

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC' NEW DELHI**

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

**ITA No. 1236/Del/2018
Assessment Year: 2009-10**

Deepak Kumar Gupta & Sons (HUF) C/o Wahi & C.LLP, CAs, K-1, Kailash Colony, New Delhi. PAN No. AADHD7715G	vs	ITO Ward 63(2) New Delhi.
APPELLANT		RESPONDENT

Assessee by	Shri Anil Kumar Malhotra, CA
Revenue by	Ms. Ekta Vishnoi, Sr. DR

ORDER

This appeal filed by the assessee against the impugned order dated 19.01.2018 passed by the Ld. CIT(Appeals)-20, New Delhi in relation to assessment year 2009-10 on the following grounds:

1. **"Addition of Rs. 17,63,065/- on account of bogus purchases:**

The Hon'ble CIT(A) has simply ratified the decision of the Ld. ITO without analyzing the genuine supporting evidence produced by the assessee. The order passed by the Hon'ble CIT(A) is without analysis and is against the complete facts.

Therefore, the addition on account of bogus purchases is prayed to be deleted.

2. The assessee company craves mercy to add/amend any grounds of appeal at the time of hearing.”

2. I have heard the both parties and have perused the orders passed by the Revenue Authorities along with the Paper Book filed by the Ld. Counsel for the assessee in which the assessee has attached various documentary evidences for substantiating the claim of assessee. I have also perused the case law summary filed by the Ld. Counsel for the assessee to support the claim of assessee.

3. Ld. DR also filed written submission. I have also gone through the same.

4. I find that assessee filed its return of income declaring income of Rs. 4,16,170/- on 25.09.2009 which was processed by the Assessing Officer u/s 143(1) of the Income Tax Act, 1961 (hereinafter called the 'Act'). On 16.07.2010 the case of the assessee was selected for scrutiny u/s 148/147 of the Act after recording the reasons and issuance of notice u/s 148, dated 31.03.2016. Subsequently, notice u/s 142(1) along with detailed questionnaire dated 01.06.2016 was also issued to the assessee in compliance of the same, Authorized Representative of the assessee appeared and filed books of accounts and other necessary evidence before the Assessing Officer which was discussed by the AO and test checked on random basis.

5. The assessee is engaged in manufacturing and trading of gold and silver ornaments, etc. in the name and style of M/s Deepak Kumar Gupta & Sons (HUF). In this case, a report against TEP received in the office of Assessing Officer on 29.03.2016 with some allegations, which the AO has reproduced at page no. 2 of the assessment order and after taking the necessary approval, summons were issued and served upon Shri Deepak Kumar Gupta Prop. of M/s Deepak Kumar Gupta & Sons and Shri Pooran Chand Prop. of M/s Hariram Pooran Chand. In response to the same, AR of the assessee appeared from time to time and filed requisite details along with documentary evidence.

6. The Assessing Officer narrated the facts for taking the action in the case of assessee at page no. 3 as under:

1. *“The issue of the instant assessee has emanated as an outcome of the search conducted by the DRI at the premises of M/s Kamud Drugs Pvt. Ltd. at Kolhapur, Mumbai, Ahmadabad, Kupwar & Sangli etc. which is found to be involved in the International Drug trafficking. Sh. Abhijeet Konduskar is the CMD of the M/s Kamud Drugs Pvt. Ltd.*
2. *The transactions of Mr. Abhijeet Konduskar, regarding the sale of old gold ornaments to Delhi based jewelers viz. M/s hariram Pooran Chand Jewellers & M/s Deepak Kumr Gupta & Sons during the FY 2008-09 relevant to the AY 2009-10 appears to be unrealistic on the ground that Mr. Abhijeet Konduskar could have sold his old gold ornaments to the nearby places like Pune, Mumbai etc. but instead he had travelled all the way to Delhi on 14 different occasions to sell his old gold ornaments which creates suspicion & doubt regarding the authenticity of the sale purchase of the gold ornaments as discussed. This suspicion gets further*

strength from the fact that the purchaser jewelers in Delhi have declared very negligible net profit against the huge turnover running into hundreds of crores, which is strong indicator of accommodating the entries of the sale purchase to the requisite parties without actually entering into the process of sale purchase of old gold ornaments. The relevant statistic with reference to the turnover and the net profit of both the Delhi based jewelers M/s Deepak Kumar Gupta & Sons is tabulated as under:

M/s Deepak Kumar Gupta & Sons

<i>S.No.</i>	<i>Particulars</i>	<i>AY 2009-10</i>
<i>1.</i>	<i>Total turnover</i>	<i>Rs. 4.26 Cr.</i>
<i>2.</i>	<i>Net Profit</i>	<i>Rs. 0.05 Cr.</i>

- 3. Further, all the sale proceeds of Rs. 35,18,260/- & Rs. 17,62,765/- are found to be transferred from the accounts of M/s Hariram Pooran Chand Jewellers & M/s Deepak Kumar Gupta & Sons, respectively to the accounts of Sh. Abhijeet Konduskar, HUF during the FY 2008-09 relevant to the AY 2009-10. And surprisingly Sh. Abhijeet Konduskar, HUF is found to be non existing on the query run on ITD. This fact also makes the transaction of sale purchase of old gold jewellery under consideration incomplete as the same are not truly reflected before the Income Tax Department for the purpose of taxation.*
- 4. Finally, the assessee was given an opportunity to file the details of old gold jewellery purchased from Sh. Abhijeet Konduskar, HUF during the FY 2008-09 but in response nobody appeared of the assessee nor any reply is filed in this office till date. This non compliance on part of the assessee makes it clear that the assessee does not have anything to say or to offer any explanation in this regard.”*

7. After going through the aforesaid facts and circumstances the AO forwarded to the concerned jurisdictional AOs for taking

remedial action u/s 147 of the Act for deep investigation and to bring the amount of Rs. 17,62,765/- to tax for AY 2009-10 in the case of assessee.

8. After receiving the aforesaid information, the AO of the assessee made a deep enquiry and initiated the proceedings u/s 147/148 after recording the reason and completing the necessary formalities. A notice u/s 148 dated 31.03.2016 was issued to the assessee. Assessee filed objection dated 27.04.2016 for dropping the proceedings. The AO disposed of objection of the assessee. Assessee filed a letter in response to notice u/s 148 stating that his original return filed on 25.09.2009 should be treated in response of notice u/s 148 of the Act. Assessing Officer issued notice u/s 143(2) dated 31.03.2016 to the assessee along with notice u/s 142(1) to submit financials for AY 2008-09 and 2009-10. In response to the same, the assessee filed necessary documentary evidence. After considering the reply and documentary evidence filed by the assessee, the AO is of the view that it is highly improbable that a person in Kolhapur to sale old gold ornaments to a person in Delhi. Similar issues of laundering unaccounted money through sale of non-existent gold jewellery has been unearthed during post search investigations in other cases. In the instant case also the modus operandi appears to be the same. In view of buttressed by the fact that Hariram Pooran Chand has disclosed a turnover of Rs. 4.26 crores for AY 2009-10 and net profit of Rs. 0.05 crores. Similar is the net profit percentage disclosed in the return of income by the assessee i.e. M/s Deepak

Kumar Gupta & Sons. The disclosure of miniscule net profit against a huge turnover is a strong indicator of accommodation entry provider. The Investigation wing has given an opportunity to file the detail of old ornaments from Abhijeet Kunduskar, but nobody appeared. Assessing Officer also given a similar opportunity to the assessee also while issue a show cause notice requesting the assessee as to why the purchase of Rs. 17,62,765/- made by the assessee from the above mentioned firms/concerns managed and controlled by Shri Abhijeet Konduskar, HUF, details of which has already been provided to the assessee in the reasons recorded by reopening of the case, be not treated as bogus purchase/accommodation entry and consequently, be not treated as the assessee income from undisclosed sources and added back to the total income declared by the assessee for the year under consideration i.e. AY 2009-10. In response to the same, Authorized Representative of the assessee appeared and filed reply which the Assessing Officer has reproduced in the assessment order at pages 7 to 10.

9. After perusing the reply of the assessee, the AO has made the addition in dispute by mentioning the various reasons which the AO has mentioned at page 10 & 11 of the assessment order i.e. reproduced as under:

“On perusal of the reply of the assessee, it is found that there is no merit in submission of the assessee due to following reasons and allegation which leads to prove the bogus purchase made by the assessee during the year.

1. *The assessee has not aware about the Business activity of the persons from whom old jewellery of huge amount purchased time to time.*
2. *After receiving payments from the aforesaid assessee by Sh. Abhijeet Kunduskar, HUF the amount have been immediately transferred to M/s Kumud Drugs Pvt. Ltd. or Kunduskar Laboratins Pvt. Ltd. as seen from the bank statement of M/s Abhijeet Kunduskar, HUF having with ICICI Bank account no. 087301000310, Branch CBD, Belapur, Navi Mumbai.*
3. *During the year assessee shown Net Profit of Rs. 5,16,170/- against Gross Turnover of Rs. 4,26,61,223/- which overly 1.20% which reflects unrealistic in the business of trading of jewellery and indicates clear cut that there is a matter of Accommodation entry and bogus purchase.*
4. *Assessee stated that he complied the notice of Investigation wing but no evidence submitted in this regard. Therefore, at this point, Investigatin wing is right that no compliance made by the assessee against letters/notices issued by the Investigation wing and contentions of the assessee is not genuine.*
5. *The assessee has not quote any reason that why a person from Sholapur, Maharashtra from far distant place from Delhi used to come to sold his jewellery to Sadar Bazar, Delhi.*
6. *The assessee's Audit report in forms 3CB reflects at 8(a) that assessee is engaged in trading and manufacturing of gold & silver ornaments. There is no specification of old jewellery trading.*
7. *It is impractical that a person who is not engaged in the business of jewellery and yet used to sold old jewellery valued more than 50 lacs this year to the aforesaid assessee Sh. Pooran Chand Gupta & Deepak Gupta HUF whose karta is Sh. Deepak Gupta, sons of Sh. Pooran Chand Gupta.*
8. *Abhijeet Kunduskar is CMD of M/s Kumud Drugs Pvt. Ltd. and during the search & seizure, it has been established that the company is illegally*

manufactured ketanine value over 100 crores in international market. During the search, Rs. 1 crore cash was also found at the premises of M/s Kumud Drugs Pvt. Ltd. Sh. Abhijeet Kunduskar routed the generated cash through cheques from such parties including Sh. Pooran Chand Gupta & Sh. Deepak Gupta, HUF.

In view of the above, it is clear that the assessee is engaged in the activity of Bogus entry provider and shown bogus purchases from Abhijeet Kunduskar, HUF during the year. The amount of transaction with M/s Abhijeet Konduskar, HUF was reported by Investigation Wing of Rs. 17,62,765/-, however, on perusal of ledger of party given by the assessee vide letter dated 27.07.2016 as Annexure-10, it is established that the amount of transaction with M/s Abhijeet Konduskar, HUF was Rs. 17,63,065/- instead of Rs. 17,62,765/-. Therefore, amount of Rs. 17,63,065/- is added back to the total income of the assessee treating the amount of expenses on account of bogus purchases as per the above discussions.

(Addition of Rs. 17,63,065/-)”

10. The AO made the addition of Rs. 17,63,065/- and added to the total income of the assessee treating the amount of expenses on account of bogus purchases and completed the assessment u/s 143(3)/147 of the I.T. Act, 1961 dated 30.11.2016.

11. The Ld. First Appellate Authority has also upheld the addition in dispute after considering the documentary evidence and written submission filed by the assessee. Ld. First Appellate Authority has given its finding at page nos. 14 to 16 of para nos. 4.4.2 & 4.4.4 and held that the AO has discussed in detail how it is not possible for a person from Kolhapur to sale old gold jewellery to a person in

Delhi. Further, the huge turnover of Rs. 4.26 crores was shown by the appellant by declaring only net profit of Rs. 0.05 crores which was very low in this line of business. The Revenue Authority is also of the view that assessee could not give any plausible explanation with the support of evidences for this transaction. Assessee has not discharged the onus which was casted upon him by making a necessary investigation in the case Kamud Drugs Pvt. Ltd. by the Investigation Wing, Pune. After discussing the evidence, collected by the Investigation wing and the finding of the Ld. AO the Ld. First Appellate Authority has uphold the addition of Rs. 17,63,065/- by holding that it is a bogus purchase claim to have been made from Shri Abhijeet Kunduskar (HUF). Ld. First Appellate Authority has also applied the ratio of the case Durga Prasad 82 ITR 540 in which the Hon'ble Supreme Court has held that surrounding circumstances and human probabilities should not be ignored by the Taxing Authorities. The Ld. First Appellate Authority has also applied the ratio of decision of Sumati Dayal 214 ITR 801 (Hon'ble Supreme Court) has again given the importance of human probability and considering the surrounding circumstances.

12. Keeping in view of the facts and circumstances explained above and the order passed by the Revenue Authority along with the documentary evidence filed by the assessee in the shape of Paper Book and the case law. These are not applicable in the facts and circumstances of the present case. I am of the considered view that Ld. First Appellate Authority has passed a well reasoned order

which needs no interference. Therefore, the present appeal filed by the assessee is dismissed.

Order pronounced in the open Court.

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

Dated: 31/10/2019

*Kavita Arora

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI

