

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

**BEFORE SHRI R.C.SHARMA, AM & SHRI C.N. PRASAD, JM**

**ITA Nos. 7198 & 7200/Mum/2018  
(Assessment Years: 2011-12 & 2013-14)**

KirtiKumar D. Shah, 39, 4 <sup>th</sup> Floor, Nanik Niwas, D.D. Sathe Marg, Banham Hall, Girgaon, Mumbai.	Vs.	A.C.I.T.-19(2), 2 <sup>nd</sup> Floor, Matru Mandir, Tardeo Road, Mumbai.
<b>PAN/GIR No. ALNPS 6533 Q</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Himanshu Gandhi (AR)
Revenue by	Shri K.C. Selvamani (DR)
<b>Date of Hearing</b>	<b>16/12/2019</b>
<b>Date of Pronouncement</b>	<b>16/12/2019</b>

**आदेश / ORDER**

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

These are the appeals filed by the assessee against the separate orders of the Id. CIT(A)-30, Mumbai dated 12/10/2018 for the A.Y. 2011-12 an 2013-14 respectively in the matter of order passed U/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short, the Act).

2. Grievance of the assessee in both the years relate to reopening of assessment and estimation of gross profit on the alleged bogus purchases.

3. Rival contentions have been heard and record perused. Facts in brief are that the assessee is engaged in business of manufacturing, import, export and trading of cut and polished and rough diamonds. The A.O. got information from the Investigation Wing of the Department

regarding assessee having obtaining accommodation bill with regard to purchases of diamonds. Accordingly, the case was reopened for the A.Y. 2011-12 and thereafter the addition was made by the A.O. by estimating profit @ 3% on polished diamonds and 5% on rough diamonds. By the impugned order, the Id. CIT(A) confirmed the addition by estimating profit at 3% in polished and rough diamonds both, against which the assessee is in further appeal before the ITAT.

4. The Id AR of the assessee Shri Himanshu Gandhi has argued that the A.O. was not justified in making addition in respect of genuine purchases for which complete quantitative details were filed before the A.O. As per the Id. AR, the assessee has filed stock register reflecting goods received and processing and manufacturing thereof and corresponding sale with individual invoice before the A.O. Furthermore, one to one mapping of goods purchases, processed and subsequent sales with quantity was also filed before the A.O. which proves that the assessee has purchased goods and subsequently sold the same goods. Alleging the reopening, he further contended that in the A.Y. 2011-12, the A.O. has not recorded any reason to believe that there is escapement of any income, accordingly, the reopening was not justified.

5. With regard to merit of the addition, the Id AR has relied on the decision of Hon'ble Jurisdictional High Court in the case of Pr.CIT Vs. Mohommad Haji Adam & Co. in ITA No. 1004 of 2016 order dated

11/02/2019. He has further submitted that the Hon'ble Jurisdictional High Court decision has been consistently followed by the various Benches of the Tribunal. Respective orders were placed on record. It was contended that when corresponding sale are accepted, the addition on account of bogus purchases should be confined to the difference between the GP declared in respect of bogus purchases as compared to the GP in normal purchases.

6. On the other hand, the Id DR has relied on the order of the A.O. an contended that during the course of search at Bhanwar Lal group, it was found that the assessee has taken accommodation bills of purchases without taking delivery.

7. We have considered the rival contentions and carefully gone through the orders of the authorities below and found from the record that the assessee is engaged in manufacturing, export and trading of diamonds. We also found that before the A.O., the assessee has filed quantitative details of purchases, stock register reflecting goods received and processing and manufacturing thereof and corresponding sales with individual invoice with respect to alleged bogus purchases. The A.O. made addition by estimating GP on such alleged bogus purchases. By the impugned order, the Id. CIT(A) has given partial relief and the assessee is in further appeal before us. After going through the facts of the case, we observe that 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. (supra) 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."*

8. 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 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."*

9. It is clear from the above decisions that in case of bogus purchases where sales are accepted and assessee has filed quantitative details of purchases and also stock register reflecting goods received, 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 restore the matter back to the file of 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. We direct accordingly.

10. In the result, both the appeals of the assessee are allowed in part for statistical purposes only.

Order pronounced in the open court on 16<sup>th</sup> December, 2019.

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

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

Mumbai; Dated 16/12/2019

\*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**