

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” Bench, Mumbai
Before Shri Shamim Yahya, Accountant Member
and Shri Ravish Sood, Judicial Member

ITA No.3956/Mum/2018
(Assessment Year: 2008 -09)

Shri Ajit Rikhabchand Jain
104 New Hormuzd Apartments
Behind Kemps Hotel
131 August Kranti Marg
Mumbai 400 036

Dy. Commissioner of
Income Tax, Central Circle-1(4)
Room No. 902, Old CGO Building
Vs. M.K. Road, Churchgate
Mumbai 400 020

PAN – ABIPJ9943Q

(Appellant)

(Respondent)

Appellant by: Shri Sunil Hirawat, A.R
Respondent by: Shri Chaitnya Anjaria, D.R

Date of Hearing: 25.04.2019
Date of Pronouncement: 30.04.2019

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-47, Mumbai, dated 29.03.2018, which in turn arises from the assessment order passed by the A.O under Sec.143(3) r.w.s. 147 of the Income Tax Act, 1961 (for short 'I.T Act'), dated 21.01.2016.

2. Briefly stated, the assessee which is engaged in the business of trading in diamonds had filed its return of income for A.Y. 2008-09 on 09.09.2008, declaring his total income at Rs.6,48,320/-. Assessment under Sec.143(3) was completed on 29.11.2010 and the returned income of the assessee was accepted. Subsequently, on the basis of information received by the A.O from the DGIT (Inv.), Mumbai that the assessee had taken accommodation entries in the form of purchase of

Rs.3,86,904/- from M/s Mihir Diamond during the year under consideration, 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 the backdrop of the information received from the DGIT(Inv.), Mumbai, deliberated on the veracity of the purchases claimed by the assessee to have been made from the aforementioned concern viz. M/s Mihir Diamond. It was noticed by the A.O that the assessee failed to establish that the goods which were purchased from M/s Mihir Diamonds were exported by it. Apart there from, it was observed by the A.O that as the stock register maintained by the assessee was incomplete, therefore, the same did not inspire any confidence and thus could not be relied upon. On the basis of his aforesaid deliberations, it was concluded by the A.O that though the purchase of diamonds themselves were not bogus, however, it stood proved that the assessee had procured the same not from the aforementioned party viz. M/s Mihir Diamond but had purchased the same from certain bogus parties. In the backdrop of his aforesaid deliberations the A.O made an addition of Rs.48,363/- i.e @ 12.5% of the alleged bogus purchases of Rs.3,86,904/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) not finding favour with the contention advanced by the assessee dismissed the appeal.

5. The assessee being aggrieved with the order passed by the CIT(A) has carried the matter in appeal before us. The Id. Authorized Representative (for short 'A.R') for the assessee submitted, that as the assessee had already disclosed a G.P. rate of 15%, thus no further addition was called for in his hands. Alternatively, it was averred by him that in the totality of the facts of the case the authorities below

had erred in making of exorbitant addition @ 12.5% of the aggregate value of the purchases made by the assessee from the aforementioned party.

6. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record and the judicial pronouncements relied upon by them. Admittedly, as is discernible from the orders of the lower authorities, the assessee had failed to discharge the onus and therein prove the genuineness of the purchases claimed to have been made from the aforementioned party viz. M/s Mihir Diamond. In fact, in the course of the assessment proceedings, the assessee could not place on record any irrefutable documentary evidence which could substantiate the authenticity of the purchase transactions under consideration. Insofar the observation of the lower authorities that the assessee had purchased the goods from the open/grey market are concerned, we are persuaded to subscribe to the same. However, we are unable to subscribe to the quantification of the profit element embedded in the said purchase transaction, which we find had been taken by the lower authorities @ 12.5% of the value of the purchases under consideration. We though are not oblivious of the fact that in respect of bogus purchases made in normal business the courts had consistently estimated the profit margin in making of such purchases from the open/grey market @ 12.5% of the value of such purchases, but then not losing sight of the fact that unlike those cases in the trade line of diamond business the profit margin does not exceed 3%, therefore, in our considered view the estimation of the profit element embedded in making of purchases in the case before us by the lower authorities @ 12.5% is totally unjustified and cannot be sustained. In fact, we find that the VAT involved in the business of manufacturing & trading of diamonds was 1%, while for in places like Surat the same

was fully exempt. Apart there from, we find that the Government of India, Ministry of Commerce and Industry, after considering the BAP scheme had recommended presumptive tax for the diamond industry viz. @ 2% for trading activity and @ 3% for manufacturing activity or @ 2.5% across the board. Further, profit in the case of diamond trading for computation of Arm's Length Price (for short 'ALP') by the Transfer Pricing Wing had consistently remained in the range of 1.75% to 3%. In the backdrop of our aforesaid observations, we are of the considered view that the estimation of the profit element involved in making of purchases by the assessee from the open/grey market can safely be taken @ 3% of the value of purchases made by it from the aforementioned party viz. M/s Mihir Diamonds. Our aforesaid view is supported by the order of the coordinate bench of the Tribunal viz. Popatalal N. Shah Vs. ACIT 19(2), Mumbai (ITA No. 5939/Mum/2016, dated 08.11.2017). We thus in terms of our aforesaid deliberations restrict the addition in the hands of the assessee to Rs.11,607/- (3% of Rs.3,86,904/-).

7. The appeal of the assessee is allowed.

Order pronounced in the open court on 30.04.2019

Sd/-
(Shamim Yahya)
ACCOUNTANT MEMBER

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 30.04.2019

Ps. Rohit

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**