

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

BEFORE SHRI R.C.SHARMA, AM & SHRI VIKAS AWASTHY, JM

**ITA No. 5769/Mum/2018
(Assessment Year: 2014-15)**

M/s Sanghvi Diamond Corporation, BW-5021, 5 th Floor, Bharat Diamond Bourse, Bandra Kurla Complex, Bandra (East), Mumbai-51.	Vs.	I.T.O., Ward-23(3)(2), Mumbai.
PAN/GIR No.AAafs 3251 M		
(Appellant)	..	(Respondent)

Assessee by	Shri Ketan L Vajani (AR)
Revenue by	Shri Kumar Padmapani Bora (Sr.DR)
Date of Hearing	10/12/2019
Date of Pronouncement	10/12/2019

आदेश / O R D E R

PER: R.C. SHARMA, A.M.

This is the appeal filed by the assessee against the order of the Id. CIT(A)-34, Mumbai dated 24/07/2018 for the A.Y. 2014-15 in the matter of order passed U/s 143(3) of the Income Tax Act, 1961 (in short, the Act).

2. In this appeal, the assessee is aggrieved for the addition upheld by the Id. CIT(A) to the extent of 3% of alleged bogus purchases.
3. Rival contentions have been heard and record perused. Facts in brief are that the assessee is engaged in the business of import and

export of diamond and trading and manufacturing of diamond jewellery. Return of income was filed on 30/09/2014 declaring total income of Rs. 10,70,134/-. In this case, search and survey action was conducted in the case of Shri Bhanwarlal Jain and others on 03/10/2013 by DGIT (Inv.), Mumbai. The Investigation Wing, Mumbai covered certain name sake/dummy directors/partners/proprietors of various concerns that were being actually managed, controlled and operated by Bhanwarlal Jain & family U/s 132 and 131 of the Act. During the course of search it was found that all name sake/dummy directors/partners/proprietors of various concerns belong to the native place of Bhanwarlal Jain & family in Rajasthan and have either know Bhanwarlal Jain personally and through their families. In their respective statements recorded, they have admitted that they were made directors, partners and proprietors of various concerns at the direction of Bhanwarlal Jain & Family which were eventually being managed and managed by the latter. Subsequently, the A.O. received information from the office of DGIT(Inv.), Mumbai that the assessee is a beneficiary of accommodation Bills of purchases from certain bogus Hawala Dealers. As per the information, the concerned Hawala Dealers had not sold any goods, but it had given accommodation entries of sales to the assessee. The A.O. found that there was total purchase of Rs. 6,45,05,526/- from such bogus suppliers. After making detailed enquiry, the A.O. found the

purchases to be bogus without taking any delivery of goods. Accordingly, he estimated income of 5% on such bogus transaction. By the impugned order, the Id. CIT(A) confirmed the addition to the extent of 3%, against which the assessee is in further appeal before the ITAT.

4. It was argued by the Id AR of the assessee that the assessee has filed all the documentary evidence to prove the genuineness of the purchases and sales. He invited our attention to the details of purchases and sales placed at page 38 of the paper book which indicated that the G.P. ratio in respect of alleged bogus transaction was 7.58% as against normal G.P. of 6.75%, accordingly, it was pleaded that no addition is warranted in view of the decision of the Hon'ble Jurisdictional High Court in the case of Pr.CIT Vs M/s Mohommad Haji Adam & Co. in ITA No. 1004 of 2016 order dated 11/02/2019.

5. On the other hand, the Id DR has relied on the orders of the lower authorities.

6. We have considered the rival contentions and carefully gone through the orders of the authorities below. With respect to issue regarding addition in respect of bogus purchases, the Hon'ble Jurisdictional High Court in the case of Pr.CIT Vs M/s Mohommad Haji Adam & Co. in ITA No. 1004 of 2016 vide its order dated 11/02/2019 have held as under:

“8. *In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assesses additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of N.K. Industries Ltd.. (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under-*

So far as the question regarding addition of Rs.3,70,78,125/- as gross profit on sales of Rs.37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6% gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66%. Therefore, considering 5.66% of Rs.3,70,78,125/which comes to Rs.20,98,621.88 we think it fit to direct the revenue to add Rs.20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said

question is answered partially in favour of the assessee and partially in favour of the revenue."

7. The Coordinate Bench of the ITAT, Mumbai in the case of Shri Rameshkumar Daulatraj Vs ITO in ITA No. 4192/Mum/2018 order dated 07/05/2019 after following the above decision of Hon'ble Bombay High Court held as under:

"9. When these facts were confronted to the learned Sr. DR, he requested for application of reasonable profit rate and according to him the profit rate applied by the AO and confirmed by CIT(A) is quite reasonable in view of the decision of Hon'ble Gujarat High court in the case of Smith P.Seth (supra). We have considered the rival contentions ITA No. 4192/Mum/2018 and are of the view that Hon'ble Bombay High Court in the case of Mohammad Haji Adam & Co. and Ors. (supra) has considered this issue and respectfully following the same, we direct the AO to restrict the profit rate only to the extent of differential percentage as declared on the bogus purchases and as declared on the regular purchases, Hence, we direct the AO accordingly."

8. It is clear from the above decisions that in case of bogus purchases where sales are accepted, the addition is required to be made only to the extent of difference between the GP declared by the assessee on normal purchases vis a vis bogus purchases. Respectfully following the order of the Hon'ble Jurisdictional High Court and the Coordinate Bench of the ITAT, Mumbai, we direct the A.O. to restrict the addition to the extent of lower GP declared by the assessee in respect of bogus purchases as compared to GP on normal purchases. The assessee is also directed to give full details to the A.O. with regard to GP earned on normal purchases and also GP earned on alleged bogus purchases.

The A.O. is directed to verify the correctness of G.P. calculation so filed by the assessee and to decide the same in terms of Hon'ble Bombay High court decision referred above. We direct accordingly.

9. In the result, appeal of the assessee is allowed in part.

Order pronounced in the open court on 10th December, 2019.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 10/12/2019

*Ranjan

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.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai