



ITA No.6041/Mum/2016  
M/s. A.S. Bro's  
Assessment Year-2007-08

**आयकर अपीलीय अधिकरण "ए" न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"A" BENCH, MUMBAI**

श्री शक्तिजीत दे, न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।  
**BEFORE SHRI SAKTIJIT DEY, JM AND**  
**SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No.6041/Mum/2016  
(निर्धारण वर्ष / Assessment Year:2007-08)

<b>M/s. A.S. Bro's</b> B-1, Gautam Nagar, Datta Mandir Road Malad (E), Mumbai-400 097.	<b>बनाम/</b> Vs.	<b>ITO -30(1)(1)</b> Pratyakshkar Bhawan Bandra Kurla Complex Bandra (East), Mumbai-400 051.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. <b>AAGFA-5134-P</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

पीलार्थी की ओर से/ <b>Appellant by</b>	:	Shri Ravindra Poojary-Ld.AR
प्रत्यर्थी की ओर से/ <b>Respondent by</b>	:	Shri S. Michael Jerald-Ld.DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	16/10/2019
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	13/11/2019

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member): -**

1. Aforesaid appeal by assessee for Assessment Year 2007-08 contest the order of Ld. Commissioner of Income-Tax (Appeals)-41, Mumbai, [in short referred to as 'CIT(A)'], *Appeal No. CIT(A)-41/IT-280/15-16* dated



05/07/2016. The appeal was earlier disposed-off vide order dated 24/05/2018, however, the order was recalled vide MA No.589/Mum/2018 and accordingly, the appeal has come up for fresh hearing before this bench. The only ground urged by Ld. Authorized Representative for assessee is quantum of estimation on account of alleged bogus purchases.

2. We have heard rival submissions, perused relevant material on record and applied our mind to judicial decisions cited before us.

3.1 The assessee, being resident firm, stated to be engaged in trading of diamonds was assessed for year under consideration u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 on 31/03/2015 wherein the income was determined at Rs.105.11 Lacs after sole addition of alleged bogus purchases for Rs.98.29 Lacs as against returned income of Rs.6.82 Lacs filed by the assessee on 02/10/2007. The original return of income was processed u/s 143(1).

3.2 Pursuant to receipt of certain information from investigation arm of the department, it transpired that the assessee made aggregate purchases of Rs.98.29 Lacs from 4 suspicious entities viz. Rutuja Gems, Hiren Gems, Neelam Gems and Gaurang Enterprises. Accordingly, the case was reopened as per due process of law vide issuance of notice u/s 148 on 31/03/2014 followed by statutory notices u/s 143(2) & 142(1) wherein the assessee was directed to substantiate the purchase transactions.

3.2 The investigation carried out by the investigation wing brought to light 19 Bank accounts which were reported as suspicious. The amounts were transferred from 6 (level-1) accounts to remaining 9 (level-2) accounts and



cash was immediately withdrawn from level-2 accounts. Accordingly, summons was issued to various persons holding these accounts to make further inquiries. Although these persons asserted that they were carrying out trading of diamonds, but failed to fully substantiate the same.

3.3 In the above background, Ld. AO formed an opinion that these persons could not produce any verifiable evidence to prove that they have actually conducted any business. The suppliers from the whom the purchases were shown to have been made by the assessee could not identify the brokers through which the trades were carried out and also could not produce evidence for transfer of diamonds to the assessee. Therefore, it was concluded that the purchase of Rs.98.29 Lacs made by the assessee were bogus bills entries in the nature of accommodation entries. No actual business was carried out by the assessee and therefore, the purchases were disallowed and added to the income of the assessee.

4. The Learned first appellate authority, *inter-alia*, relying upon the decisions of Hon'ble Gujarat High Court in **Vijay Proteins Ltd. V/s CIT (58 Taxmann.com 44)** and **CIT V/s Simit P.Sheth (356 ITR 451)** opined that profit embedded in such transactions was to be brought to tax. The estimation was done @30% and the balance additions were deleted. Aggrieved, the assessee is under appeal before us.

5. Upon careful consideration, we are of the considered opinion that there could be no sale without actual purchase of material keeping in view the assessee's nature of business i.e. trading. The assessee was in possession of primary purchase documents and the payments to the



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suppliers was through banking channels. The ledger confirmation from the stated suppliers have been placed on record by the assessee. The quantitative details of trading items were also produced which is supported by information given in Tax Audit Report.

6. Proceeding further, we find that the assessee has made total purchases of Rs.144.05 Lacs during the year under consideration out of which purchases of Rs.98.29 Lacs has been disallowed by learned AO which result into disallowance of more than 68% of total purchases. As against this, the assessee has reflected sale of Rs.157.09 Lacs which has been accepted by VAT authorities and the said sale could not have been possible without actual purchase of material. If the purchases were held to be bogus then the corresponding sale must also have been treated as bogus and excluded from the financial results, which has not been done. The assessee reflected Gross profit Rate of 9.54% during year under consideration which was well in line with the GP rate reflected in previous as well as in subsequent years. The additions of 30% as sustained by learned first appellate authority would yield Gross Profit Rate of more than 28% which is highly probable in trading business keeping in view the fact that Gross Profit rate reflected in other years is well below 10%.

7. Therefore, on the stated facts and circumstances, in our opinion, the additions which could be sustained, would be to account for profit element embedded in these purchase transactions to factorize for profit earned by assessee against possible purchase of material in the grey market and undue benefit of VAT against such bogus purchases, which learned first



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appellate authority has rightly done. However, we find the estimation of 30% to be on very higher side. Keeping in view the Gross Profit Rate of 9.54% already reflected by the assessee, we estimate the impugned additions @3% of alleged bogus purchases of Rs.98,29,910/- which comes to Rs.2,94,897/-. The balance addition stands deleted. The impugned order stand modified to that extent. The said estimation is in line with estimation approved by coordinate bench of this Tribunal in **ITO V/s Dhaval Exim Pvt. Ltd. (ITA No. 6711/Mum/2016 dated 30/11/2018)** which has been co-authored by one of us.

The other grounds raised in the appeal has not been urged during the hearing of the appeal.

8. Resultantly, the appeal stands partly allowed in terms of our above order.

*Order pronounced in the open court on 13th November, 2019.*

**Sd/-  
(Saktijit Dey)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-  
(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 13/11/2019

Sr.PS:-Jaisy Varghese

**आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant



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2. प्रत्यर्धी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.