

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"D" Bench, Mumbai**

**Before Shri Rajesh Kumar, Accountant Member  
and Shri Amarjit Singh, Judicial Member**

**ITA Nos. 2678 to 2680/Mum/2018**

(Assessment Years: 2008-09, 2012-13 & 2013-14)

M/s. Mini Diamonds (India) Ltd.  
7/A, Nusser House  
Opp. Panchratna Building  
Opera House, Mumbai 400004

Income Tax Officer-5(2)(3)  
Aayakar Bhavan, M.K. Road  
Vs. Mumbai 400020

PAN – AAACM5082D

**Appellant**

**Respondent**

Appellant by: Ms. Heena Gandhi  
Respondent by: Shri Drop Singh Meena

Date of Hearing: 11.10.2019  
Date of Pronouncement: 19.11.2019

**ORDER**

**Per Rajesh Kumar, AM**

This appeals filed by the assessee are directed against the orders of the CIT(A)-10, Mumbai dated 27.03.2018 and it relates to assessment years 2008-09, 2012-13 and 2013-14.

2. The common issue raised by the assessee in all these appeals is against the confirmation of addition to the tune of 8% of the alleged bogus purchases by the learned CIT(A) as against the addition made by the AO @12.5% of the bogus purchases.

3. Brief facts of the case are that the assessee is engaged in the business of manufacturing and export of cut and polished diamonds. The assessee filed returns of income which were processed under Section 143(1) of the Income Tax Act, 1961 (hereinafter "the Act") for all these years. Subsequently the assessments were reopened under Section 147 of the Act by issuing notices under Section 148 of the Act after receiving information from the DGIT (Inv) that the assessee is beneficiary of hawala

purchases from the concerns controlled by Shri Bhanwarlal Jain Group on whom the Investigation Wing has conducted a search on 03.10.2013. Accordingly the AO called upon the assessee to explain the purchases from the concerns relating to Bhanwarlal Jain Group and prove the genuineness there of. The assessee, during the course assessment proceedings filed various details such as copy of payment details, quantity of diamonds, rate of carat, valuation reports with evidences of delivery notes of goods, original bills raised by the parties, quantitative tally of purchases and sales and details of persons with whom transactions were entered into. However, the AO brushing aside the contentions of the assessee concluded that all these purchases from these parties were bogus and applied a rate of 12.5% to bring the profit element on the said bogus purchases to tax resulting into addition of ₹58,20,839/- in A.Y. 2008-09, ₹97,18,979/- in A.Y. 2012-13 and ₹59,53,464/- in A.Y. 2013-14 in the assessment framed under Section 143(3) r.w.s. 147 of the Act.

4. In the appellate proceedings the learned CIT(A) restricted the addition at 8% of the bogus purchase after taking into consideration the submissions of the assessee. The learned CIT(A), while passing the order, followed the decision of the Mumbai Benches in the case of *M/s. Dhaddha Gems Ltd. Vs. ITO* in ITA No. 7310 to 7314/Mum/2016.

5. The learned A.R. submitted before the Bench that since the assessee is in the trade of manufacturing and dealing in cut and polished diamonds the margin of profit in assessee's trade is very meagre and even the Government of India has recognised the fact by bringing out circular to this effect that the profits range between 2 to 6 percent. The learned A.R. submitted that the addition as made by the AO and confirmed by the learned CIT(A) is bad in law and against the facts on record. The learned A.R. submitted that the assessee has filed all necessary evidences, namely stock tally, inward purchases and outward sales, evidence of payments through banking channels, confirmation from parties, bills and invoices, etc. along with delivery challans. Under these circumstances such a huge addition as confirmed by the CIT(A), would lead to unrealistic and

hypothetical G.P. in the case of diamond trade. The learned A.R. relied upon the following decisions in defence of his arguments: -

- i. Tejua Rohitkumar Kapadia, Tax Appeal No. 691 of 2017 (SC)
- ii. Jitendra M Kitavat HUF vs. ITO, ITA No. 3305/Mum/206 (Mum)
- iii. Sanghavi Exports, ITA No. 3305/Mum/2017 (Mum)
- iv. Shantivijay Jewels Ltd. vs. DCIT, ITA No. 1045/Mum/2016 (Mum)
- v. DCIT vs. Ronak Gems Pvt. Ltd., ITA No. 3118/Mum/2017 (Mum)
- vi. Indo Unique Trading Pvt. Ltd. vs. DCIT, ITA No. 6341/Mum/2016 (Mum)
- vii. Maruti Impex vs. JCIT, ITA No. 3823/Mum/2014 (Mum)
- viii. ACIT vs. Tristar Jewellery, ITA No. 7593/Mum/2011 (Mum)

6. The learned D.R., on the other hand, heavily relied on the order of the CIT(A) by submitting that very reasonable addition has been made to tax profit on the bogus purchases and therefore the order of the CIT(A) be confirmed.

7. After hearing the rival contentions and perusing the record we observe that the assessee is engaged in the business of manufacturing and export of cut and polished diamonds. The assessee is undoubtedly beneficiary of hawala purchases from the group related to Bhanwarlal Jain on whom search was conducted and it was candidly accepted during the search that the whole group is engaged in providing bogus billings. Under these circumstances we partly agree with the view taken by the authorities below that only a rate can be applied to bring the profit element in the bogus purchases to tax. Pertinent to mention that the assessee has filed evidences to prove that the purchases were made and consequent to this the AO has rightly applied the rate on bogus purchases. However, the quantum of rate applied is excessive and unreasonable in view of the trade of the assessee. Under the present facts and circumstances and considering the rate of profit prevalent in assessee's trade we are of the view that it would be reasonable if a rate of 3% is applied to the alleged

bogus purchases. Accordingly we set aside the order of the CIT(A) and direct the AO to apply a rate of 3% on bogus purchases.

8. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 19<sup>th</sup> November, 2019.

Sd/-  
**(Amarjit Singh)**  
**Judicial Member**

Sd/-  
**(Rajesh Kumar)**  
**Accountant Member**

Mumbai, Dated: 19<sup>th</sup> November, 2019

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -10, Mumbai*
4. *The Pr.CIT - 5, Mumbai*
5. *The DR, "D" Bench, ITAT, Mumbai*

*By Order*

//True Copy//

*Assistant Registrar*  
*ITAT, Mumbai Benches, Mumbai*

n.p.