

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR

श्री रमेश सी शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA Nos. 200 to 205/JP/2019
निर्धारण वर्ष / Assessment Years :2009-10 to 2014-15

M/s Diagold, 760, Khuteton Ka Rasta, Kishanpole Bazar, Jaipur.	बनाम Vs.	A.C.I.T., Circle-1, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAefd 1208 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Rajiv Sogani &
Ms. Shivangi Samdhani (CA)
राजस्व की ओर से / Revenue by : Shri Kailash Mangal (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 23/07/2019
उदघोषणा की तारीख / Date of Pronouncement : 08/08/2019

आदेश / ORDER

PER: BENCH

These are the appeals filed by the assessee against the separate orders of Id.CIT(A)-I, Jaipur dated 05/12/2018 for the A.Ys. 2009-10 to 2014-15 in the matter of order passed U/s 147/143(3) of the Income Tax Act, 1961 (in short, the Act).

2. Common grounds have been involved in all the years under consideration, therefore, for the sake of convenience and brevity, all the

appeals were heard together and are being decided by passing this consolidated order.

3. Rival contentions have been heard and record perused. Facts in brief are that the assessee is a firm engaged in the business of manufacturing and trading of Jewellery and Semi-Precious Stones. Original returns filed for the assessment years under consideration was processed U/s 143(1) of the Act. Thereafter, the A.O. got information from the Investigation Wing to the effect that the assessee was one of the beneficiary who have obtained accommodation entries from the concerns operated by Shri Rajendra Jain Group, Shri Sanjay Choudhary Group and Shri Dharmichand Jain Group. The A.O. found the purchases from these concerns to be bogus, accordingly, assessments were reopened by issuance of notice U/s 148 of the Act. The A.O. issues show cause notice as to why the purchases made from these concerns should not be treated as bogus in so far as the assessee had primary facts in his knowledge and onus lies on him to prove the purchases claimed by him are genuine and fully and exclusively for the business purposes. After enquiry, the A.O. observed that the assessee has only provided copy of bills. Finally, the A.O. concluded that the assessee has obtained bogus bills of purchases to decrease its gross profit, hence, books of account of

the assessee were held to be not reliable. After considering the decision of the Hon'ble Gujarat High Court in the case of Sanjay Oilcake Industries Vs CIT (2008) 10 DTR 153 (Guj) and other judicial pronouncement in the case of Rameshwal Lal mali Vs CIT 256 ITR 536 (Raj), the A.O. disallowed 25% of alleged bogus purchases.

4. By the impugned order, the Id. CIT(A) has given substantial relief in the A.Y. 2009-10 to 2013-14. However, he has upheld part of the addition in these years and major addition was upheld in the A.Y. 2014-15. Against this order of the Id. CIT(A), the assessee is in further appeals before the ITAT.

5. It was argued by the Id AR of the assessee that the information received from the Investigation Wing was made the sole basis for initiating action U/s 147 of the Act without making any independent enquiry. As per the Id AR even the reasons recorded for reopening only indicate list of beneficiaries prepared during the course of search proceedings in the case of Shri Rajendra Kumar Jain group and the said list was made available with the office of the A.O. It was vehemently argued by Shri Rajiv Sogani, Id AR of the assessee that satisfaction for reopening was of Investigation Wing and not of the A.O. Reliance was placed on the various judicial pronouncements in support of the

proposition that no reopening can be done only on the basis of information received from the Investigation Wing. The Id AR has further contended that there was no corroborative evidence with the A.O. to reopen the said case except the statement of Shri Rajendra Kumar Jain. For this purpose, reliance was placed on the decision of Coordinate Bench in the case of Nirmal Agarwal Vs ACIT in ITA No. 995 & 996/JP/2016 order dated 11/04/2018. There was non-application of mind by the A.O. in the A.Y. 2009-10 in so far as in the reasons the A.O. has stated that the assessee firm has obtained accommodation entries in the form of share capital/share application/bogus purchases. Since the assessee is a firm and at no stretch of imagination it can obtain accommodation entries in the form of share capital. This shows that the A.O. has not examined the information which was received and has not applied his mind at all to come to a conclusion that there is escapement of income.

6. It was also argued by the Id AR that there was no proper sanction for reopening. Our attention was invited to the copy of sanction obtained for reopening for the A.Y. 2010-11 and 2011-12 wherein for granting sanction only "YES" was mentioned and signature was affixed. By referring to the various judicial pronouncements, the Id AR has

vehemently argued that reopening for all the years deserves to be quashed in toto.

7. The Id AR has also argued that it is not a fit case for reopening U/s 147 but provisions of Section 153C of the Act should have been invoked.

8. So far as merit of addition is concerned, the Id. AR has argued that the A.O. has not called the books of account for verification, therefore, rejection was without verifying the books of account. As per the Id AR purchases, sales, expenses were 100% vouched. Stocks were also maintained. In view of the details filed before the Id. CIT(A) regarding name and address of the supplier with confirmation and bank account, the assessee has discharged its onus and the only evidence against the assessee was the statement of third party. The said statement was not corroborated with any evidence even the A.O. did not make any independent enquiry by issuing notice U/s 131 or 133(6) of the Act. Our attention was also invited by the Id AR to the various visits/travelling of assessee to the Bombay and Surat in support of his contention that delivery of goods was taken by the assessee himself by travelling to the place of suppliers. As per the Id AR, in view of plethora of decisions whenever books of account of assessee are rejected, the only source left is to make assessment U/s 144 of the Act for which past history of the

assessee is the best guide. Our attention was also invited to the decision of the Hon'ble Rajasthan High Court in the case of CIT Vs. Garment Crafts (2016) 68 taxmann.com 222 (Raj) wherein it was held that where the books of account are maintained in a proper manner, no addition can be made on the basis of decline in Gross Profit as there can be no hard and fast rules of increasing gross profit rate over years. The Id. AR has explained that even if there is decline in G.P. rate but that was due to the sharp increase in the turnover and change in combination of products in which assessee deals in, therefore, such decline in G.P. cannot be made the basis of addition.

9. In the last, it was argued without prejudice to the above contentions that the addition which can be made in respect of alleged bogus purchases should be to the extent of 3% to 5% only of alleged bogus purchases.

10. On the other hand, the Id DR has relied on the order of the Id. CIT(A) and contended that very reasonably the Id. CIT(A) has upheld only part of the addition by considering the G.P. shown by the assessee in earlier years and no interference in the order of the Id. CIT(A) is called for.

11. We have considered the rival contentions and carefully gone through the orders of the authorities below and found from the record that the AO on the basis of information received from Investigation Wing regarding assessee's obtaining accommodation bills of purchases etc. from the entry providers without physically taking in the possession of the goods, made inquiry and then reopened the assessment after duly recording the reasons to believe that there was escapement of income. The AO on the basis of Investigation Report made his own enquiry and found that there was sufficient reason to believe that income of the assessee has escaped assessment in so far as assessee has taken accommodation entries from the number of identities controlled and managed by Rajendra Jain Group and others, entry operators at Bombay in whose case search was conducted by the Income Tax Department wherein it was admitted by him that he was in the business of providing accommodation entries. Since the assessee was claiming purchases from the parties which were only issuing accommodation bills and were not having any stock available with them, the A.O. formed an opinion that there was escapement of income. The reopening of assessment was done by the AO after properly recording the reasons and following due procedure of law. So far as the contention of the assessee with regard to

sufficiency of reasons is concerned, it was held by the Hon'ble Supreme Court in the case of Raymond Woollen Mills Ltd. vs ITO [1999] 236 ITR 34 that there should be prima facie some material with the AO on the basis of which Department could reopen the case. The sufficiency or correctness of material is not a thing to be considered at the time of reopening the assessment. Similarly, the Hon'ble Gujarat High Court in the case of Amit Polyprints (P) Ltd. vs DCIT [2018] 94 taxmann.com 393 held that where reassessment proceedings were initiated on the basis of information received from Investigation Wing that assessee had received certain goods from shell companies working as an accommodation entry providers, the reassessment could not be held as unjustified. We found that the Id. CIT(A) has dealt with various judicial pronouncements as cited by Id.AR of the assessee and came to conclusion that there was sufficient reason to believe that there was escapement of income. We also found that proper approval was taken by the AO before reopening the assessment. Accordingly, we do not find any merit in the contention of the Id.AR that reopening was not justified. So far as the merit of the addition is concerned, we found that the assessee was unable to prove the genuineness of the purchase, accordingly, the AO added 25% of such alleged purchases in assessee's income. By the impugned order, the Id.

CIT(A) has deleted substantial addition in all the years. We found that the A.O. has not disputed sales made by the assessee and thus purchases must have been made for making the sales. Since the purchases could not be verified during the assessment proceeding, the AO came to conclusion that book results cannot be accepted. Accordingly, the AO has justifiably rejected the book results. However, the AO has not made the addition on the basis of rejection of book results, in so far as, after rejecting books of account, the proper course of action is to estimate the profit on the basis of past records of the assessee with regard to gross profit declared. From the records, we found that the trading results of the assessee from the Assessment Year 2006-07 to 2014-15 are as under: -

A.Y.	Turnover	Gross Profit	G.P. Rate
2006-07	36,63,154	7,69,262	21%
2007-08	48,11,330	9,41,913	19.58%
2008-09	65,77,368	12,97,757	19.73%
2009-10	79,00,571	16,78,222	21.24%
2010-11	1,19,38,248	22,64,607	18.97%
2011-12	2,29,65,102	39,89,184	17.37%
2012-13	3,23,62,451	50,01,469	15.45%
2013-14	5,22,06,218	68,96,986	13.21%
2014-15	8,71,75,611	96,11,098	11.02%
	22,96,00,053	3,24,50,498	14.13%

12. In the case of CIT vs Vaibhav Gems Ltd [2014] 112 DTR 84, the Hon'ble Rajasthan High Court held that past history becomes the relevant basis for determining the trading addition to be made after rejection of

the books of account. It is clear from the above chart that the average of the gross profit declared by the assessee works out at 14.13%. Thus, after rejection of books of account, the addition is to be made keeping in view gross profit rate actually declared by the assessee during the year as compared to average gross profit shown by him in earlier years. We found that in the Assessment Year 2009-10, the assessee had shown the gross profit rate of 21.24%, in Assessment Year 2010-11- gross profit rate of 18.97%, in Assessment Year 2011-12- gross profit rate of 17.37%, in Assessment Year 2012-13- gross profit rate of 15.45% which are higher than the average gross profit rate of 14.13%. Accordingly, as per our considered view, no addition in these Assessment Years is warranted. Accordingly, we delete the part addition so upheld by the Id. CIT(A) in Assessment Year 2009-10 to 2012-13. However, in Assessment Year 2013-14, the assessee had shown gross profit rate of 13.21%, in the Assessment Year 2014-15 gross profit rate 11.02% which are undoubtedly lower than the average gross profit rate of 14.13%. Accordingly, we direct the AO to compute the gross profit of 2013-14 and 2014-15 by applying gross profit rate of 14.13% to the actual sales shown by the assessee which are at Rs. 5.23 crores in A.Y. 2013-14 and Rs. 8.71 crores in A.Y. 2014-15. The shortfall so worked out by applying

the gross profit rate of 14.31% is to be upheld. As per our calculation of A.Y. 2014-15, the gross profit addition works out to be at Rs. 27,06,815/- whereas in the Assessment Year 2013-14, the gross profit additions works out to be at Rs. 4,79,752/-. We direct accordingly.

13. In the result, the appeals of the assessee for the Assessment Years 2009-10 to 2012-13 are allowed whereas the appeals for the Assessment Years 2013-14 & 2014-15 are allowed in part in terms indicated herein above.

Order pronounced in the open court on 08th August, 2019.

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

Sd/-
(रमेश सी शर्मा)
(RAMESH C SHARMA)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 08th August, 2019

*Ranjan

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

1. अपीलार्थी / The Appellant- M/s Diagold, Jaipur.
2. प्रत्यर्थी / The Respondent- The ACIT, Circle-1, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 200 to 205/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar