/-***

23. Therefore, the assessee asked to show cause as to why the purchases amount of Rs.1,44,34,927/- should not be treated as non-genuine. After considering facts, the AO observed in para 4.7 of the assessment order that notice u/s.133(6) issued on 29.01.2016 either returned unserved or not complied in respect of following parties :

S.No.	*Name of the purchaser party*	*Remarks*	*Amount of purchase*
1	*Jivraj Exports*	*Returned with "Not Known" remarks*	*1,86,921/-*
2	*Impex Gems*	*Not yet complied*	*31,60,038/-*
3	*Daksh Diamond*	*Not yet complied*	*22,61,173/-*
4	*Jewel Diam*	*Not yet complied*	*32,33,076/-*
5	*Sun Diam*	*Returned unserved*	*1,78,566/-*

24. Therefore, genuineness of the purchasers made from these parties could not be proved as the letter issued to them either returned unserved and further the Sun Diam belongs to the bogus concern of Shri Rajendra Jain Group. Accordingly, the AO treated the purchases totaling to Rs.88,41,208/- made by assessee from Jivraj Exports, Impex Gems, Daksh Diamond and Jewel Diam as bogus.

25. With regard to parties namely Sparsh Export Pvt. Ltd, Sun Diam, Maniprabha Impex Pvt. Ltd and Dharam Impex Pvt. Ltd, the AO noticed that these entry provider are belongs to Shri Rajendra Jain, Shri Sanjay Chaudhary, Shri Dharmichand Jain in which also search and seizure was carried out on 03.10.2013. The AO also referred that in reply to question no.13, Shri Rajendra Jain stated that they are operating through a number of business concerns of all the three natures, i.e. Proprietorship, partnership firm as well as companies in the name of various persons including their employees. However, for all practical purposes, he and Shri Sanjay Chaudhary were handling the entire business network on profit sharing basis. Further, in reply to question no.14, he stated, as follows: "I want to admit that we are engaged in the business of bills shopping through all the concerns, due to which we do not have any physical stock of diamond with us at any of our place at any point of time". It was further stated by him that they are merely lending names of various concerns to the real importer of diamond who take the actual delivery of diamonds.

26. Considering the facts, the AO treated the purchase transactions amounting to Rs.31,12,491/- from the above group concerns which belongs Shri Rajendra S. Jain, Shri Sanjay Choudhary and Shri

Dharmichand Jain during the financial year 2007-08 relevant to assessment year 2008-09 as bogus of which details are as under :

S.No.	*Name of the purchaser party*	*Amount of purchase*
1	*Sparsh Export Pvt Ltd.*	*1,98,852/-*
2	*Sun Diam*	*1,78,566/-*
3	*Mani Prabha Impex Pvt. Ltd.*	*18,39,738/-*
4	*Dharam Impex*	*8,95,335/-*
	Total	***31,12,491/-***

27. In view of the above facts and discussion and conclusion made in para 4.6, 4.7 and 4.11 the AO treated the bogus purchases of Rs.23,02,662/- made from M/s. Mohit International proprietary concern of Shri Nilesh Parmar and Rs.88,41,208/- purchases made from Jivraj Exports, Impex Gems, Daksh Diamond and Jewel Diam and balance purchases of Rs.31,12,491/- made from the Sparsh Export Pvt. Ltd, Sun Diam, Maniprabha Impex Pvt. Ltd., and Dharam Impex. Thus, total aggregate purchases amounting to Rs.1,42,56,361/- were disallowed and added to the total income of the assessee on account of bogus purchases made during the year under consideration.

28. Being aggrieved, the assessee filed appeal before the ld.CIT(A). Before whom, it was submitted that additions of purchases of Rs.88,41,208/- made from 4 parties namely Jivraj Exports, Impex Gems, Daksh Diamond and Jewel Diam amounting to Rs.88,41,208/- do not

belongs to Shri Pravin Kumar Jain or Rajendra Group. The addition has been made on the basis of noncompliance of notice u/s.133 (6) of the Act whereas the assessee has furnished all confirmation copy of ITR Bank Statement of all these parties. It was also submitted that the assessee has furnished a paper book containing 1 to 356 pages which contains copy of acknowledgment of ITR, copy of audit report, copy of stock report, copy of sales register, copy of purchase bills submitted before the AO, copy of affidavit of some parties, copy of retraction statement filed by so called bogus seller parties and confirmation of seller parties, copy of bank statement of seller parties etc. However, the CIT(A) observed that the assessee has made purchases of Rs.1,42,56,361/- from the following parties :

S.No	*Name of the Party*	*Amount (Rs.)*
1	*Mohit International*	*23,02,662/-*
2	*Jivraj Export*	*1,86,921/-*
3	*Impex Gems*	*31,60,038/-*
4	*Daksh Diamond*	*22,61,173/-*
5	*Jewel Diam*	*32,33,076/-*
6	*Sparsh Exports*	*1,98,852/-*
7	*Sun Diam*	*1,78,566/-*
8	*Mani Prabha Impex*	*18,39,738/-*
9	*Dharam Impex*	*8,95,335/-*
	Total	***1,42,56,361/-***

29. The CIT(A) further observed that the AO found that the notices u/s.133(6) of the Act were issued to various parties of which no compliance was made, therefore, the AO made the additions after issuance of show cause notice. The CIT (A) further noted that the claim of the appellant that details were filed before AO on 18.03.2016 could not be verified from the case records nor the appellant could furnish any evidence to prove that the details were furnished before the AO in Tapal/Dak or it was sent by post. This contention of the assessee was found to be erroneous and factually incorrect as the AO in his remand report submitted that the claim of the appellant is not correct. The appellant has filed the voluminous paper book containing 356 pages on 07.06.2016 wherein para 20 at page 10 at the paper books he has mentioned that these papers has been submitted before the AO, and if same have not been submitted that these may be considered as additional evidence and admitted accordingly. Since the submission of the assessee was a very casual manner, therefore, CIT (A) opined that it is the responsibility of the appellant to furnish the details as per the Rule 46A of Income Tax Rules. The appellant even does not know that which document he has filed before the AO and which are additional evidences which itself proved that the claim of the appellant of following the

details on 18.03.2016 as devoid of facts. Accordingly, the CIT (A) after citing various case laws as mentioned in the appellate order rejected the admission of additional evidences filed by the assessee. The CIT(A) further observed that parties at Sl.No.2, 3, 4 and 5 of the above table to whom notices u/s.133(6) of the Act were issued twice on 07.12.2015 and 29.01.2016 at the different addresses given by the appellant during the assessment proceedings who were returned unserved with the remark not known of both the actions. The assessee has made purchase from these parties of Rs.88,41,208/- but the existence of these parties could not be proved.

30. With regard to purchases of Rs.23,02,662/- from M/s. Mohit International, the CIT (A) noted that this concern belongs to Pravin Jain Group who has been searched by Mumbai Investigation Wing and was in the business of providing accommodation entries to whom notice u/s.133(6) were returned unserved with remark not known on both the actions, therefore, the genuineness of the parties from whom purchase of Rs.23,02,662/- was made could not be proved by appellant.

31. Similarly, on the basis of information from Investigation Wing, Mumbai the following parties belong to Shri Rajendra Jain Group who was

also searched by the Investigation Wing, Mumbai and was in the business of providing accommodation entries :

SN.	*Name of the Party*	*Amount (Rs.)*
1	*Sparsh Exports*	*1,98,852/-*
2	*Sun Diam*	*1,78,566/-*
3	*Mani Prabha Impex*	*18,39,738/-*
4	*Dharam Impex*	*8,95,335/-*
	Total	***31,12,491/-***

32. Since the evidences found by the Investigation Wing, Mumbai reveals the modus operandi of providing accommodation entries by Shri Rajendra Jain, therefore, these transactions were treated as unexplained.

33. With regard to retraction of statement, the CIT(A) observed that retraction was filed by Shri Rajendra Jain on 31.10.2014 before the AO after one year of search/statement recorded. Shri Rajendra Jain has not filed any retraction before Investigation Wing; therefore, the retraction is shown in nature and lack of any supportive evidences. If Shri Rajendra Jain wanted to correct the said statement then it was open for him to show the evidences to retract those facts. The credence of such retractions by Rajendra Jain more than an year after the admission on oath u/s.132 (4) itself shows that it is an afterthought, therefore, the CIT (A) concluded that the appellant has failed to prove the genuineness of

the purchases in spite of several opportunities given during the assessment proceedings, therefore, the addition made by the AO of Rs.1,42,56,361/- is upheld.

