

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

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA Nos.654, 655, 656, 657, 658 & 659/M/2018
Assessment Years: 2007-08, 2008-09, 2009-10, 2011-12, 2012-13 &
2014-15**

M/s. Star Brilliant Jewellery Ltd., 809/913, Parekh Market, 39, JSS Road, Opera House, Mumbai – 400 004 PAN: AAACS6220M	Vs.	Income Tax Officer 5(3)(4), Room No.565, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Ashok Mehta, A.R.
Shri Dipesh Vora, C.A.

Revenue by : Shri Chaudhary Arun Kumar Singh, D.R.

Date of Hearing : 16.07.2019

Date of Pronouncement : 13.09.2019

ORDER

Per Rajesh Kumar, Accountant Member:

The above titled appeals have been preferred by the assessee against the common order dated 10.10.2017 of the Commissioner of Income Tax (Appeals)-10, Mumbai [hereinafter referred to as the CIT(A)] involving common issue which in turn arose out of the orders passed by the AO . All these appeals are being disposed of by this common and consolidated order for the sake of brevity as the only issue involved in all these appeals is as regards confirmation of addition by Ld. CIT(A) on peak theory basis qua the bogus purchases thereby upholding the order of Assessing officer (hereinafter called the AO). We shall first deal with the ITA No.654/M/2018 for A.Y. 2007-08 first.

ITA No.654/M/2018

2. The Id AR of the assessee did not press the ground taken against the re-assessment proceeding u/s147 of the Act and therefore the same is dismissed.

3. The only issue raised by the assessee is against the order of Ld. CIT(A) confirming addition of Rs.11,26,274/- as made by the AO under section 69C of the Act on peak theory basis in respect of bogus purchases.

4. The facts in brief are that the assessee filed the return of income for A.Y. 2007-08 on 31.10.2007 declaring an income of Rs.5,60,180/-. The assessment was framed under section 143(3) vide order dated 06.05.2009. Thereafter, the case of the assessee was reopened u/s 147 of the Act by issuing notice under section 148 dated 27.03.2014. The assessee filed the return of income on 31.10.2007 in response to notices issued under section 148. Thereafter, the reasons recorded under section 148(2) were supplied vide letter dated 05.06.2014 to the assessee. The assessee filed the objections to the reassessment proceedings initiated under section 147 which were also disposed vide order dated 12.12.2014. During the course of the re-assessment proceedings, the AO observed that assessee has entered into bogus transaction of purchases of Rs.9,63,194/- from three parties namely M/s. Moulimani Impex Pvt. Ltd. – Rs.35,484/-, M/s. Sun – Rs.3,94,027/- and M/s. Vitrag – Rs.5,33,328/- aggregating to Rs.9,58,938/-. The assessee is a manufacturer and trader of diamond jewellery. It is pertinent to note that the investigation wing of the Revenue found that assessee is a beneficiary of bogus purchase transactions by

group concerns belonging to Mr. Rajendra Kumar Jain as the assessee have taken bogus entries from these entities. Thereafter, the assessee filed the bills, vouchers, sale invoices issued by these parties along with the payment details and stock tally. During the course of assessment proceedings, the AO also found that assessee has made bogus purchases from M/s. AVI Exports of Rs.8,27,336/- which is a proprietary concern of Mr. Rajendra Kumar Jain and thus treated the purchases of Rs.17,90,530/- as bogus purchases but addition was made on the basis of peak credit. The AO also issued notices under section 133(6) to these three parties out of which only one party M/s. Moulimani Impex Pvt. Ltd. sent the reply to the said notice. The AO rejecting the reply of the assessee and the response of the party to 133(6) notices came to the conclusion that the said amount of purchases were non genuine and bogus and consequently made addition on the basis of peak balance theory calculation whereof is given in para 7.3 of the assessment order of Rs.11,26,274/-.

5. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee by holding that the transactions of purchase of goods from the 4 suppliers were non genuine as the assessee could not prove the purchases with the necessary evidences and therefore justified the addition made on the basis of peak credit.

6. The Ld. A.R. vehemently submitted before the Bench that the order of Ld. CIT(A) is wrong as it contained several infirmities i.e. legal as well as factual. The Ld. A.R. submitted that the goods purchased by the assessee from these 4 parties were

solely treated as bogus on the basis of statement of Mr. Rajendra Kumar Jain recorded during the course of search on him and his associated concerns. The Ld. A.R. submitted that the assessee has filed all the necessary evidences in connection with the purchase of goods. The Ld. A.R. stated that these statements which are relied upon by the AO for making addition carries no evidentiary value as the said statement stood withdrawn by Mr. Rajendra Kumar Jain. Moreover, the said statement is not bearing the sign of the person who has given the statement by referring to a copy of the said statement. The ld AR argued that the reliance on the same by the lower authorities is incorrect. The Ld. A.R., however, candidly admitted that the notice in respect of two parties were returned unserved which were issued by the AO under section 133(6) of the Act to verify the purchases however stressed the point that the sales out of the alleged bogus purchases were not disputed by either AO or ld CIT(A). Finally, the Ld. A.R. submitted that in view of the said facts, the addition as made by the AO on peak basis which is also affirmed by the Ld. CIT(A) may kindly be deleted. In defence of his argument, the Ld. A.R. also relied on a certain decisions of the co-ordinate benches of the Tribunal copies whereof were filed in the paper book.

7. The Ld. D.R., on the other hand, relied on the orders of authorities below and submitted that the addition has rightly been made on the peak basis as the purchases were made from the hawala operator, his group concerns which could not be verified with any satisfactory evidences. The Ld. D.R. submitted that even the notices issued under section 133(6) could not be served on two parties namely Sun Diamond & Vitraj Jewells.

The Ld. D.R. also filed written submission citing various case laws to support the order of Ld. CIT(A). Finally, the Ld. D.R. prayed before the Bench that the order of Ld. CIT(A) is very reasoned and speaking one and therefore same may kindly be affirmed.

8. After hearing both the parties and perusing the material on record, we are undoubtedly of the view that assessee is a beneficiary of hawala purchase entries. Though Mr. Rajendra Kumar Jain retracted his statement but the facts remain that he and his associated concerns were only supplying bogus bills for purchases on commission basis. So the issue before us is whether the addition confirmed by ld CIT(A) as made by the AO on peak basis is correct or not. We also note that the corresponding sales out of the alleged bogus purchases were not disputed. It is also undisputed that in some cases notices issued u/s 133(6) were returned unserved. In such type of cases normally the purchases are made from the grey market and bills are procured from the hawala operators and thus the assessee makes saving of VAT charges and other incidental charges. The peak theory as applied by the ld AO has resulted into unrealistic high profits which are not practically possible. In our opinion in order to assess the income or profit element on the said bogus purchases a percentage is applied depending on the nature of trade VAT rate applicable and gross profit margin of the assessee. The coordinate benches in similar set of facts i.e. diamond industry have applied profit rates ranging from 2% to 6 % depending upon the facts of each individual cases. In the present case, the Ld. CIT(A) has upheld the addition made on the basis of peak theory affirming the total addition made under

section 69C of Rs.11,26,274/- which accounts for more than 50% of the total alleged bogus purchases from the concerns related to Mr. Rajendra Kumar Jain. In our view, said addition is excessive and unreasonable and can not be sustained. Since the assessee is a manufacturer and trader of diamond jewellery it would be reasonable and in the interest of justice if the purchases are brought to tax @ 4% of the alleged bogus purchases. Accordingly, appeal of the assessee is partly allowed.

Since we have decided the issue on merit partly in favour of the assessee the other ground raised by the assessee need not to be adjudicated.

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

ITA Nos.655, 656, 657, 658 & 659/M/2018 (Assessment Years 2008-09, 2009-10, 2011-12, 2012-13 & 2014-15)

10. The issue involved in these appeals is identical to the one as stated above in ITA No.654/M/2018 for A.Y. 2007-08. Therefore, our finding in ITA No.654/M/2018 for A.Y. 2007-08, would ,mutatis mutandis, apply to these appeals as well. Accordingly, the appeals of the assessee are partly allowed.

Order pronounced in the open court on 13.09.2019.

**Sd/-
(Amarjit Singh)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 13.09.2019.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent

The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.