

IN THE INCOME-TAX APPELLATE TRIBUNAL “SMC” BENCH MUMBAI  
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND SHRI PAWAN SINGH JUDICIAL MEMBER  
ITA No. 3621/Mum/2018 (Assessment Year 2007-08)

Smaru Gems FW 6070, Bharat Diamond Bourse, Bandra Kurla Complex, Bandra East, Mumbai-400004. <b>PAN: ABGFS6292P</b>	Vs.	ITO - 19(3)(3) 219, Matru Mandir, Tardeo, Mumbai-400007.
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Appellant

Respondent

Appellant by : Shri Rajendra B. Shah with  
Ms. Drashti Shah (AR)  
Respondent by : Shri Chaitnya Anjaria (DR)  
Date of Hearing : 01.08.2019  
Date of Pronouncement : 07.08.2019

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT**

**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. This appeal by assessee is directed against the separate orders of Id. CIT(A)-52, Mumbai dated 27.04.2018, which in turn arises from the assessment order dated 25.03.2015 passed under section 143(3) r.w.s 147 of the Act for Assessment Year 2007-08. The assessee has raised the following grounds of appeal:

1. (i) The Id. Comm. Of Income Tax (Appeals) has erred in confirming the addition of Rs. 1,05,257/- to the extent of 5.02% (8%-2.98% being profit margin from alleged hawala purchases) of Rs. 20,96,760/- purchase made from M/s. Vitrag even though no purchases have been made by the appellant from the said party during the previous year relevant to the assessment year 2007-08.

(ii) Your appellant prays that the said confirmed by the Ld. CIT(A) may be deleted.

2. Brief facts of the case are that the assessee is a registered partnership-firm engaged in the business of trading in Diamonds, filed its return of income for Assessment Year 2007-08 on 12.10.2007 declaring total income of Rs. 82,389/-. The return of income was processed accepting the return income. Subsequently, the assessment was re-opened on the basis of search and seizure action was conducted on Rajendra Jain Group on 03.10.2013. During the course of search proceeding, it was established that Rajendra Jain Group were running a paper companies/ partnership firm without doing any real business activities, operating solely with the purpose of facilitating fraudulent financial transaction providing accommodation entries of unsecured loan, bogus bills etc. The DGIT(Inv.) informed the Assessing Officer that the assessee has allegedly availed purchases of Rs. 20,96,760/- during the Financial Year 2006-07. On the basis of said information, the Assessing Officer form an opinion that income of the assessee has escaped assessment. The Assessing Officer reopened the assessment under section 147 and issued notice under section 148. In response to the notice under section 148, the assessee appeared and contested the re-assessment proceeding. The assessee filed its reply and stated that they have not made any purchase or sale transaction with the alleged hawala parties during the Financial

Year. The Assessing Officer in the assessment recorded that he has issued notice under section 133(6) to M/s Vitrag. In response to the notice of Assessing Officer M/s Vitrag gave confirmation of sale to the assessee of Rs. 20,96,760/-. The Assessing Officer also recorded that the assessee was confronted with the confirmation. The Assessing Officer on the basis of statement made by Rajendra Jain recorded under section 132 concluded that that assessee must have earned profit by purchasing the Diamond from the grey market. The Assessing Officer on his observation that the margin in such transaction are 8% and accordingly the Assessing Officer disallowed 8% of alleged non-genuine purchases of Rs. 20,96,760/-.

3. On appeal before the Id. CIT(A), the assessee specifically contended that the assessee/partnership firm was created only on 12.10.2006 vide partnership deed dated 12.10.2006, partnership firm/assessee was allotted PAN only after 12.10.2016. The assessee-firm was allotted PAN No. ABGSF6292P. The assessee further contended that they have not made purchases any material from the said hawala dealer namely M/s Vitrag. The Id. CIT(A) after considering the submission of assessee concluded that Assessing Officer not doubted whether the purchases made from the said party as claimed by assessee. However, the Id. CIT(A) was of the view that the tax can be levied only on the real income. It is further concluded that profit from the business cannot be

ascertained without deducting cost of purchases from sale otherwise it would amount to levy of income and gross receipt or sales which is not permissible unless it is specifically authorise to do so in the particular provision contained in the Act. The Id. CIT(A) by following the decision of Hon'ble Gujarat High Court in Hariram Bhambhani (ITA No. 313 of 2013) and Simit P. Sheth (38 Taxmann.com 385) held that not the entire purchase price but only the profit element embedded in such purchases can be added to the income of the assessee. The department has considered 6% of profit margin in case of Gems & Jewellery is reasonable for an assessee which is not invalid in hawala purchases. The Id. CIT(A) concluded that it would be appropriate after reasonable margin arising to the assessee on account of alleged hawala purchases is adopted of 8%, however, the Assessing Officer made addition on account of additional profit margin arising of hawala purchase, we should reduce the profit margin already shown by assessee in its books from the said profit margin adopted at 8% of alleged hawala purchase and granted partial relief to the assessee. Before us, the Id. AR of the assessee vehemently submitted that the assessee came into existence only on 12.10.2006 and the assessee has no occasion to make purchases on 01.04.2006 and on 30.06.2006.

4. We have noted that the assessee has placed on record copy of partnership-deed dated 12.10.2006 page no. 1 to 13, copy of PAN Card

issued to the assessee allotting PAN No. ABGFS6292P bearing dated 12.10.2006 (date of incorporation). The assessee in reply to the show-cause notice before the Assessing Officer has specifically stated that the assessee has not made any purchase or sale transaction with M/s Vitrag during the Financial Year 2006-07. We have noted that despite the specific contention of the assessee that they have not made any purchases from M/s Vitrag. The Assessing Officer concluded that the assessee must have purchased the Diamond in the grey market from the regular dealer. The Id. CIT(A) also confirmed the action of Assessing Officer without appreciating the documentary evidences furnished by assessee with regard to date of incorporation/creation of tenancy, PAN Card and registration under Maharashtra Value Added Tax. Therefore, we found force in the contention of Id. AR of the assessee that during the relevant period in which the alleged hawala trader i.e. M/s Vitrag has shown the transaction, the assessee was not in existence. Therefore, the grounds of appeal raised by assessee are allowed and the Assessing Officer is directed to delete the addition.

5. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 07/08/2019.

**Sd/-**  
**SHAMIM YAHYA**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**PAWAN SINGH**  
**JUDICIAL MEMBER**

Mumbai, Date: 07.08.2019  
SK

**Copy of the Order forwarded to :**

1. Assessee
3. The concerned CIT(A)
5. DR "SMC" Bench, ITAT, Mumbai
6. Guard File

2. Respondent
4. The concerned CIT

**BY ORDER,**

**Dy./Asst. Registrar  
ITAT, Mumbai**