34. Being aggrieved, the assessee has filed this appeal before this Tribunal. The ld.Counsel for the assessee submitted that the assessee is engaged in trading of diamonds in the name of proprietary concerns M/s. Aryan Impex. During the year, the assessee has made total purchases amounting to Rs.1.51 crores and sales Rs.1.18 crores as against which the AO has disallowed bogus purchases of Rs.1.42 crores without raising any question on quantity tally of stock. The assessee has shown Gross Profit of 4.7% which was 4.60% last year and net profit at 2.5% which was 4.2% last year, therefore Gross Profit and Net Profit ratio have increased in comparison to last year. However, the AO has made addition of Rs.1.42 crore on account of bogus purchases made from 9 parties. The ld.Counsel submitted that during the course of assessment proceedings the assessee has submitted details of purchases along with copy of purchase bills, details of opening and closing stock, copy of bank statement, details of sundry debtors and creditors and during the course of appellate proceedings, the assessee has submitted an affidavit by the same dated 20.05.2016, copy of account confirmation, relevant bank statements,

purchase bills, PAN, acknowledgement of Return of Income along with computation of income, audited balance sheet along with the Annexure and VAT details in respect of all the 9 parties, therefore, the AO was not justified in making disallowance of bogus purchases. It was further submitted that copy of statement of Shri Pravin Jain was not made available to the assessee nor the copy of statement of Shri Nilesh Parmar was made available. Therefore, no addition can be made merely on the basis of the allegation that the above parties admitted that bills raised by them against the assessee were merely accommodation bills as held by Hon'ble Gujarat High Court in the case of ACIT vs Akruti Dyeing and printing Mills Pvt. Ltd (Tax Appeal No.997/2008 dated 27.01.2009). The ld.Counsel further contended that no cross-examination of the parties of whom statement has been used against the assessee has been allowed by the AO. Therefore, there is a violation of principle of natural justice, hence, the credence of the statement of Shri Pravin Jain and Shri Nilesh Parmar which amounts to serious flaw and makes assessment impugned order nullity as held by the Hon'ble Supreme Court in the case of Andaman Timber Industries vs. Commissioner of Central Excise (2015) 281 CTR 241(SC). Further, the copy of statement of Shri Pravin Jain and Shri Nilesh Parmar were not given to the assessee. The ld.Counsel further

contended that in the reasons recorded placed at paper book page 13 & 14, the AO observed that purchases of Rs.23,02,662/- made from Mohit International are bogus which belongs to Shri Pravin Jain Group. However, while making assessment the AO added the purchases made from 8 other parties which are not related to Pravin Jain Group. The AR further contended that the following parties from whom purchases made were not belongs to either Pravin Jain Group or Rajendra Jain Group. Hence, these purchases could not be doubted as non genuine as the all documentary evidences relating to these concerns have been furnished before the AO as under :

1.	Jivraj Exports	Rs. 1,86,921/-
2.	Impex Gems	Rs. 31,60,038/-
3.	Daksh Diamond	Rs. 22,61,173/-
4.	Jewel Diam	Rs. 32,33,076/-
	Total:	**Rs. 88,41,208/-**

35. The ld. Counsel further submitted that quantity details of purchases made from the above parties are duly submitted and available on record and the AO has also submitted that these parties do not belongs to Pravin Jain Group or Rajendra Jain Group. Therefore, no addition in respect of these amounts could have been made, as there is no adverse statement in respect of these parties.

36. The ld.Counsel further submitted that the details were filed before the AO who has not provided the sufficient opportunity of being heard, therefore details were filed after 9 days by which time the order was passed. With regard to Jivraj Export, the Counsel claimed that an affidavit dated 20.05.2016 paper book page 48 and 49 giving details of quantity purchase and total amounting to Rs.1,86,921/- purchases from the said parties on 25.02.2008. It was also submitted that the payment of Rs.1,50,000/- was made by account payee cheque on 13.03.2008 and payment of Rs.36,921/- was also made by account payee cheque on 15.04.2008 to the said parties. The details of regarding said parties has been given in paper book page no.56, copy of acknowledgment of return (PB-57), copy of balance sheet (PB-59) copy of VAT details (PB-60). Thus, these parties neither connected with any Jain Group, therefore, the purchases made from these parties cannot be treated as bogus. Similarly, in the case of Impex Diamonds, Daksh Diamond, Jewel Diam and Sun Diam all the details filed in the Paper Book containing 365 pages. Hence, these parties cannot be treated as bogus. Therefore, the addition of Rs.88,41,208/- made on account of these parties needs to be deleted.

