

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "SMC", MUMBAI

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

ITA No. 6934/Mum/2018  
Assessment Year : 2008-09

Dilipkumar Chimanlal & Co DC-8060/70, Bharat Diamond Bourse, Bandra Kurla Complex, Bandra East, MUMBAI [PAN : AAAFD1236B]	Vs.	ITO-19(1)(4), MUMBAI
(Appellant)		(Respondent)

Assessee by : Shri Killi Krishna Murty, AR  
Revenue by : Shri R.Bhoopathi, DR

Date of Hearing : 17-12-2019	Date of Pronouncement : 20-12-2019
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**ORDER**

This appeal by the assessee is directed against the order of the Commissioner of Income Tax(Appeals)-29, Mumbai, dated 25-09-2018, for the AY.2008-09.

2. The brief facts of the case as emanating from records are: The assessee is a firm, engaged in the business of import/export of diamonds. A search and seizure action was conducted on Bhanwarlal Jain Group concerns on 03-10-2013 by the DGIT (Inv.), Mumbai. During the course of search proceedings, it was established that the group concerns are all paper companies/firms/proprietorship concern with no real business activities, operating solely with the purpose of facilitation of fraudulent financial transactions

which includes, among others, providing of accommodation entries in the form of unsecured loans to interested parties, issuing a bogus sale bills to various parties and providing a bogus front to concerns which do not want to import diamonds in their own hands/books of accounts. The Assessing Officer (AO) on the basis of documents forwarded by the DGIT (Inv.), Mumbai, held that during the period relevant to assessment year under appeal, the assessee has obtained accommodation entries from the following hawala parties:

S.No	Name of the Party	Bill Amount Rs.
1	Ankita Exports	15,43,804
2	Mayur Exports	22,13,463
3	Navkar Diamonds	43,71,498
	Total Rs.	81,28,765

The AO estimated Gross Profit (GP) @8% on alleged bogus purchases and made addition of Rs.6,50,301/-.

Aggrieved against the assessment order dt.16-03-2016 passed u/s.143(3) r.w.s.147 of the Income Tax Act, 1961 (herein after referred to as 'the Act'), the assessee filed appeal before the CIT(A).

3. The CIT(A) passed *ex-parte* order, dismissing the appeal of assessee.

Against the *ex-parte* order of First Appellate Authority (FAA), the assessee is in appeal before the Tribunal.

4. Shri Killi Krishna Murty, appearing on behalf of the assessee, submitted that the CIT(A) has confirmed the addition to the extent of 8% of the bogus purchases in

*ex-parte* proceedings. The Id.AR submitted that assessee had filed application praying for adjournment and the same was not considered by the CIT(A). The Id.AR contended that the matter may be restored to the file of FAA for deciding the issue afresh, after giving a fair and reasonable opportunity of hearing to the assessee.

5. *Au contraire* Shri R.Bhoopathi, DR, representing the Department vehemently supported the impugned order and prayed for dismissing the appeal of assessee.

6. Both sides heard and the orders of the authorities below perused. The CIT(A) in the *ex-parte* proceedings, confirmed the assessment order. Taking into consideration entirety of facts without expressing any views on the merits of addition, I am of the considered view that it is appropriate to restore the issue back to the file of CIT(A) for deciding the appeal of assessee afresh. Needless to mention that the assessee shall be given a fair and reasonable opportunity of hearing, in accordance with law.

7. In the result, the appeal of assessee is allowed for statistical purpose.

*Order pronounced in the open court on Friday  
the 20<sup>th</sup> day of December, 2019*

Sd/-  
(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/Mumbai; दिनांक/Dated : 20-12-2019

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai
4. आयकर आयुक्त / CIT, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai