

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'डी', मुंबई।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "D", MUMBAI**

श्री संदीप गोसाई, न्यायिक सदस्य एवं

श्री जी. मंजूनाथ, लेखा सदस्य, के समक्ष

**Before Shri SANDEEP GOSAIN, Judicial Member AND  
Shri G. MANJUNATHA, Accountant Member,**

**ITA No.4146/Mum/2017  
Assessment Year: 2013-14**

ACIT-25(3), Room No.601, C-10, 6 <sup>th</sup> Floor, Pratyakshakar Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai-400051	<b>बनाम/ Vs.</b>	M/s Radiant Gems, 701C, Gokul Divine, S.V. Road, Datta Wadi, Vile Parle West, Mumbai-400056
(राजस्व /Revenue)		(निर्धारिती /Assessee)
<b>P.A. No. AAJFR3662E</b>		

**CO No.153/Mum/2018  
(Arising out of ITA No.4146/Mum/2017)  
Assessment Year: 2013-14**

M/s Radiant Gems, 701C, Gokul Divine, S.V. Road, Datta Wadi, Vile Parle West, Mumbai-400056	<b>बनाम/ Vs.</b>	ACIT-25(3), Room No.601, C-10, 6 <sup>th</sup> Floor, Pratyakshakar Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai-400051
(निर्धारिती /Assessee)		(राजस्व /Revenue)
<b>P.A. No. AAJFR3662E</b>		

निर्धारिती की ओर से / Assessee by	Ms. Dinkle Hariya
राजस्व की ओर से / Revenue by	Shri D.G. Pansari-CIT-DR

सुनवाई की तारीख / <b>Date of Hearing :</b>	<b>02/05/2019</b>
<b>आदेश की तारीख /Date of Order:</b>	<b>17/05/2019</b>

### **आदेश / O R D E R**

**Per G. Manjunatha (Accountant Member)**

This appeal filed by the Revenue and Cross Objection by the assessee is directed against order of the Ld. CIT(A)-37, Mumbai, dated 17/03/2017 and they pertains to AY. 2013-14. The assessee has raised following grounds of appeal:-

“1. *“On the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in Restricting the addition of Rs. 9,21,96,9657- to 3 % i.e Rs 27,65,909 on account of bogus purchases .”*

2. *“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not considering that the addition was made on the basis of information received from DIT(Inv.) and Sales Tax Department, Maharashtra with regard to bogus purchase made by the assessee from dealers without supply of actual goods.”*

3. *“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not considering that hawala dealers have admitted on oath before the Sales Tax Authorities that they have not sold any material to anybody.”*

4. *“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not considering that the assessee could not prove the genuineness and credit worthiness of the purchase transactions during the course of assessment proceedings.”*

5. *“On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in estimating the profit at 3 % of the total alleged bogus purchases from Bhanwarlal Jain Group without appreciating the fact that it is not incumbent on CIT(A) to restrict such disallowance to only 3 % and while doing so, Ld. CIT(A) has failed to conform the ratio laid down by the Hon'ble Apex Court in the case of NK Proteins Ltd vs DCIT in SLP(civil)No. 769/2017 dated 16.01.2017.”*

6. *“On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating that purchases were made from some other parties which were not recorded in the books of accounts and only accommodation bills were obtained from hawala parties and there by attracting provisions of section 40A(3).”*

7. *"On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that applicability of provisions of section 40A(3) attracts 100% bogus purchases to be held as profit."*

8. *"The appellant prays that the order of Ld. CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored."*

2. The brief, facts of the case are that the assessee partnership firm is engaged in the business of trading in diamond polished and rough, filed its return of income for AY 2013-14 on 30/09/2013 declaring total income at Rs.30,82,990/-. The case was selected for scrutiny and the notice u/s 143(2) and 142(1) of the Income Tax Act, 1961 (hereinafter the Act) were issued. In response of notices, the authorised representative of the assessee appeared from time to time and filed various details, as called for. During the course of assessment proceedings, the AO has received information from DGIT(Inv.), Mumbai, that a search and seizure was carried out in the case of Shri Bhanwarlal Jain Group and its associates, wherein, it was found that the Shri Bhanwarlal Jain and his associates were involved in providing accommodation entries of unsecured loans, share capital and purchase to large number of parties through various Benami Concerns. It was further observed that the assessee was one of the beneficiary of accommodation entries of Rs.9,21,96,965/- from M/s Laxmi Trading Company a company controlled by Shri Bhanwarlal Jain and its associates. During the course of assessment proceedings, the AO in order to ascertain correctness of purchases from M/s Laxmi Trading Company called upon the assessee to file necessary evidences, to justify purchases in the backdrop of report of DGIT(Inv.). In

response, the assessee vide letter dated 25/02/2016 submitted copies of purchase ledger, sales ledger, stock register and copies of Amit diamonds including affidavit and confirmation to argue that purchase from two parties are genuineness which are supported by necessary evidences. The AO, based on the information received from the DGIT(Inv.) coupled with further enquiry conducted during the course of search came to the conclusion that although the assessee has filed certain basic evidences in respect of purchases from M/s Laxmi Trading Company, but failed to file further evidences in the backdrop of clear findings from the DGIT(Inv.) that the assessee is one of the beneficiary of accommodation entries provided by Shri Bhanwarlal Jain. Therefore, he came to the conclusion that assessee might have purchased goods from grey market, but obtained bills from Shri Bhanwarlal Jain in order to save taxes and get more margin, therefore, considering all these facts came to the conclusion that purchases from the above parties is bogus in nature and accordingly estimated 12.5% profit on alleged bogus purchases and made additions of Rs.1,15,24,260/-.

3. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld. CIT(A).

4. Before the Ld. CIT(A), the assessee has reiterated its submissions made before the AO to the argue that the AO made additions towards alleged bogus purchases only on the basis of report of DGIT(Inv.) without bringing on record any contrary evidences to prove that purchases from M/s Laxmi Trading Company is bogus in nature, despite

the assessee has furnished complete set of documents, including confirmations and affidavit of M/s Deepak Mehta partner of M/s Laxmi Trading Company. The assessee has also filed complete stock details. The AO never rejected the books of accounts nor pointed out any defects in books before estimating profit on alleged bogus purchases. In absence of incorrectness in books of accounts or made out a case of sales outside books of accounts, no adverse inference could be drawn that the assessee has not discharged its burden by filing complete details.

5. The Ld. CIT(A), after considering the submissions of the assessee and also relied upon various judicial precedence including the decision of Hon'ble Gujarat High Court in the case of CIT vs Simit Sheth (2013) 38 taxmann.com 385(Guj.) held that it is difficult to accept the argument of the assessee that purchases from M/s Laxmi Trading company is genuine which is supported by necessary evidences in the backdrop of clear findings from the DGIT(Inv.), Mumbai, where it was found that the assessee is one of the beneficiaries of accommodation entries provided by Shri Bhanwarlal Jain and its Associates. Therefore, he came to the conclusion that the assessee could not prove the purchases to the satisfaction and accordingly by taking into account the fact that the assessee has filed complete set of documents and also the fact that the profit element in diamond trading industries is around 2 to 3% which is further supported by the expert committee on diamond trade industries where it was suggested 2 to 3% profit under BAP scheme, scaled down additions made by the AO towards alleged bogus purchases

to 3% as against 12.5% profit added by the AO. The relevant findings of the Ld. CIT(A)

are as under:-

*"5. I have carefully gone through the assessment order passed by the A.O, written submissions filed by the appellant and relevant case laws cited by the appellant during the appellate proceedings. The submission and contention of the appellant are being discussed and decided as under:-*

*5.1 In the instant case it is seen that all the grounds of appeal pertain to disallowance of Rs,1,15,24,620/-. For the sake of convenience, all the grounds are disposed together.*

*5.2 The AO received an information from the DIT(Investigation), Mumbai that a search and seizure operation was carried out in Bhanwarlal Jain Group and various other persons wherein it was found that Shri Bhanwarlal Jain along with his associates have provided that accommodation entries in form of unsecured loans/deposits/purchases entries to a large number of parties through various benami concerns. The assessee was one of the beneficiary of accommodation entries of Rs.9,21,96,965/- from M/s. Laxmi Trading. The A.R. of the appellant appeared and furnished details and explanation during the assessment proceedings before the A.O. The Appellant vide letter dtd.25/03/2015 submitted the copy of purchase ledger, sales ledger, stock register and copy of Amit Diamond alongwith copies of the Affidavit and confirmation. The Assessee has produced Purchase and Sales details along with quantitative details and no adverse inference has been drawn by the Assessing Officer on the same and hence contemporaneous records establishes the purchases as genuine. The books of accounts are not rejected by the assessing officer. No defects are found in the books of accounts. It is respectfully submitted that the entire sales has been accepted by the assessing officer and has not disputed the veracity of the consumption and quantitative details filed by the Assessee. The Assessee had discharged its onus of proving the transaction as genuine with all sorts of evidences. The Assessing officer has made addition of Rs.1,15,24,520/- on account of alleged bogus purchases simply relying on the information received from the DG(Inv) and without any independent application of mind.*

*5.3 Further stated that the appellant firm has undertaken transaction with the said party and appellant is not aware of the fact that the said party is indulged in providing accommodation entries and, therefore, unless and until the cross examination is provided and same cannot under what circumstances the said statement given by the third party can be utilized against assessee. Hence, the cross examination of the party concerned is very much essential to find out the truth of the said alleged statement given by him since the said statement is being used against the appellant company.*

*5.4 From the assessment order, it transpires that the AO has solely relied upon the statements of Bhanwarlal Jain and did not carry out any*

worthwhile independent inquiry in the matter. He has totally ignored the documentary evidences submitted by the appellant. The AO in the assessment order has admitted existence of these details. The AO has not pointed out any defect in the above mentioned documentary evidences submitted during assessment proceedings. Without pointing out any lacuna in the evidences submitted by the appellant, the sources and the genuineness cannot be doubted. Once evidences related to a transaction is submitted before the A.O., the onus shifts on him to prove these as non-genuine or bogus. The A.O. has not discharged the onus casted on him. In my opinion, merely based on the statement of a third person without any corroborative evidence will not make the transactions, in question, as non-genuine or bogus transaction. As such, in the absence of any contrary evidence placed on record, the transaction cannot be treated as bogus or paper transaction.

5.5 As far as the question of validity of the transaction, even if some of the transactions entered into by the above parties are found to be not genuine, it does not lead to the conclusion that all the transactions entered into by these parties were bogus or non-genuine including the transactions related to the appellant. There is no evidence brought in the assessment order to prove the above conclusion, by the AO. The reassessment proceedings were wide open and the AO could have carried out independent investigation to prove his argument regarding the bogus or non-genuine transactions. No such investigation has been carried out by the AO. The outcome of investigation carried out in the case of Bhanwarlal Jain, the conclusions drawn therein cannot be applied ipso facto to all other cases who have dealt in the transactions during that period. Simply relying on the report of the Inv. Wing, Mumbai and statement the AO cannot conclude that all transactions are bogus or have no credential value.

5.6 The cross examination of the party concerned is very much essential to find out the truth of the said alleged statement given by him since the said statement is being used against the Assessee company. The Honble Apex Court in the case of Andaman Timber Industries in CIVIL APPEAL NO.4228 OF 2006 held as under:-

*According to us, not allowing the assessee to cross examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is*

concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them,

As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the sold dealers/witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal No.2216 of 2000, order dated 17-03-2005 was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions.

In view of the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the Show Cause Notice.

5.7 In this case, AO not doubted the genuineness of sales, however held that the appellant indulged in non-genuine purchases to suppress the profits and proceeded to add the entire amount of such purchases, instead of making the profit element embedded in such bogus purchase. As stated earlier when the sales are genuine, it is not possible to sell the goods without making any purchases. If the purchases are not made from those parties, the appellant must have purchased from some other parties. In such a situation, adding the entire amount of purchase to the total income is not correct because it will give a distorted picture of the profit margin as stated in the written submissions by the appellant. In my considered opinion, which is supported by several judicial forums, estimating the profit percentage on such purchases is the correct way to bring the income to tax. Thus, the issue would boil down to finding out what is the correct element of profit embedded in bogus purchases which the appellant would have made from such unknown entities.

5.8 The Hon'ble ITAT, Ahmedabad 'C' Bench in the case of Vijay Proteins Ltd. vs. ACIT 58 ITD 0428 held that in similar circumstances, 25% of the purchase price accounted through fictitious invoices has to be disallowed. The Hon'ble High Court of Gujarat in the case of Sanjay Gil cakes v/s CIT 316 ITR 0274 dealt with similar case where some of the alleged suppliers who had issued bills to the assessee were not genuine as they were not traceable. The goods must have been received from other parties. The likelihood of the purchase price of these alleged purchases being inflated could not be ruled out and therefore the Hon'ble High Court has upheld the decision of CIT(A) and the ITAT disallowing 25% of the payments made to such parties. The Hon'ble High Court of Gujarat in the case of CIT vs. Simit P. Sheth 356 ITR 0451 held that once the sale is accepted by the AO, the very basis of purchases could not be questioned. Not the entire purchase price could be disallowed but only the profit element embedded in such purchases could be added to the income of the assessee. The estimation varies with the nature of business and no uniform yardstick could be adopted.

5.9 In this regard, it is apt to refer certain decisions dealing the similar issue. The decision of Gujarat High Court in the case of Bholanath Poly Fab Pvt.Ltd. 355 ITR 290 (Guj) where the Hon'ble Court was battling with the finding of Hon'ble ITAT

that purchases were made from bogus parties, nevertheless, the purchases themselves were not bogus as the entire quantity of opening stock, purchases and sales were tallying and hence, only the profit margin embedded in such amount would be subjected to tax. The Hon'ble Gujarat High Court taking cognizance of the fact held that whether purchases themselves were bogus or whether parties from whom such purchases were made were bogus, is essentially a question of fact and the Tribunal having examined the evidence on record and concluded that the assessee did produce cloth and sell finished goods, the entire amount covered under such purchase would not be subjected to tax and only the profit element embedded therein to be taxed. While coming to the above conclusion, the Hon'ble High Court also relied on the decision in the case of Sanjay Oil Cake Ind. 316 ITR 274 (Guj).

5.10 In Sanjay Oilcake Industries v. Commissioner of Income-tax [2009] 316 ITR 274 (Guj), it was held as under:

"Thus, it is apparent that both the Commissioner (Appeals) and the Tribunal has concurrently accepted the finding of the Assessing Officer that the apparent sellers who had issued sale bills were not traceable. That goods were received from the parties other than the persons who had issued bills for such goods. Thus, the purchases are shown to have been made by making payment thereof by account payee cheques, the cheques have been deposited in bank accounts ostensibly in the name of the apparent sellers, thereafter the entire amounts have been withdrawn by bearer cheques and there is no trace or identity of the person withdrawing the amount from the bank accounts. In the light of the aforesaid nature of evidence it is not possible to record a definite conclusion, therefore from the one recorded by the Commissioner (Appeals) and the Tribunal

*concurrently holding that the apparent sellers were not genuine, or were acting as conduit between the assessee-firm and the actual sellers of the raw materials. Both the Commissioner (Appeals) and the Tribunal have, therefore, come to the conclusion that in such circumstances, the likelihood of the purchase price being inflated cannot be ruled out and there is no material to dislodge such finding. The issue is not whether the purchase price reflected in the books of account mulches the purchase price stated to have been paid to other persons. The issue is whether the purchase price paid by the assessee is reflected as receipts by the recipients. The assessee has, by set of evidence available on record, made it possible for the recipients not being true for the purpose of income as to whether the payments made by the assessee have been actually received by the apparent sellers. Hence, the estimate made by the two appellate authorities does not warrant interference. Even, otherwise, whether the estimate should be at a particular sum or at a different sum, can never be an issue of law."*

*5.11 Similarly, in yet another decision of Hon'ble Gujarat High Court in the case of CIT vs. Simit Sheth (2013) 38 Taxmann.com 385 (Guj), Hon'ble Court was seized with a similar issue where the A.O. had found that some of the alleged suppliers of steel to the assessee had not supplied any goods but had only provided sale bills and hence, purchases from the said parties were held to be bogus. The A.O. in that case added the entire amount of purchases to gross profit of the assessee. Ld. CIT(A) having found that the assessee had indeed purchased though not from named parties but other parties from grey market, partially sustained the addition as probable profit of the assessee. The Tribunal however, sustained the addition to the extent of 12.5%. Taking into account the above facts, the Hon'ble Gujarat High Court held that since the purchases were not bogus, but were made from parties other than those mentioned in books of accounts, only the profit element embedded in such purchases could be added to the assessee's income and as such no question of law arose in such estimation. In Simit P Sheth's case the Honourable High Court has ordered the disallowance at 12.5% since the VAT rates are higher (10%) in the type of goods dealt by Simit P. Sheth, iron & steel, (where the average GP is 2.5%). In the case of diamond business, which the appellant is dealing, the VAT charges are only 1%. The tribunal for arriving the profit embedded in the transactions @ 2.5% held as under:*

*"Having heard the submissions of both sides, we have been informed that the malpractice of bogus purchase is mainly to save 10% sales tax etc. It has also been informed that in this industry about 2.5% is the profit margin. Therefore, respectfully following the decisions of the co-ordinate bench pronounced on identical circumstances, we hereby direct that the disallowance is required to be sustained at 12.5% of the purchase from those parties. With these directions, we hereby decide the grounds of the rival parties which are partly allowed."*

5.12 Taking into consideration the above decisions, the correct way of dealing the bogus purchases issue is to estimate the profit margin on such purchases and not adding the entire amount of such purchases. In view of the same, the issue arrived at is to what would be the margin, one can expect while buying the material from grey market instead of normal course of business from regular dealers. Two aspects need to be taken into consideration in such circumstances. First, these diamonds in the grey market are always cheaper than the diamonds sourced from the genuine. This is because, the genuine dealer would charge his incidental cost including the whole administrative cost while selling the diamond in the market whereas the petty dealers in the grey market do not carry such incidental charges on such sales, wherein they are only looking for a quick profit. Secondly, there is always an element of discount in the case of instant cash purchase.

5.13 In the light of the above, one has to see in the present case, which is in the line of trading in diamonds, what is the correct profit element embedded in such bogus purchases. In the case of diamond trade, generally the rate of VAT is stated to be charged @ 1% on the purchases made from Mumbai and on the purchases made under Form 'H' no VAT is levied due to export commitment and purchases made from Surat also there is no VAT levied. Coming to the profit margin in the trade, the task force group for diamond industry, after considering the BAP scheme, recommended presumptive tax for net profit calculated @2% of trading activity and @3% for manufacturing activity or 2.5% across the board. It is also ascertained that the operating profit in case of diamond trading for computation of ALP by the TP wing is consistently in the region of around 1.75% to 3%. During the appellate proceedings, the A.R. of the appellant brought to my notice and also furnished copy of assessment order for the A.Y.2008-09, wherein the A.O. considered the same issue and estimated the addition 03% on total non-genuine purchases. The reason given by the A.O. for adopting such percentage in the order is as under:-

*“As the assessee has demonstrated corresponding sale against the purchase from Bhawarlal Jain group concern and where, on one hand the genuineness of the purchase party is doubted, but the genuineness of purchase on a whole cannot be doubted, the courts have taken a view that only the profit margin embedded in such a transaction could be taxed. This is a fairly accepted principle and the same would also apply in this case. However, what would be the fair margins in such transaction is the moot question. Given the facts and circumstances of the assessee's case, the discussion as narrated above, the profit margin embedded in the transaction with the impugned entry is taken at 3% of the value of the transaction and the said amount i.e. Rs.60,018/- (3% of Rs.20,01,271/-) is added to the total income of the assessee for the assessment year under consideration.”*

5.14 In view of the same considering the profit margin in this sector i.e. around 2 to 3 percent and the taxes saved is around 10/0 I am of the considered opinion that if the addition is sustained to the extent of 3% of the purchases made, as the profit element embedded in such purchases from the

*three parties belonging to the Bhanwarlal Jain Group concerns, that will meet the ends of justice. In view of the same, I direct the AO to restrict the addition @3% of the purchases made from M/s. Laxmi Trading of Rs.9,21,96,965/-.*

6. Aggrieved by the Ld. CIT(A)'s order, the Revenue is in appeal before us
7. The Id. DR submitted that the Ld. CIT(A) has erred in scaled down estimation of profit on alleged bogus purchases to 3% without appreciating the fact that the AO has brought out clear facts in light of information received from the DGIT(Inv.) and Sales Tax Department, Maharashtra, with regard to bogus purchases made by the assessee from the dealers without supply of actual goods. The Ld. DR further submitted that the Ld. CIT(A) has erred in not considering that the assessee could not prove genuineness of purchases and mere furnishing confirmation letter and other evidences is not sufficient enough to prove the genuineness of the transactions, more particularly, when information gathered during the course of assessment proceedings clearly established that the assessee is one of the beneficiaries of accommodation entries provided by Bhanwarlal Jain Group and his associates. The Ld. DR further submitted that the Ld. CIT(A) failed to consider the ratio laid down by the Hon'ble Supreme Court in the case of N. K. Proteins Ltd. vs DCIT in SLP (Civil No.769 of 2017) dated 16/01/2017, where under identical circumstances the Hon'ble Supreme Court upheld additions of 100% on bogus purchases in absence of necessary evidences.
8. The Ld. AR for the assessee, on the other hand, submitted that the Ld. CIT(A) although scaled down estimation of profit to 3% from 12.5%, but failed to appreciate the

facts in right perspective that before estimation of income, the books of accounts should be rejected u/s 145(3) of the Act. The Ld. AR for the assessee further submitted that the AO made additions only on the basis of report of DGIT(Inv.) without considering the evidences filed by the assessee including confirmation and affidavit from the partner of M/s Laxmi Trading Company, where they have denied any wrong doing and also filed complete details of purchases. The assessee has also filed quantitative details of goods traded along with statutory forms for import and export. The AO neither pointed out any discrepancy in the books of account nor made out a case of sales outside books of accounts, therefore no adverse inferences could be drawn when the assessee has discharged its initial burden by filing complete details of purchases. In this regard, assessee relied upon various judicial precedence including the decision of Hon'ble Bombay High Court in the case of M/s Mohammad Haji Adam & Co. in Income Tax Appeal No.1004 of 2016, dated 11/02/2019 . The cases relied upon by the assessee are as under:-

- i. Jitendra M. Kitavat (HUF) vs ITO (ITA No.7047/Mum/2016)
- ii. Jitendra M. Kitavat vs ITO (ITA No.7050/Mum/2016)
- iii. Indo Unique Trading Pvt. Ltd. vs DCIT (ITA No.6341/Mum/2016)
- iv. ITO vs Deepak Popotlal Gala (ITA No.5920/Mum/2013)
- v. ACIT vs G.V. Sons (ITA No.2239/Mum/2012 & ITA No.2240/Mum/2012, ITA No.2238/Mum/2012)
- vi. Rakesh Kumar & Co. vs ACIT (ITA No.2959/Mum/2014)
- vii. Babulal C. Boranvas vs ITO (2006) 282 ITR 251(Bom.)

- viii. CIT vs Hi Lux Automotive P. Ltd. (2009) 183 taxman 260 (Del.)
- ix. CIT vs Nikunj Exmip Enterprises Pvt. Ltd. (ITA No.5604 of 2010) (Bom.)
- x. CIT vs M. K. Brothers (1987) 30 taxmann 547(Guj.)

9. We have heard both the parties, perused the material available on record and gone through the orders of authorities below. There is no dispute with regard to fact that the name of concerned parties from which the assessee has purchased diamonds i.e. M/s Laxmi Trading Company is belongs to M/s Bhanwarlal Jain group and his associates. It is also an admitted fact that M/s Bhanwarlal Jain group and his associates have categorically admitted during the course of search in their cases, in its statement recorded u/s 132(4) of the Act, that they have involved in providing accommodation entries of unsecured loans/share application money and purchases to various beneficiaries. It is also an admitted fact that the report of DGIT(Inv.) clearly suggested that the assessee is one of the beneficiaries of accommodation entries of purchases from M/s Laxmi Trading Company. In the above factual background, if you examine the evidences filed by the assessee including copies of purchases bills, purchase ledger, sales ledger, stock register and confirmations from M/s Laxmi Trading Company along with affidavit of partner of M/s Laxmi Trading Company, it is difficult to accept the finding of the AO that purchases from M/s Laxmi Trading Company is bogus in nature, which is not supported by necessary evidences. In fact, the assessee has filed complete set of documents in respect of purchases from M/s Laxmi Trading Company including confirmations from the parties. The AO neither pointed out any discrepancies

