

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'F': NEW DELHI)
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 4387/Del/2015
(Assessment Year: 2007-08)**

DCIT, Central Circle- 25, New Delhi.	Vs.	M/s P.P. Jewellers Pvt. Ltd., H-05, P.P. Tower, Netaji Subhash Place, Pitampura, Delhi-110034
PAN No: AAACP0874G		
APPELLANT		RESPONDENT

**ITA No:- 3523/Del/2015
(Assessment Year: 2007-08)**

M/s P.P. Jewellers Pvt. Ltd., H-05, P.P. Tower, Netaji Subhash Place, Pitampura, Delhi-110034.	Vs.	DCIT, Central Circle- 25, New Delhi.
PAN No: AAACP0874G		
APPELLANT		RESPONDENT

Revenue by : Smt. Sulekha Verma, CIT(DR)
Assessee by : Shri R.R. Singla, CA

ORDER

Per Anadee Nath Misshra, AM

These cross appeals (vide ITA No. 4387/Del/2015 filed by Revenue and vide ITA No. 3523/Del/2015 filed by the Assessee) are directed against the order dated

07/04/2015 of Learned Commissioner of Income Tax (Appeals)-29, New Delhi. For the sake of convenience, these appeals are being disposed off through this consolidated order. The grounds of cross appeals are as under:

(Revenue's appeal in ITA No.- 4387/Del/2015)

- "1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,29,73,418/- out of total addition of Rs. 1,39,03,418/- made on account of bogus purchases on the basis of assumption/presumption which is not flowing from the facts of the case.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition of Rs. 1,29,73,418 especially after holding the purchase to be bogus by applying a whimsical ratio not warranted within the provisions of the Act.*
3. *On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in not appreciating the fact that ratio of bogus purchases to total purchases is 0.8%, which is very nominal and hence the same were meant for only reducing its profit to escape from taxation.*
4. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition despite holding that the actual purchases were made in cash in contravention to the provisions of section 40A(3) of the Act.*
5. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition on the basis of ingenuine stock register, which is prepared from the bogus invoices issued by non-existent parties.*
6. *The order of the CIT(A) is erroneous and is not tenable on facts and in law.*
7. *The appellant craves leave to add, alter or amend any / all of the grounds of appeal before or during the course of the hearing of the appeal."*

(Assessee's appeal in ITA No.- 3523/Del/2015)

1. *That the Ld. CIT(A) has erred in law as well as on facts of the case in deciding that the appellant company has miserably failed to file the details or evidences to show that its 4 suppliers **(from whom the appellant company purchased the goods)** were having profit earning apparatus, by filing the details of supplier entities, such as, (i) Name, PAN and address of MD / Directors of its suppliers entities, (ii) Name of the Assessing Officers with whom such supplier entities are assessed, (iii) copy of income tax returns filed by the supplier entities for their businesses and (iv) the copy of ledger account and copy of bank account of the supplier entities evidencing the recording of payment made by the appellant for purchase of goods in normal course of business.*
2. *That the Ld. CIT(A) has erred in law as well as on facts of the case in deciding*

that the appellant company has purchased the diamonds worth Rs. 1,39,03,418/- from the entities, other than the supplier entities to whom the appellant made payment qua purchase of diamonds, through banking channels.

3. *That the Ld. CIT(A) has erred in law as well as on the facts of the case in holding that the appellant company purchased the diamonds worth Rs. 1,39,03,418/- in cash outside the books of account without having any cogent or incriminating evidence on record which is found as a result of survey proceedings carried out by the department.*
4. *That the Ld. CIT(A) has erred in law as well as on the facts of the case in holding that the appellant company made purchases worth Rs. 9,30,000/- outside the books of accounts.*
5. *The appellant craves leave to add to, alter, vary modify or otherwise amend the grounds of appeal before the appeal is finally disposed of."*

(2) Original Assessment Order dated 18.06.2009 was passed U/s 143(3) of Income Tax Act, 1961("I.T. Act", for short) wherein the revised total income of Rs. 1,93,79,100/- returned by Assessee was accepted. Fresh Assessment Order dated 16/06/2014 was passed U/s 153A read with Section 153C of I.T. Act, wherein addition amounting to Rs. 1,39,03,418/- was made on account of bogus purchases, and total income was assessed at Rs. 3,32,82,518/-. Facts leading to assumption of jurisdiction U/s 153C of I.T. Act by Assessing Officer ("AO", for short) have been discussed in the first paragraph of the aforesaid Assessment Order dated 16/06/2014; the relevant portion of which is reproduced as under:

"...Shri Vidhan Jain was intercepted by the officers of AIU at IGI Airport on 02.11.2012. On interception, his statement was recorded u/s 131(1A) of the Income Tax Act, 1961 wherein he stated that he was an employee of M/s P.P. Jewellers Pvt. Ltd. and was carrying jewellery weighting 13 K.G. (Approximately) received from M/s Apply Diamonds Pvt. Ltd. 24, Mana Parmanand House, 2nd Floor, Opposite Roxy Theater, Opera House, Mumbai-4. He further stated that he carried approximately 11 kgs Gold Bar of M/s P.P. Jewellers Pvt. Ltd. issued to M/s Appy Diamonds Pvt. Ltd. on an earlier trip i.e. 22.10.2012 for making gold jewellery on job work basis. M/s Appy Diamonds Pvt. Ltd. is an associated company of M/s P.P. Jewelers Pvt. Ltd. Now after getting the job work done he was carrying the gold jewellery to be

delivered to M/s P.P. Jewellers Pvt. Ltd. at Karol Bagh, Delhi. He was also carrying labour charges issue voucher issued by M/s Appy Diamonds Pvt. Ltd. Mumbai. Therefore, the search proceedings u/s 132 of the Income Tax Act, 1961 were carried out in the case of Shri Vidhan Jain on 02.11.2012. In consequence thereof, survey u/s 133A of the Income Tax Act, 1961 was conducted in the business premises of assessee company i.e. M/s P.P. Jewellers Pvt. Ltd. 2129-30, Gurudwara Road, Karol Bagh, Delhi-110005. The case of the assessee company was already being assessed in this charge. The assessment proceedings u/s 153(C) of the Income Tax Act, 1961 have been initiated in this case after recording the satisfaction in writing. Consequently, notice u/s 153(C) of the Income Tax Act, 1961 dated 06.12.2013 was issued and served upon the assessee requiring it to file return of income within 20 days of service of the notice."

(2.1) The Assessee filed appeal before the Ld. Commissioner of Income Tax (Appeals)-29, New Delhi, wherein, inter alia, the assessee opposed the invocation of Section 153C of I.T. Act, in the first ground of appeal filed by the assessee before the Ld. CIT(A). This ground of appeal was dismissed by the Ld. CIT(A) in paragraph Nos. 4.1 and 4.2 of his impugned appellate order dated 07/04/2015; relevant portion of which is reproduced as under for the ease of reference:

"4.1 In ground no. 1 the appellant has challenged the assessment framed under section 153A on the ground that no seizure was made and no incriminating document/information was found during the course of search.

4.2 With regard to the above ground, I am of the considered view that the plain reading of the provisions of Section 153A indicates that the assessment under Section 153A is mandatory and even when no incriminating material is found in the course of search under Section 132. As per the provision of Section 153A, once the search action has been taken, the AO is bound to make assessment for 6 Assessment Years preceding the year in which the search took place. Since in the present case the search was conducted on 02.11.2012, hence the AO has rightly made the assessment under Section 153A for Assessment Year 2007-08 as it falls within a period of 6 years preceding the date of search. Hence, I hold that the AO has passed a valid assessment order."

(2.2) On merits, the Ld. CIT(A) allowed partial relief to the assessee.

(2.3) Both Revenue as well as Assessee have filed appeals in Income Tax Appellate Tribunal ("ITAT", for short) against the aforesaid impugned order dated 07/04/2015 of Ld. CIT(A). These appeals are now before us.

(3) When the appeals came up for hearing before us, learned Authorized Representative ("Ld. AR", for short) for the assessee submitted that assumption of jurisdiction u/s 153C of I.T. Act by the AO was improper, because the addition was not made on the basis of any incriminating material found in the course of search. The Ld. CIT(DR) opposed this contention of the Ld. AR. However, both sides (Revenue represented by Smt. Sulekha Verma, CIT[DR] and assessee represented by Shri R.R.Singla, (CA) agreed that the Ld. CIT(A) has not properly adjudicated on assumption of jurisdiction by the Assessing Officer U/s 153C of I.T. Act. Instead, both sides agreed, the Ld. CIT(A) has expressed his view on applicability of Section 153A of I.T. Act, instead of deciding the applicability of Section 153C of I.T. Act in the present case. In the light of this, both sides expressed the view that the disputed issues in both appeals may be restored to the file of the Ld. CIT(A) for fresh adjudication, after Ld. CIT(A) first decides validity of assumption of jurisdiction by the Assessing Officer U/s 153C of I.T. Act.

(3.1) We have heard both sides. We have carefully perused the materials available on record. We agree with the view expressed by both sides, that the Ld. CIT(A) has not properly adjudicated on the applicability on section 153C of I.T. Act, although, this was raised by the assessee in the first ground of appeal, in the appeal filed before the Ld. CIT(A). This is very obvious from the perusal of the relevant part of the impugned

order dated 07/04/2015 of Ld. CIT(A) which has already been reproduced in the foregoing paragraph No.(2.1). Therefore, in the fitness of things, and as both sides agree to this, we restore disputed issues in both the appeals to the file of the Ld. CIT(A) for fresh order with the direction to first decide on validity of assumption of jurisdiction U/s 153C of I.T. Act by the AO, and to pass fresh order on the merits of the additions in the light of his decision on validity of assumption of jurisdiction by the Assessing Officer U/s 153C of I.T. Act. These appeals are disposed off with the aforesaid directions. In the result, both appeals are partly allowed for statistical purposes.

Order pronounced in the open court on 14th day of August, 2019.

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 14.08.2019
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	13/08/19
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	