

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, HON'BLE ACCOUNTANT MEMBER**

ITA.NO. 2636/MUM/2018 (A.Y:2009-10)

| | | |
|---|----|---|
| M/s Dia Diamond Link Pvt. Ltd., 10, Uma Smruti Building Carter Road No. 7 Borivali (E), Mumbai - 400 066 PAN: AACCD6723E | v. | DCIT – 12(2)(1) Aayakar Bhavan Mumbai |
| (Appellant) | | (Respondent) |

| | | |
|------------------------------|---|----------------------------|
| Assessee by | : | None |
| Department by | : | Jyothilakshmi Nayak |
| | | |
| Date of Hearing | : | 25.09.2019 |
| Date of Pronouncement | : | 28.11.2019 |

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals) – 20, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 10.11.2017 for the A.Y. 2009-10 in sustaining the addition made towards bogus purchases.

2. Briefly stated the facts are that, the assessee is an individual and engaged in the business of Manufacturing, Trading & Export of cut and polish diamonds filed return of income on 20.09.2008 for the A.Y.2009-10

declaring income of ₹.5,78,23,972/- and the return was processed u/s. 143(1) of the Act. The Assessing Officer received information from the DGIT(Inv.), Mumbai about the accommodation entries provided by Kriya Impex which concern is relating to Rajendra Jain Group and assessee was also one of the beneficiary from such dealer. The assessee was required to prove the genuineness of the purchases made from Kriya Impex which was referred to in the Assessment Order. The assessee produced copies of bills, bank statements, ledger copies and submitted that the purchases made are genuine. Not convinced with the submissions of the assessee the Assessing Officer treated the purchases as non-genuine and he was of the opinion that assessee had obtained only accommodation entries without there being any transportation of materials. It is the finding of the Assessing Officer since the purchases made by the assessee and claimed as expenses in his Profit and Loss Account are not genuine, the purchases to that extent remained unverifiable. He also observed that the dealer from whom the assessee made purchases stated that they have issued only accommodation bills. Therefore, he treated purchases of ₹.2,49,21,478/- as non-genuine and added to the income of the assessee. On appeal the Ld.CIT(A) sustained the addition made by the Assessing Officer.

3. In spite of issue of notice none appeared on behalf of the assessee nor any adjournment was sought by the assessee. Therefore, we proceed to dispose off these appeals on hearing the Ld. DR on merits.

4. Ld. DR vehemently supported the orders of the authorities below.

5. Heard Ld. DR and perused the orders of the authorities below. On a perusal of the Assessment Order, we find that the Assessing Officer treated the purchases made by the assessee from Kriya Impex solely based on the statement said to have been recorded from one of the Directors of the dealers. No independent enquiries have been conducted by the Assessing Officer before treating such purchases as bogus. The Assessing Officer has neither issued notice u/s. 133(6) of the Act to the dealers nor provided any statements to the assessee before relying on them to treat the purchases as bogus.

6. We find that more or less on identical issue has been decided by this Coordinate Bench in the case of M/s. Amy Diam Vega Jewellery Pvt. Ltd. v. DCIT in ITA.No. 5799 to 5801/Mum/2016 dated 28.09.2017 wherein the Coordinate Bench taking note of report of the task group submitted to Department of Commerce etc., held as under: -

“9. We have heard the rival submissions, perused the orders of the authorities below. In this case the assessments were reopened based on the information from the DGIT(Investigations), Mumbai that assessee is a beneficiary from

the entities operated by Shri Bhanwarlal Jain/Shri Praveen Kumar Jain wherein the search took place and it was found that Shri Bhanwarlal Jain/Shri Praveen Kumar Jain were providing only accommodation entries and there were no actual sale transactions and the assessee could not prove the movement of goods from the suppliers to the assessee. In the absence of delivery challans, proper stock records and based on the depositions of the suppliers that they have provided only accommodation bills, the Assessing Officer has rightly concluded that the assessee has obtained only bogus bills and assessee might have purchased goods in gray market. The Assessing Officer estimated the Gross Profit Margin on such purchases at 8% which the Ld.CIT(A) reduced to 4% taking note of the report of the Task Group for Diamond Sector submitted to the Department of Commerce observing as under: -

“4.2. The A.O called upon the appellant to establish the genuineness of the purchases. The AO noted that the concerns from whom purchases were shown did not have documents to prove the delivery of goods of the appellant. The concerns from whom purchases were claimed to be made were operating from premises which were in the name of Bhanwarlal Jain & Family. The suppliers/ bogus parties could not be produced before the A.O for examination. The A.O therefore concluded that the appellant had merely received bills but not the material/goods from these parties. Though the appellant had shown corresponding sales against the purchases claimed, purchases were most likely made from grey market. Without bill and to adjust these transactions, bogus bills were obtained from Bhanwarlal Jain Group. The A.O concluded that the diamonds purchased from the grey market are cheaper than the diamonds sourced from genuine dealers. Subsequently there is an element of discount in the case of cash purchased in the grey market. The A.O. therefore computed the additional G.P earned by the appellant has 8% of the purchase cost. Accordingly, disallowance/ addition of ₹.63,90,742/- was made to the returned income

4.3. In the appellate proceedings the Ld.AR submitted that the appellant was engaged in the business of trading in polished diamonds and manufacturing of jewellery. The appellant had requested the A.O. to furnish the copies of documents relied upon by him for treating the purchases as bogus and to also allow cross examination of the alleged parties. Neither of the request were granted by the A.O. The appellant had furnished detailed chart showing name of parties, date of purchase, quantity in carats, amount in rupees and details of exports made against

each purchases. Stock book reflecting the purchases were also produced. Ledger accounts in respect of the purchases and copy of invoices for the purchase and corresponding sales were also furnished. It was contended that the initial burden on the appellant to prove the genuineness of the purchases was fulfilled. The A.O has not conducted any enquiry as regards the alleged bogus transactions of the appellant. No defects have been found in the books. The copies of the material based on which the A.O. concluded that the purchases are not genuine was not provided to the appellant. Once the sales (primarily exports) are not doubted, no addition can be made by doubting the purchases. As regards the absence of delivery challan, it was submitted that the A.O completely ignored confirmation on the purchase bills by the appellant by signing on the face of the bill as is the practice in diamond trade. The allegation that the purchase is from grey market is based on presumptions and surmises. It was also contended that the estimation of gross profits @8% was quite high Reference was made to its own transfer pricing study report and the report of task group submitted in February 2013 presented to the Commerce and Industry Ministry. It was also submitted that all the impugned purchases are exported. Polished diamonds are purchased locally and exported. Further, that where H form is submitted, there is no levy of VAT and in the cases where VAT is levied, the same is refunded subsequently after export of diamonds. The appellant relied on the decision of the Hon'ble ITAT in the case of Say India Jewellers in ITA No.6735/Mum/2010 stating that no addition should be made.

4.4. I have considered the submissions of the appellant carefully. In the face of categorical denial by the alleged suppliers of diamonds of any real supply of goods, and the appellant's inability to establish the facts to be otherwise, the disallowance of purchases is clearly in order. The action of the assessing officer of disallowing a percentage of impugned purchases is in line with the view expressed in the decisions such as in the case of CIT vs. Bholanath PolyFab Pvt. Ltd. (2013) 355 ITR 290 and thereafter in the case of CIT vs. Simit P. Sheth (2013) 219 Taxman 85 (Gu).

4.5. It is noted that there is nothing distinguishable to identify the sales as corresponding to the purchases. However, the submission that the margin on trading in polished diamonds is low is supported by the report of the Task Group for Diamond Sector submitted to Department of Commerce in which it was reported that net profit in diamond manufacturing is in the range of 1.5 to 4.5% and

in trading in the range of 1 to 3%. The appellants business is of trading in polished diamonds in respect of the impugned purchases. Thus, a margin of 4% is considered to be appropriate.

10. On a careful consideration of the totality of facts and circumstances and the findings of the Ld.CIT(A), we do not see any valid reason to interfere with the findings and the decision arrived at by the Ld.CIT(A) in estimating the Gross Profit at 4% of the bogus purchases as against 8% estimated by the Assessing Officer. Thus, we uphold the order of the Ld.CIT(A) for all these Assessment Years i.e. 2010-11, 2011-12 and 2012-13.”

7. Respectfully following the said decision, we estimate the profit element from bogus purchases @4%. We order accordingly.

8. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on the 28th November, 2019

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER
Mumbai / Dated 28/11/2019
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum