

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

BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER

**ITA NOS. 4193 & 4194/MUM/2018
(A.Ys: 2012-13 & 2013-14)**

Shri Dinesh J Lalwani Flat No. 802, Melange 8 th Floor, 4 th Cross Lane Santa Cruz (E) Mumbai – 400 055 PAN: AAOPL 1813 A	v.	Income Tax Officer – 22(1)(2) Room No. 313, Piramal Chambers Lalbaug, Mumbai – 400 012
(Appellant)		(Respondent)

Assessee by : Shri Daran Gandhi
Department by : Shri Chaitanya Anjaria

Date of Hearing : 04.06.2019
Date of Pronouncement : 31.07.2019

ORDER

PER C.N. PRASAD (JM)

1. These two appeals are filed by the assessee against different orders of the Learned Commissioner of Income Tax (Appeals)-32, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 06.04.2018 for the A.Ys. 20012-13 and 2013-14.

2. In both these appeals the assessee challenged the order of the Ld.CIT(A) in sustaining the reopening and also sustaining the addition made at 12.5% of the bogus purchases.

3. Brief facts are, in the Assessment Order Assessing Officer state that based on the information received from Pr.DIT (Inv.), Mumbai the assessments were reopened in the case of the assessee, as it was found that assessee was one of the beneficiary of accommodation entries provided by Gautham Jain & Others. In the course of the reassessment proceedings the assessee was required to prove the genuineness of the purchases. Assessing Officer also issued notice u/s. 133(6) of the Act to various parties and the said notices were returned unserved with the remarks "not known" by the Postal Authorities. Assessee could not produce the parties. It is the finding of the Assessing Officer that assessee could only furnish the copies of ledger account and bank statements to prove its claim that the transactions were genuine. Finally, the Assessing Officer estimated the profit element at 12.5% from the purchases made from the supplier M/s.Kingstar. On appeal the Ld.CIT(A) sustained the addition.

4. Before me, the Ld. Counsel for the assessee submits that there is no justification in making the addition @12.5% of the bogus purchases on the facts of the assessee's case. Ld. Counsel for the assessee submits

that assessee has furnished the confirmation of supplier before the Assessing Officer and the Ld.CIT(A) which was also placed in the Paper Book. Ld. Counsel for the assessee submits that stock reconciliation and quantitative details were furnished before the Assessing Officer and the Ld.CIT(A) and they were also part of the Paper Book. Ld. Counsel for the assessee submits that the seller has confirmed the physical delivery of goods in his confirmation. The assessee has furnished new address and the party has also replied to the summons issued by the Assessing Officer.

5. Ld. Counsel for the assessee further submits that before the Assessing Officer assessee has furnished complete details and the same were furnished even before the Ld.CIT(A). Ld. Counsel for the assessee submits that those details are appearing from Page No. 3 to 225 containing final audit accounts, bank statements, statement of purchases, stock reconciliation, VAT returns by sellers, purchase invoices, sales invoices and corresponding sales, confirmation of the party etc., Ld.Counsel for the assessee submits that voluminous details have been furnished demonstrating purchase, sale of goods, delivery of goods, confirmation, payment of VAT by the seller and payment by banking systems. It is submitted that even the seller has replied to the summons issued by the Assessing Officer. Therefore, the purchases cannot be treated as bogus purchases.

6. Ld. Counsel for the assessee further submitted that Assessing Officer placed reliance on the statement of Gautham Jain and none of the materials was handed over to the assessee for rebuttal. It is submitted that the said Gautham Jain has no connection with the purchases made by the assessee from M/s. Kingstar. Ld. Counsel for the assessee submits that the proprietor of Kingstar, Mr. Pramod Ranka had in fact confirmed the sale of goods to the assessee. Therefore, reliance on the statement of Gautham Jain has no relevance to the facts of the present case.

7. Without prejudice to the above, Ld. Counsel for the assessee submits that the assessee has declared Gross Profit of 13.07% and 9.15% for the A.Y. 2012-13 and 2013-14. It is submitted that as per the report of the Task Group for diamond sector submitted to Department of Commerce the net profit in trading in the diamond in the range of 1 to 3%. Therefore, it is submitted that since the assessee has already declared Gross Profit at 13.07% and 9.15% the addition may be restricted to 2% of the alleged bogus purchases. Reliance was also placed in the case of M/s. Sejal Exports (India) v. DCIT in ITA.No. 3854 & 3855/Mum/2017 dated 04.07.2018 and M/s. Choron Diamond (I) Pvt. Ltd., v. ACIT in ITA.No. 4449/Mum/2016 dated 30.10.2017.

8. Ld. DR vehemently supported the orders of the authorities below.

9. Heard rival submissions, perused the orders of the authorities below. In this case the Assessing Officer estimated the profit element at 12.5% from the purchases made by the assessee on the ground that assessee has obtained only accommodation entries without any delivery of goods. Assessing Officer was of the opinion that assessee has made purchases from gray market and has obtained only accommodation entries. Assessing Officer has relied on the statements of Gautham Jain & Others and how the concerns of Gautham Jain have been operated. It is the submission of the assessee that the Gautham Jain Group has nothing to do with the concerns from which the assessee has purchased the diamonds i.e. M/s. Kingstar. It is the submission of the Ld. Counsel for the assessee that the proprietor of M/s. Kingstar is one Mr. Pramod Ranka and he has confirmed the sales made to the assessee. Mr. Pramod Ranka also replied to the summons issued u/s. 133(6) of the Act confirming the sale of goods and physical delivery. Therefore, Ld. Counsel submits that the assessee has filed all the information regarding the purchases including confirmations, stock reconciliations, purchase and corresponding sales etc., the purchases cannot be treated as bogus purchases.

10. Alternatively, it is submitted that since the assessee has declared higher Gross Profit at 13.07% and 9.15% for the A.Y. 2012-13 & 2013-14

which is much more than the profit margin in the diamond industry and as per task group for diamond sector the net profit in trading is in the range of 1% to 3% only, it is requested that the addition be restricted to 2% of the alleged bogus purchases.

11. The Paper Book furnished before me shows that assessee has furnished voluminous evidences to substantiate its claim that the purchases made from M/s. Kingstar are genuine purchases. The letter filed before the ITO-22(1)(2) dated 28.8.2016 in the course of the reassessment proceedings itself speaks of voluminous evidences enclosed by the assessee. Assessee also filed confirmation of accounts from the supplier M/s. Kingstar. The contents of the letter dated 28.08.2016 and the evidences furnished are as under: -

From
Mr. Dinesh Lawani
Fat No. 09, Plot No. 690
Zindagi 2nd Floor,
15th Road, Khar West
Mumbai – 400 052
Dated 28.08/2016

To
The Income Tax Officer 22(1)(2)
Room No. 313 Piramal Chambers, Lalbaug, Parel
Mumbai – 400 012

Ref: P.A.N. AAOPL1813A
Sub: Reassessment proceedings for the A.Y 2012-13 and 2013-14

Dear Sir,

Please refer to my letters dated 16/03/2016, 09/05/2016 (2 letters) both dated 11/05/2016, with which was enclosed paper book containing pages 1 to 92. I also refer to discussions my CA KJ.Vegad had with you during the months of May, June and July 2016 and on 08/08/2016. I also refer to e-mail sent by my CA KJ.Vegad on 09/08/2016 regarding CBDT directive F no. 286/98/2013- IT (Inv.II) dated 18/12/2014 and two judgements of the Gujarat High Court namely CIT vs. Ramanbhai B. Patel and Chetnaben J. Shah vs. ITO Ward 10(3). I further submit as under:-

1. I enclose herewith statement showing purchases from M/s King Star and corresponding sales made to other parties against the purchases from M/s King Star for the year 31/03/2012 and 31/03/2013Pgs 93-94
2. Also enclosed please find two separate statements being stock register for purchase and sale of diamonds for the years ended 31/03/2012 and 31/03/2013, wherein you will find the quantitative details of diamonds purchased and sales made against them.Pgs94-95A
3. Shri Pramod Kumar Ranka proprietor of King Star is assessed to income tax and under PAN No. ADEPJ3002A
4. He is also registered dealer under the Sales Tax Act and his VAT No. is 27230833585V and his registration number under Central Sales Tax Act is 27230833585C
5. M/s King Star is a regularly filing sales tax return under the above registration number with Sales Tax Authorities.
6. He has filed returns of sales tax for year ended 31/03/2012 and 31/03/2013 wherein he has also included the sales made to me for the year 31/03/2012 Rs.5637449/-(including VAT Rs.55816/-) and for 31/03/2013 Rs. 17765461 (including VAT Rs.175303)
7. I enclose herewith Form No. 704 being Audit Report of M/s King Star under Section 61 of Maharashtra Value Added Tax audited by M/s Nitesh Mahendra Kothari, Chartered Accountants for the years ended 31/02/2012 and 31/03/2013, which gives the entire summary of purchases, sales etc. for the above 2 years which is summarized as under:

No.	Particulars	31/03/2012	31/03/2013
1	Gross Turnover of Sales - Table-2	33,66,94,344	90,48,77,737
2	Total amount of VAT (sales tax) collected on Sales Part-3 of Schedule-1	25,62,759	83,55,020
3	Total turnover of Purchases - Part-3 Schedule-1	35,21,78,905	94,50,83,402
4	Total amount of VAT (sales Tax) paid/ payable on purchases Part 3 of schedule I	11,57,834	36,29,231
5	VAT paid as per Annexure —A	14,04,940	47,26,232
	TOTAL	25,62,774	83,55,463

8. Please refer to Annexure J- Section I being part of form no, 704 as referred above, being customer wise sales made by M/s King Star for the year 31/03/2012 and 31/03/2013, wherein you will find in Annexure J section I, in serial item no.2 my VAT no. 27120552297V and the amount of sales and the amount of VAT and gross total amount of sales for each respective year is appearing in the said annexure.
9. Also enclosed herewith Annexure J-Section II being part of form no, 704 as referred above, being customer wise VAT purchase made by M/s King Star for the year 31/03/2012 and 31/03/2013, wherein you will find the TIN nos. of the suppliers from whom M/s King star has made purchases and the amount of purchases made from them, VAT amount paid and gross total amount of purchases for the years 31/03/2012 and 31/3/2013.

10. Please refer to Annexure A of Form No. 704 as referred above being details of VAT paid by M/s King Star for the years 31/03/2012 & 31/03/2013.
11. Also enclosed please find three VAT challans paid by M/s King Star for payment of VAT for the year ended 31/03/2012. Pgs 154-156
12. Also enclosed please find seven VAT challans paid by M/s King Star for payment of VAT for the year ended 31/03/2013. Pgs 157-162
13. Enclosed please find five purchase invoices for purchase made from M/s King Star for the year 31/03/2012 totaling to rs. 5637449(including Vat) Pgs 163-167
14. Enclosed please find nine purchase invoices for purchase made from M/s King Star for the year 31/03/2013 totaling to rs. 17705461(including Vat)Pgs 168-176
15. Enclosed please find five sales invoices in respect of sales made by me against the purchase of M/s King Star for the year 31/03/2012 totaling to rs.6054565 (including Vat)Pgs 177-181
16. Enclosed please find ten sales invoices in respect of sales made by me against the purchase of M/s King Star for the year 31/03/2013 totaling to rs.18857213 (including Vat)Pgs 182-191
17. Enclosed please find bank statements of M/s King Star having their bank account with ING Vysya Ltd for the year ended 31/03/2012 (Five statements), wherein you will find all the payments made towards purchases are appearing in their bank statement and the same are highlighted by yellow mark.Pgs 192-195
18. Enclosed please find bank statements of M/s King Star having their bank account with ING Vysya Ltd for the year ended 31/03/2013 (Twelve statements), wherein you will find all the payments made towards purchases are appearing in their bank statement as the same are highlighted by yellow mark.Pgs 196-207
19. You will observe from the bank statements of M/s King Star that all the payments made by me towards purchases are through cross account payee cheques.
20. I enclose herewith Statement of Accounts as appearing in the books of M/s King Star for the year ended 31/03/2012 & 31/03/2013.Pgs 208-209
21. Enclosed please find copy of affidavit dated 30/10/2013 of Shri Pramod Kumar Ranka proprietor of M/s King Star, wherein he has specifically mentioned in para 5 of affidavit that the statement recorded by income tax authorities u/s 131(1A) & 132(4) at the time of search was recorded under pressure, undue influence and coercion from Income Tax Authorities and furthermore he has denied the contents of statements recorded at the time of search and he has retracted the same by the said affidavit. Under the circumstances I submit that any addition made on account of statement given under pressure, influence and coercion is bad in law and the same cannot be relied upon for the purpose of reassessment. Your attention is invited to the CBDT directive dated 18/12/2014 referred above wherein the above position has been clarified. ..Pgs. 2010-211
22. The transaction of purchases from M/s King Star and thereafter sales made by me against those purchases as referred above are genuine business transactions and during the course of business and all the payments are through cross account payee cheques only.
23. I once again reiterate that purchases made by me from M/s King Star are out of the purchases made by M/s King Star during the course of his business as referred above and he has furnished Vat number wise details of supplier in Annexure J-Section II of Form no. 704 filed with the sales tax authorities for the above two years as referred above and against those purchases he has effected the sales to me and other parties

as reported in form no. 704 of Annexure J Section I. On the basis of above I submit that the purchases made from M/s King Star and sales made against those purchases thereafter are genuine business transactions only.

24. For the year 31/03/2012 my gross profit ratio was 9.15% and for 31/03/2013 it was 13.07% which is more than the average GP in diamond trading business.

25. By virtue of powers vested in you under section 131,1 request you to kindly summon proprietor of M/s King Star so that I will cross examine him in connection with purchase transaction for the above 2 years

26. Moreover I refer to two judgements of Gujarat High Court as referred above wherein the additions made to total income was deleted since the additions was made on the basis of the statements recorded u/s 131 and which was later on retracted, since the statement was under pressure, influence, threat and coercion, in both the above high court judgments the above CBDT Directive has been referred to

27. In the said judgment of Ramanbhai Patel in para 5.2, a reference has been made to letter dated 10/03/2003 issued by the Central Board Of Director Taxes wherein it has been stated that if the confession is not based upon credible evidence and later on confession is retracted in that event the addition to total income is bad in law. Thank You.

*Yours Sincerely,
Dinesh Lalwani"*

12. None of these evidences were neither considered nor examined by the Assessing Officer. The Assessing Officer merely stated that as per the information received from Pr.DIT(Inv.), Mumbai that one Mr. Gautham Jain was providing accommodation entries and assessee is one of the beneficiaries. Ignoring all the evidences and contentions of the assessee that Gautham Jain has nothing to do with the purchases made by the assessee from M/s.Kingstar, Assessing Officer proceeded to estimate the profit element from such purchases at 12.5% merely relying on the statements of the Gautham Jain. The Assessing Officer has not even mentioned about the voluminous evidences furnished by the assessee nor made any sort of enquiries to disprove the evidences furnished by the

assessee. Since the Assessing Officer failed to rebut the evidences filed by the assessee nor he provided any details of the information which he said to have possessed from DIT(INV.), to the assessee, on this ground alone entire addition deserves to be deleted. However, accepting the alternative contention of the assessee that since the assessee has declared Gross Profit at 13.07% and 9.15% for the A.Ys. 2012-13 and 2013-14 a reasonable percentage should be adopted. Thus, taking the totality of facts and circumstances into consideration, I direct the Assessing Officer to estimate the profit element from the alleged bogus purchases at 2% as against 12.5% made while completing the assessments and recompute the income of the assessee. As I have decided the issue on merits, I am not inclined to go into the aspect of validity of reopening of assessment. All other grounds are left open.

13. In the result, appeals of the assessee are partly allowed.

Order pronounced in the open court on the 31st July, 2019

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER
Mumbai / Dated 31/07/2019
Giridhar, Sr.PS

Copy of the Order forwarded to:

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

BY ORDER

(Asstt. Registrar)
ITAT, Mum