

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” Bench, Mumbai**

**Before Shri Ravish Sood, Judicial Member
and Shri N.K. Pradhan, Accountant Member**

**ITA Nos.1624 – 1625 & 1638 - 1639/Mum/2018
(Assessment Years: 2010 -11 to 2013 -14)**

M/s Inter Carat Jewellery Pvt.
Ltd., Unit No. 14,
New Nandu Industrial Estate,
Shanti Nagar, Mahakali Cave
Road, Andheri (East),
Mumbai – 400 093

Dy. Commissioner of Income Tax -
10(1)(1)
Room No. 209, Aayakar Bhavan,
Vs. M.K. Road,
Mumbai – 400 020

PAN – AABCI1023K

(Appellant)

(Respondent)

Appellant by: Shri Prakash K. Jotwani, A.R
Respondent by: Shri Abi Rama Kartikiyan, D.R
Date of Hearing: 27.03.2019
Date of Pronouncement: 29.03.2019

ORDER

PER RAVISH SOOD, JM

The present appeals filed by the assessee are directed against the consolidated order passed by the CIT(A)-51, Mumbai, dated 22.12.2017 which in turn arises from the respective assessment orders passed by the A.O under Sec. 143(3) of the Income Tax Act, 1961 (for short 'I.T Act') for A.Y 2012-13 and under Sec.143(3) r.w.s 147 for A.Y. 2010-11, A.Y 2011-12 and A.Y 2013-14. As common issues are involved in the aforementioned appeals, therefore, the same are being taken up and disposed off together by way of a consolidated order. We shall first advert to the appeal of the assessee for A.Y. 2010-11, wherein the order of the CIT(A) has been assailed on the following grounds of appeal:

“On the facts and in the circumstances of the case and in law:-

- 1. The learned CIT(Appeal) erred in confirming re-assessment made by the Assessing Officer when there was no tangible material to disprove the genuineness and bonafide for the purchases for reopening and when there was no failure on part of the appellant to disclose full and complete particulars of his income.*
- 2. The learned CIT(Appeal) erred in confirming disallowance at 12.5% of total purchases of Rs.7,94,253/- made from M/s Adi Impex as bogus purchases. However, the learned CIT (Appeal) ought to have appreciated that the appellant had furnished full and complete details of the purchases and had discharged the onus of proving genuineness of the transactions. Also, the learned CIT (Appeal) ought to accept the fact, that there can be no sales without purchases and that on the said purchase of Diamonds, there has been a sale too which has been assessed to tax.; when the sales of the appellant are fully allowed the purchases made from the above party cannot be questioned.*
- 3. The learned CIT(Appeal) has erred in not relying on Instruction No.2/2008 of CBDT, Task force report on diamond sector suggesting that the profit margin in trading in diamond should be between the range of 1% to 3% and hence estimation of 12.5% of purchases is unjust and ought to be deleted in full.*
- 4. The Appellant craves leave to add, alter or amend the Grounds of appeal at or before the hearing of the Appellant.”*

2. Briefly stated, the assessee company which is engaged in the business of manufacturing and selling of studded Gold/Silver jewellery had e-filed its return of income for A.Y. 2010-11 on 14.10.2010, declaring total income at Rs.49,01,175/-. Subsequently, the assessee filed a revised return of income on 17.03.2011 declaring its income at Rs.56,85,593/-. The return of income filed by the assessee was processed as such under Sec.143(1) of the I.T Act. On the basis of information received by the A.O from the office of the DGIT (Inv.), Mumbai, that the assessee had obtained accommodation entries of bogus purchases from various concerns of Rajendra Jain Group/Sanjay Chaudhari Group/Dharmichand Jain Group which were engaged in the business of providing accommodation entries, the case of the assessee was reopened under Sec.147 of the I.T. Act.

3. During the course of the assessment proceedings the A.O in order to verify the genuineness and veracity of the purchases of

Rs.7,94,253/- claimed by the assessee to have been made from M/s Adi Impex (alleged entry provider), therein directed the assessee to produce the said party for necessary examination. Apart therefrom, the A.O also issued summons to the aforementioned concern viz. M/s Adi Impex. However, neither the assessee produced the said party for necessary examination before the A.O, nor was there any response on the part of the aforesaid party to whom summons were issued by the A.O. In the backdrop of the aforesaid facts, the A.O after deliberating at length on the facts which had emerged pursuant to search proceedings conducted in the case of the aforementioned accommodation entry providers viz. Rajendra Jain Group/Sanjay Chaudhari Group/Dharmichand Jain Group, and also taking cognizance of the *modus operandi* which was adopted by them for facilitating their business of providing accommodation entries, observed that it stood established beyond doubt that the assessee had entered into bogus transactions with the aforementioned group entity i.e M/s Adi Impex. The assessee in order to substantiate the genuineness and veracity of the purchase transaction under consideration, placed on record certain documentary evidence viz. (i) ledger account of M/s Adi Impex for the year ended 31.03.2010; (ii) purchase invoices that were raised by M/s Adi Impex on the assessee; (iii) bank statements reflecting payments made by the assessee towards purchase consideration by account payee cheques to M/s Adi Impex; and (iv) copy of affidavit filed by Shri Anoop Y. Jain, proprietor of M/s Adi Impex, wherein he had stated that genuine transactions were carried with the assessee during the year under consideration. However, the explanation of the assessee and the documentary evidence placed on record by it to impress upon the A.O that genuine purchases were made from the aforementioned party i.e M/s Adi Impex, did not find favour with the A.O. In fact, the A.O held a

conviction that the assessee had only obtained the 'bill' from M/s Adi Impex, without actually getting any material from the said concern. In the backdrop of his aforesaid deliberations it was concluded by the A.O that the assessee had in the garb of the purchases claimed to have been made from the aforementioned party inflated its purchase account with a clear intent to suppress its true profits. Insofar the affidavit filed by Shri Anoop Y. Jain was concerned, the A.O was not persuaded to accept the same for the reason that despite sufficient opportunity the aforesaid person was avoiding to personally appear before him. On the basis of the aforesaid observations the A.O disallowed the unsubstantiated purchases of Rs.7,94,253/- that was claimed by the assessee to have been made from the aforementioned concern.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) after deliberating on the contentions advanced by the assessee in the backdrop of the material available on record, concluded that as the assessee had failed to establish the genuineness of the purchases claimed to have been made from the aforementioned concern viz. M/s Adi Impex, therefore, the A.O had rightly characterised the purchase transaction under consideration as a bogus transaction. However, it was observed by the CIT(A) that as the sales of the assessee had not been questioned, therefore, the entire value of the purchase consideration could not have been added to the returned income of the assessee. In sum and substance, the CIT(A) was of the view that the addition in the hands of the assessee was liable to be restricted only to the extent of the profit element involved in making of such unsubstantiated purchases which were found to be backed by accommodation bills. In order to work out the profit element, the CIT(A) observed that the gross profit margin of the assessee except for in A.Y 2011-12 had remained around 6% i.e

5.92%. On the basis of his aforesaid observations, the CIT(A) relying on the judgment of the Hon'ble High Court of Gujarat in the case of Simip P. Sheth 356 ITR 451 (Guj) restricted the disallowance in the hands of the assessee to the extent of 12.5% of the aggregate value of the purchases which were claimed by the assessee to have been made from the aforementioned concern viz. M/s Adi Impex.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The ld. Authorized Representative (for short 'A.R') for the assessee at the very outset of the hearing of the appeal submitted that the issue involved in the present appeal was squarely covered by the orders of the coordinate benches of the Tribunal passed in its own case for A.Y. 2006-07 and A.Ys. 2009-10 to A.Y. 2013-14. It was submitted by the ld. A.R that in all the aforementioned cases the addition towards the profit element embedded in the unverified purchases had been estimated at 3% of the value of such purchases by the Tribunal. In order to fortify his aforesaid contention the ld. A.R took us through the various orders of the Tribunal, which therein revealed that in all the said years the addition towards the estimated profit element involved in making of such purchases by the assessee had been restricted to 3% of the aggregate value of such transactions. It was submitted by the ld. A.R that the addition in its case on a similar footing may be restricted to the extent of 3% of the aggregate value of the purchase transactions under consideration.

6. Per contra, the ld. Departmental Representative (for short 'D.R') relied on the order of the CIT(A). On being confronted with the fact that the issue as regards quantification of the profit element involved in making of alleged bogus purchases by the assessee was covered by the orders passed in the assessee's own case for the aforementioned

years, the ld. D.R. could not rebut the same. The ld. D.R. failed to place on record any such material which could persuade us to conclude that the facts involved in the years before us were distinguishable as against those involved in the aforementioned years as had been adjudicated upon by the Tribunal.

7. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. Admittedly, the assessee had failed to substantiate the genuineness and varacity of the purchases claimed to have been made from the aforementioned alleged entry provider viz. M/s Adi Impex. Insofar the observations of the lower authorities that the assessee had failed to discharge the onus and therein prove the authenticity of the purchase transactions under consideration is concerned, we are persuaded to subscribe to the same. However, we are unable to comprehend as to on what basis the CIT(A) had estimated the profit element involved in making of the alleged bogus purchase at 12.5% of the aggregate value of the purchase transactions under consideration. In fact, as is discernible from the order of the CIT(A), the latter while quantifying the profit element at 12.5% of the value of the purchase transaction had relied on the judgment of the Hon'ble High Court of Gujarat in the case of Simit P. Shet 356 ITR 451 (Guj). In our considered view though the CIT(A) is principally correct in relying on the judgment of the Hon'ble High Court of Gujarat in the case of Simit P. Sheth (supra), however, in the course of the quantification of the profit element he had lost sight of the fact that the assessee in the case before the High Court was involved in the business of trading in Iron & Steel, whereas the assessee before him was engaged in the business of manufacturing and selling of studded Gold/Silver jewellery. Be that as it may, we find that the issue involved in the present appeal is squarely covered by the orders of the

coordinate benches of the Tribunal in the assesses own cases, as under:

- (i) M/s Inter Carat Jewellery Vs. ITO-8(2)(1)
(ITA No. 307/Mum/2018; dated 07.03.2018 and AY. 2006-07).
- (ii) Inter Carat Jewellery Pvt. Ltd. Vs. Dy. CIT-10(1)(1), Mumbai
(ITA No. 1623/Mum/2018; dated 01.01.2019 and A.Y. 2009-10).
- (iii) ACIT-10(1)(1), Mumbai Vs. Inter Carat Jewellery Pvt. Ltd.
(ITA No. 2110/Mum/2018; dated 13.03.2019 and A.Y. 2013-14).
- (iv) Inter Carat Jewellery Pvt. Ltd. Vs. ACIT-10(1)(1), Mumbai
(ITA No. 1626/Mum/2018; dated 13.03.2019 and AY 2013-14)

8. We find that in all of the aforementioned cases the Tribunal had restricted the estimation of the profit element involved in making of the bogus purchases at 3% of the aggregate value of the alleged bogus purchases. We thus finding ourselves to be in agreement with the view taken by the tribunal in the aforementioned cases, thus respectfully follow the same and restrict the addition in the hands of the assessee to the extent of 3% of the value of the alleged bogus purchases. The A.O is directed to restrict the addition to Rs.23,828/- i.e 3% of the aggregate value of alleged bogus purchase of Rs.7,94,253/- claimed by the assessee to have been made from M/s Adi Impex. The order of the CIT(A) is modified in terms of our aforesaid observations. The appeal of the assessee is allowed in terms of our aforesaid observations.

ITA Nos. 1638,1639 & 1625/Mum/2018
AYs. 2011-12, 2012-13 & 2013-14

9. As facts and the issue involved in the aforementioned appeals are identical to that involved in the case of the assessee for AY. 2010-11 as had been adjudicated by us herein above, therefore, our order therein passed shall apply *mutatis mutandis* for disposal of the aforementioned appeals i.e ITA No. 1638/Mum/2018, ITA No.1639/Mum/2018 & ITA No.1625/Mum/2018 for AYs. 2011-12, 2012-13 & 2013-14, respectively. On the basis of our observations

recorded while disposing off the appeal of the assessee for A.Y. 2010-11 in ITA No. 1624/Mum/2018, the estimation of the profit element involved in making of the alleged bogus purchase by the assessee in the said respective years is restricted to 3% of the aggregate value of such purchases. The order of the CIT(A) for the aforementioned years is modified in terms of our aforesaid observations.

10. The appeals of the assessee for the aforementioned years i.e A.Y. 2011-12, 2012-13 and 2013-14 are partly allowed in terms our aforesaid observations.

11. In result, the appeals of the assessee for A.Y. 2010-11 (ITA No. 1624/Mum/2018),A.Y 2011-12 (ITA No.1629/Mum/2018), A.Y 2012-13(ITANo.1638/Mum/2018)& AY. 2013-14 (ITA No. 1625/Mum/2018) are allowed in terms of our aforesaid observations.

Order pronounced in the open court on 29.03.2019

Sd/-

(N.K. Pradhan)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 29.03.2019

Ps. Rohit

Sd/-

(Ravish Sood)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

**आयकर अपीलीय अधिकरण, मुंबई / ITAT,
Mumbai**