

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC" MUMBAI**

**BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 4013/MUM/2018  
Assessment Year: 2011-12**

M/s A B Exports, Chitrakut Bldg., Malabar Hill, Mumbai-400006.	Vs.	ITO, Ward-19(1)(1), 2 <sup>nd</sup> floor, Matru Mandir, Tardeo Road, Mumbai- 400007
--	-----	---

**PAN No. AALFA8367R**  
**Appellant**

**Respondent**

Assessee by	:	Ms. Mrugakshi K. Joshi, AR
Revenue by	:	Mr. Chaitanya Anjaria, DR

Date of Hearing : 15/05/2019  
Date of pronouncement: 27/05/2019

**ORDER**

**PER N.K. PRADHAN, AM**

This is an appeal filed by the assessee. The relevant assessment year is 2011-12. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-51, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (the 'Act').

2. During the course of hearing, the Ld. counsel of the assessee submits that the appellant would not like to press the 1<sup>st</sup> ground of appeal which is related to reopening of assessment u/s 147/148 of the Act. Thus the 1<sup>st</sup> ground of appeal is dismissed as not pressed.

3. The 2<sup>nd</sup> ground of appeal reads as under:

The learned CIT(A) erred in confirming the addition of 8% of the alleged bogus purchases of Rs.34,40,823/- after giving credit for profit margin already shown by the assessee in the books in respect of the alleged hawala purchases made from M/s Maniprabha Impex Pvt. Ltd., although the Appellant provided sufficient information and discharged, its onus of proving the genuineness of the transaction, wherein details such as payments made by account payee cheques, bills/ vouchers, copy of ledger account, confirmation by Maniprabha Impex Pvt. Ltd. Sales ledger showing consumption of goods purchased from Maniprabha Impex Pvt. Ltd., etc, were duly furnished, but ignored by CIT(A).

2. The learned CIT(A) has not pointed out any suspicious withdrawals and deposits and has failed to establish the nexus between the impugned Rajendra Jain and M/s. Maniprabha Impex Pvt. Ltd.

3. The learned CIT(A) erred in confirming an addition on presumptive basis without any authentic and concrete evidence, and without affording an opportunity of cross-examination of the vendor, their affidavit and disregarding the cogent material being given to him like the ledger account and copies of purchase bills of both the above said parties and bank statements of the appellant.

4. The learned CIT(A) erred in not granting the Appellant an opportunity to procure the 'statement taken on oath' by Maniprabha Impex Pvt. Ltd. or such other third party which were filed before the DGIT, Mumbai wherein a confession was apparently made that it indulged only in issuing bogus purchase entries to parties that approached them. The said Affidavit formed the basis of the entire addition and the same should have been provided to the Appellant.

5. The learned CIT(A) erred in denying the Appellant an opportunity for cross- examining the above mentioned vendor from whom alleged bogus purchases were said to be made.

6. The learned CIT(A) failed to consider that the goods purchased from Maniprabha Impex Pvt. Ltd. were sold to parties who could be identified from the appellant's stock register.

4. Briefly stated, the facts are that the assessee filed its return of income for the assessment year (AY) 2011-12 on 02.09.2011 declaring total income at Rs.Nil. It may be mentioned here that a search and seizure action u/s 132 of the Act was conducted on Rajendra Jain Group on 03.10.2013 by the Investigation Wing of the Department. From the evidence collected during the course of said search, the names of the beneficiaries who had obtained accommodation entry of bogus sales from various concerns were found out.

As a result of the above search, the Assessing Officer (AO) received information from the Investigation Wing of the Department that the appellant has received accommodation entries of bogus purchases from the following concerns during the financial year 2010-11 relevant to the AY 2011-12 :

Sr. No.	Name of the hawala parties	Bill Amount
1.	Kangan	Rs.14,78,838/-
2.	Maniprabha	Rs.19,61,985/-
	<b>Total</b>	<b>Rs.34,40,823/-</b>

Accordingly, the AO reopened the assessment by issuing notice u/s 148.

During the course of reassessment proceedings, the AO relied on the findings of the aforesaid search and seizure action and also the statement recorded from Shri Rajendra Jain on 03.10.2013 u/s 132 of the Act and estimated the profit @ 8% of the disputed purchase amount of Rs.34,40,823/- and brought the resultant amount of Rs.2,75,266/- to tax.

5. In appeal, the Ld. CIT(A) *vide* order dated 26.04.2018 held as under:

“Now the issue to be adjudicated is what is the reasonable profit percentage to be adopted for computing the profits arising from the alleged hawala purchases. It is pertinent to mention that the CBDT through Instruction No. 2/08 dated 22.02.2008 has revised the rate of profit margin from 8% to 6% in respect of gems and jewellery business. Thus, it can be seen that the Income Tax Department considers 6% of profit margin to be reasonable for the business of Gems & Jewellery. However, this margin of 6% is reasonable for an assessee which is not indulging in hawala purchases. It has been noted by the Hon’ble Gujarat High Court in the case of Simit P. Sheth (*supra*) that the margins in respect of hawala purchases are much higher due to saving s on account of evasion of various government levies. Therefore, it will be appropriate if the reasonable profit margin arising to be assessee on account of the alleged hawala purchases is adopted of 8%. However, the AO while making the addition on account of additional profit margins arising on the hawala purchases should reduce the profit margins already shown by the assessee in its books in respect of the said hawala purchases from the said profit margin computed by adopting profit margin of 8% for the alleged hawala purchases. Accordingly, ground No. 2 of the appeal is partly allowed.”

6. Before us, the Ld. counsel of the assessee files a Paper Book (P/B) containing (i) statement of accounts, (ii) bank account, (iii) ledger account, purchase bills of Kangan Jewels Pvt. Ltd. and M/s Maniprabha Impex Pvt. Ltd., (iv) stock register showing purchase and sales, (v) confirmation affidavits and (vi) submissions filed before the CIT(A).

Also reliance is placed by the Ld. counsel on the decision in *ACIT v. M/s Choron Diamond (I) Pvt. Ltd.* in ITA No. 4449/Mum/2016 for AY 2007-08.

On the other hand, the Ld. DR submits that the order passed by the CIT(A) being based on facts be confirmed.

7. We have heard the rival submissions and perused the relevant materials on record. In the case of *M/s Choron Diamond (I) Pvt. Ltd.* (supra), the CIT(A) has restricted the disallowance of purchases to 4% for AY 2007-08 and 3% to AYs 2008-09, 2010-11, 2011-12 and 2013-14. The Tribunal directed the AO in the above case to estimate the profit element uniformly for the concerned assessment years at 2%.

In the instant case, the AO has given effect to the order of the Ld. CIT(A) by reducing Rs.1,43,826/- (4.18% of Rs.34,40,823/- on account of alleged bogus purchases) from the income assessed u/s 143(3) r.w.s. 147 of Rs.2,75,270/-. Thus the income after the appeal effect comes to Rs.1,31,440/-.

Having considered the facts and circumstances of the case and the direction of the Ld.CIT(A) as mentioned hereinabove, we find that the

amount of Rs.1,31,440/- after the appeal effect needs to be sustained in view of the range of profit in similar business.

Therefore, we uphold the order of the Ld. CIT(A).

8. In the result, the appeal is dismissed.

**Order pronounced in the open Court on 27/05/2019.**

Sd/-  
(MAHAVIR SINGH)  
JUDICIAL MEMBER

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 27.05.2019

*Rahul Sharma, Sr. P.S.*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)  
**ITAT, Mumbai**