37. The ld.Counsel further relied in the case of Mehta Parikh and Company vs. CIT (1956) 30 ITR 181 (SC) wherein it was held that cash books of the assessee having been accepted and the deponent not having been examined, there was no justification in not accepting the explanation of the assessee in part. Similarly, the ld.Counsel also placed reliance in the case of Shanti Vijay Jewels Ltd. vs. DCIT in ITA No.1045/Mum/2016 for assessment year 2011-12 dated 13.04.2018 wherein the addition made in respect of M/s. Maniprapbha Impex Pvt. Ltd being controlling and managed by Shri Rajendra Jain Group were deleted after considering the fact that suppliers were paying tax and filing their Return of Income and no addition could be made on the genuineness of the transactions on the ground that suppliers had not only appeared before the AO, but they had also filed affidavits confirming the sales of goods. Therefore, it was contended that the addition made in respect of Maniprabha Impex amounting Rs.18,39,738/- should be deleted in the ratio laid down by Coordinate Bench of the Mumbai Tribunal.

38. The ld. Counsel further relied in the case of CIT vs. Nangalia Fabrics Pvt. Ltd. [2013] 40 taxmann.com 206 (Guj) wherein it was held that the Tribunal has found that since the purchases were supported by bills entries were made in books of accounts and payment was made by

cheque additions should have to be deleted. The ld.Counsel further placed reliance in the case of Mayank Diamonds Pvt. Ltd. vs. ITO (Tax Appeal No. 200/2003 dated 07.11.2014) of Hon'ble Gujarat High Court wherein addition made by the AO on account of bogus purchases was restricted to 12.5 % Gross Profit by Tribunal was further restricted to the Gross Profit rate 5% considering the same as average rate of industry.

39. Replying to the above, the ld. Senior Departmental Representative referred the para 6.1.5 of CIT (A) wherein it was mentioned that the details filed by the appellant before the AO are not considered as the same were filed after the assessment order was passed. The ld.Sr.DR further referred page 14 of CIT(A) order and submitted that notices u/s.133(6) of the Act were returned unserved with the remark not known on both the occasions, therefore, the onus was lied on the assessee to provide proper address. The ld. Sr. DR submitted that the assessee has placed reliance in the case of CIT v. M K Brothers [1986] 163 ITR 249 (SC) which is in favour of the assessee and where the addition on bogus purchases was sustained. However, the said decision is relevant to year before 1986 and not related to accommodation entries whereas in the case of there is sales tax matter and statement of Shri Pravin Kumar Jain hence, not applicable to the facts of present case. Further, the

accommodation entries were duly admitted by the Pravin Kumar Jain. Similarly, in the case of ACIT vs. Akruti Dyeing and Printing Mills Pvt. Ltd is also not applicable as in the said case no statement was recorded from three parties from whom purchases were made. Further, in the case of assessee notice u/s.133 (6) have been issued to the parties, which were not produced nor found traceable. There is a statement recorded from Shri Pravin Kumar Jain and Shri Nilesh Parmar, therefore, the facts of the said case are different. With regard to judgment of Hon'ble Gujarat High Court in the case of ACIT vs. Vardhman Exports (Tax Appeal No.265/2008 dated 08.01.2016) the addition was deleted on the legal issue of disallowance made u/s.69C of the Act, wherein the case of assessee has received accommodation entries from purchaser parties. Hence, facts and legal position is different.

40. We have heard the rival submissions and perused the relevant material on record. We find that the assessee has made purchases of Rs.23,02,662 from M/s. Mohit International a proprietary concern of Shri Nilesh Parmar. The assessee has failed to produce the said party for verification to prove the genuineness of purchases. Shri Pravin Kumar Jain has admitted in his statement recorded under section 132(4) of the Act during the course of search and seizure operation conducted in their

case that they used to provide bogus accommodation bills through M/s.Mohit International a bogus concern in the name of Shri Nilesh Parmar, his employee. Shri Nilesh Parmar in his statement under section 131 of the Act has also admitted this fact. However, cross-examination was not allowed. Therefore, there is a violation of not allowing cross-examination to the assessee as held in the case of CIT v. M/s. Ashish International Tax Appeal No. 4299 of 2009-dated 22.02.2011, which supports the case of the assessee. The AO has relied on the decision in the case of Karamchand Nathmal Lunia [2014] 40CCH 199 (AHD-TRIB) wherein it was held that the companies of Mukesh Choksi are entry provider and therefore, the transaction with these companies as facts. Accordingly, the whole amount of Rs.1,42,56,361/- was added as bogus purchases.

41. However, while making assessment the AO added the purchases made from 4 other parties, which are not related to Pravin Jain Group or Rajendra Jain group. It has been contended that these parties from whom purchases made were not belongs to either Pravin Jain Group or Rajendra Jain Group. Hence, these purchases could not be doubted as non genuine as the all documentary evidences relating to these concerns have been furnished before the AO as under :

1.	Jivraj Exports	Rs. 1,86,921/-
2.	Impex Gems	Rs. 31,60,038/-
3.	Daksh Diamond	Rs. 22,61,173/-
4.	Jewel Diam	Rs. 32,33,076/-
	Total	**Rs. 88,41,208/-**

2. The ld. Counsel further submitted that quantity details of purchases made from the above parties are duly submitted and available on record and the AO has also submitted that these parties do not belongs to Pravin Jain Group or Rajendra Jain Group. Therefore, no addition in respect of these amounts could have been made, as there is no adverse statement in respect of these parties. The details regarding Jivraj Export has been given in paper book page no.56, copy of acknowledgment of return (PB-57), copy of balance sheet (PB-59) copy of VAT details (PB-60). Thus, these parties neither connected with any Jain Group; therefore, the purchases made from these parties cannot be treated as bogus. Similarly, in the case of Impex Diamonds, Daksh Diamond, Jewel Diam and Sun Diam all the details filed in the Paper Book containing 365 pages. Hence, these parties cannot be treated as bogus. in the case of Mehta Parikh and Company vs. CIT (1956) 30 ITR 181 (SC) wherein it was held that cash books of the assessee having been accepted and the deponent not having been examined, there was no justification in not accepting the

explanation of the assessee in part. We further find that the assessee had shown 1.51 crore purchases as against sales of Rs.1.18 crore, out of which the AO has treated bogus purchases of Rs.1.42 crore, without doubting sales, hence, addition of all purchases is not justified. Further, in respect of above mentioned four parties there is no third party statement recorded from any person. The assessee has filed for these parties copy of purchase bills, details of opening and closing stock, copy of bank statement, details of sundry debtors and creditors and during the course of appellate proceedings as well as during the course of assessment proceedings. The assessee has also submitted copy of affidavit dated 20.05.2016 for these main person of these concerns, copy of account confirmation, relevant bank statements, PAN, acknowledgement of Return of Income along with computation of income, audited balance sheet along with the Annexure and VAT details in respect of all the 4 parties, therefore, we are of the considered opinion that the AO was not justified in making disallowance of bogus purchases in respect of these parties which have no connection with Shri Pravin Kumar Jain whatsoever. Therefore, the addition of Rs.88,41,208/- made on account of these parties is directed to be deleted, out of total purchase of Rs.1,42,56,361/- which leaves balance purchases of Rs.54,15,153/-.

3. With regard to balance purchases of Rs.54,15,153/- detailed as below:

SN.	*Name of the Party*	*Amount (Rs.)*
1	*Mohit International*	*23,02,662/-*
2	*Sparsh Exports*	*1,98,852/-*
3	*Sun Diam*	*1,78,566/-*
4	*Mani Prabha Impex*	*18,39,738/-*
5	*Dharam Impex*	*8,95,335/-*
	Total	***54,15,153/-***

4. With regard to purchases of Rs.23,02,662/- from M/s. Mohit International, the CIT(A) noted that this concern belongs to Pravin Jain Group who has been searched by Mumbai Investigation Wing and was in the business of providing accommodation entries to whom notice u/s.133(6) were returned unserved with remark not known on both the actions, therefore, the genuineness of the parties from whom purchase of Rs.23,02,662/- was made could not be proved by the assessee. We find that that the assessee has duly produced the copies of bills, invoices and payments is made by account payee cheques. This shows that purchases have been made, but may be not from the party from whom purchases bills have been obtained. The only possibility is therefore, is that the assessee might have inflated the purchases, as sale has not been doubted by the AO. In view of this matter, it is not just or reasonable to treat the

entire purchases when corresponding sales has not been doubted by the AO. There cannot be any sales without making purchases. We are, therefore, of the view that it is a simple logic that when the AO has not questioned the sales /stock, then there is no logic to disallow the 100% of bogus purchases. It is obvious that there cannot be any sales without purchases. The book results of the assessee are in line with book results of earlier years. The books of accounts are audited under section 44AB of the Act and no adverse comments pointed out by the auditors. Quantity records are maintained. There is no evidence that cash received back except statement of Shri Pravin Kumar Jain and Shri Nilesh Parmar, which is general in nature and same was not made available to the assessee. The case laws of Karamchand Nathmal Lunia (supra) relied by the AO is not applicable to the assessee case as that case was of LTCG transaction made out of Stock Exchange and payments were made in cash. However, there is no corroborating evidences that bills from the impugned party were as per market value and purchase cost represent fair market value.

5. We further notice that the Hon`ble Jurisdictional High Court in the case of Mayank Diamonds Pvt. Ltd. v. ITO [Tax Appeal No. 200 of 2003] dated 17.11.2014 wherein the Hon`ble High Court has observed as under:

"5. We have heard learned advocates for both sides and perused the orders passed by the CIT as well as the Tribunal. As a result of hearing and perusal of records, it is borne out of that the average profit which has been considered for this industry is around 3 to 7%. The Tribunal in the instant case has directed addition at the rate 12.5%, which is in our opinion, is on higher side. Learned advocate for the appellant has fairly conceded that excess 7% is on higher side and that at the most 3% may be applied. In that view of the matter, going by the peculiar facts of the present case, we are of the view that ends of justice will be met by taking mean of maxim and minimum of the profit rate which comes to 5%. Therefore, we think it fit to direct the Assessing Officer to apply 5% G.P. rate as the rate of 12.5% is drastically higher and 1.03% is drastically lower. Gross profit rate of 5% is the average rate of the industry and we think it fit to make addition on account of 5% gross profit rate. Make the addition accordingly. We therefore, answer the question raised in the negative i.e. against the revenue and in favour of the assessee."

6. We further observe that profit rate disclosed by the assessee is at 4.70% which is as per the market rate of similar diamond traders and also similar to as disclosed by the assessee in earlier years. However, it is also a fact that the assessee has failed to substantiate the purchases by not producing the parties in question and admission of the party that they

have indulged in providing bogus accommodation entries. Therefore, in the light of above facts and circumstances and considering the net profit of 5% as the average rate of the industry as observed by the Hon`ble Jurisdictional High Court in the case of Mayank Diamonds Pvt. Ltd. v. ITO [Tax Appeal No. 200 of 2003] dated 17.11.2014; we deem it fit to restrict the addition to 5% of total bogus purchases of Rs.54,15,153/- which worked out to Rs.2,70,758/- hence, balance addition of Rs.51,44,395/- is deleted. In view of these facts and circumstances the addition of Rs.2,70,758/- is sustained and balance addition of Rs.1,39,85,603/- i.e. [Rs.88,41,208/- + Rs.51,44,395/- = Rs.1,39,85,603/-] is deleted. Accordingly, ground no. 1 and 2 of appeal are partly allowed.

7. In the result, the appeal of the assessee is partly allowed.

8. Order pronounced in the open Court on 29.05.2018

Sd/- **Sd/-**

(सी.एम.गर्ग) /(C.M. GARG) **(ओ.पी.मीना) /(O.P.MEENA)**

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ ACCOUNTANT MEMBER

सुरत/ Surat: दिनांक /Dated : 29th May, 2018/opm

Copy sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

/ / TRUE COPY / /

Assistant Registrar, Surat