in the books of account nor made out a case of sales outside the books of accounts. In absence of any incorrectness in books of account or sales outside the books, no adverse inference could be drawn that purchases from the above parties as bogus, only for the reason that the name of the party is appeared in the list of DGIT(Inv.) and also the party has accepted that he is involved in the providing accommodation entries of purchases to various parties. At the same time, it is difficult to accept the argument of the assessee that purchase from M/s Laxmi Trading Company is fully supported by necessary evidences. Mere furnishing purchase bills and other evidences is not sufficient enough to prove genuineness of the transactions, when the party himself had admitted in its statement recorded u/s 132(4) that he is involved in providing accommodation entries of purchases to various parties. In this case, it is also an admitted fact that the contents of DGIT(Inv.) report and the information collected during the course of search in the case of M/s Bhanwarlal Jain Group is matched. Although, the assessee tried to argue that the name of the party is not specifically appeared in the list of Bhanwarlal Jain Group and its associates, on perusal of facts available on record, we find that M/s Laxmi Trading Company is very much available in the list of 70 odd companies operated by M/s Bhanwarlal Jain and its associates. Under these facts, it is difficult to accept the argument of the assessee that it has discharged its onus of proving purchases in the back drop of clear finding of the AO which is supported by the DGIT(Inv.) report.

10. Having said so, let us examine what is to be done in cases where either party fail to conclusively prove the purchases in their favours. The Ld. CIT(A) after considering the relevant facts has recorded categorical finding in the light of decision of Hon'ble Gujarat High Court in the case CIT vs Simit P. Seth (356 ITR 0451)(Guj.), where the court observed that when the parties are failed to prove the purchases with necessary evidences, obviously a conclusion is drawn that the purchases are made from grey market in order to save tax and reduce the cost, but obtained bills from the parties who are involved in providing accommodation entries. The Ld. CIT(A) taking note of above facts and also considering the level of profit involved in diamond trading industries on the basis of BAP report come to the conclusion that the assessee might have saved 1% tax by making purchases from gray market and also saved 2 to 3% profit. Therefore, taking note of above facts, scaled down estimation of net profit from 12.5% to 3%. Therefore, we are of the considered view that there is no error in the findings recorded by the Ld. CIT(A) while reducing 3% profit on alleged bogus purchases from M/s Laxmi Trading Company.

11. Coming back to the case laws relied upon by the assessee. The assessee has relied various case laws including the case of Hon'ble Bombay High Court in the Pr. CIT vs M/s Mohammad Haji Adam & Co. in Income Tax Appeal No. 1004 of 2016 dated 11/02/2019. We find that Hon'ble jurisdictional High Court after considering relevant facts held that the Tribunal was correct in coming to the conclusion that the purchases

cannot be rejected without disturbing the sales in case of trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of GP rate on purchase at the same rate of other genuine purchases. In so far as, other cases relied upon by the assessee, where the Tribunal has deleted addition made towards bogus purchases, we find that although there are certain case laws in favour of the assessee, but in majority of cases, the Coordinate Bench of Mumbai Tribunal, has taken a consistent view by following the decision of Hon'ble Gujarat High Court in the case of CIT vs P. Simit Sheth (supra) and has directed the AO to estimate only profit element embedded in bogus purchases depending upon facts of each case. In this case, since assessee is in the business of trading in diamonds, the Ld. CIT(A) after considering the amount of profit involved in diamond trading industries and also taken support from BAP report, has estimated 3% profit on alleged bogus purchases. Therefore, we are of the considered view that there is no error in the order of the Ld. CIT(A) and hence, we are inclined to upheld the findings of the Ld. CIT(A) and dismissed the appeal filed by the Revenue.

12. The assessee has filed cross objection against order of the Ld. CIT(A) and challenged the findings recorded by the Ld. CIT(A) for estimating 3% profit on alleged bogus purchases. Since, we have already upheld the findings of the Ld. CIT(A) in Revenue's appeal in preceding paragraphs, the finding given by us in Revenue's appeal shall mutatis mutandis apply to the cross objection filed by the assessee.

Therefore, for the detailed reasons given in preceding paragraphs in Revenue's appeal, we dismissed the cross objection filed by the assessee.

13. In the result, appeal filed by the Revenue and cross objection filed by the assessee are dismissed.

Order pronounced in the open Court on 17/05/2019.

Sd/-

Sd/-

(Sandeep Gosain)

(G. Manjunatha)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई/Mumbai; दिनांक Dated : 17/05/2019

*Shekhar, P.S./नि.स.*

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

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

आदेशानुसार/ BY ORDER,

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

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai