

**IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH KOLKATA**

**BEFORE SHRI S.S.GODARA, JM &DR. A.L.SAINI, AM**

**आयकरअपीलसं./ITA No.763/Kol/2019**

**(निर्धारणवर्ष / Assessment Year: 2010-11)**

<b>Rajya Vardhan Kanoria</b> <b>C/o Subash Agarwal &amp; Associates, Advocates Siddha Gibson, 1, Gibson lane, suite 213, 2<sup>nd</sup> Floor, Kolkata-700069</b>	<b>Vs.</b>	<b>DCIT, Circle-10(1), Kolkata</b>
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AFSPK 6577 M</b>		
<b>(Appellant)</b>	<b>..</b>	<b>(Respondent)</b>

Appellant by : Shri Subash Agarwal, Advocate

Respondent by : Smt. Ranu Biswas, Addl. CIT

सुनवाईकीतारीख/ Date of Hearing : 31/10/2019

घोषणाकीतारीख/Date of Pronouncement : 10/01/2020

**आदेश / O R D E R**

**Per Bench:**

The captioned appeal filed by the assessee, pertaining to assessment year 2010-11, is directed against the order passed by the Commissioner of Income Tax (Appeal)-4, Kolkata in appeal no. 816/CIT(A)-4/2016-17, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (in short the "Act") dated 12/08/2016.

2. The grounds of appeal raised by the assessee are as follows:

*1.a) For that the ld. CIT(A) erred in not adjudicating the grounds relating to the validity of re-opening proceedings.*

*b) For that the ld. CIT(A) ought to have held that the re-opening proceedings are void and nullity in the eye of law and as such, re-assessment order was non-est.*

*2. For that on the facts and in the circumstances of the case, the ld. CIT(A) was not justified in confirming the addition of Rs. 4,97,360/- made by the Assessing Officer on account of purchase of diamond from M/s Shri Ganesh Gems by wrongly treating the same as bogus purchase though the payment was made by account payee cheque and the said purchase was duly disclosed in the balance sheet.*

*3. The appellant craves leave to add, alter or delete all or any of the grounds of appeal.*

3. The ld. Counsel for the assessee informs the Bench that the assessee does not want to press ground no. 1 raised by him therefore we dismiss ground no. 1 as not pressed.

4. Ground no. 2 raised by the assessee relates to addition to Rs. 4,97,360/- made by the Assessing Officer on account of bogus purchase.

5. Brief facts qua the issue are that as per information received from DGIT(Inv.), Kolkata, a list of details of accommodation entry transaction provided by Shri Goutam Jain & Ors (Surat Diamond Concern) group during the search operation, the directors / proprietors of all those concerns admitted on oath that the concerns are nothing but paper companies with no genuine business. It has also been established during the search operation that these alleged concerns with no real business activities are operating solely with the purpose of facilitation of fraudulent financial transactions which includes other providing of accommodation entries in the form of unsecured loans to interested parties issuing of bogus sale bill to various parties and providing a bogus front to concerns which do not want to import diamonds in their own hands / books of accounts. As per the information obtained, Shri Rajya Vardhan Kanoria is alleged to be a beneficiary of questionable transactions to the following extent:

Beneficiary's Name	PAN	A.Y.	Transaction	Amount	Bogus Diamond concern's name

Shri Rajya Vardhan	AFSPK 6577M	2010-11	Sales	4,97,360/-	Shree Ganesh Gems
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As the issue has not been disclosed by the assessee at any suo-moto and on the basis of the aforesaid information, opinion was formed that the return filed by the assessee u/s 139(1) has not made true reflection of his income and there is a concealed income in the hand of the assessee which has escaped assessment within the meaning of section 147 of the Act, and therefore Assessing Officer made addition to the tune of Rs. 4,97,360/-.

6. Aggrieved by the stand so taken by the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) who has confirmed the addition made by the Assessing Officer .

7. Aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

8. The Id. Counsel for the assessee submitted written submissions as follows:

*“1. The assessee has genuinely purchased cut and polished diamonds worth Rs. 4,97,360/- from M/s Shri Ganesh Gems vide its Bill No. SGGs/PD/004/2009 dated 03.04.2009 and duly paid the amount vide cheque no. 009307 drawn on Hongkong Bank, which was passed on 20.04.2009. the copy of the said bill and the bank statement is attached herewith for ready reference.*

*2. The assessee has used the above diamonds so purchased, in making an item of jewellery (1 pc. Bangle set with Diamonds in Gold) which appears at serial no 28 of the jewellery valuation report made for the year ended 31.03.2010. A copy of the said valuation report is also attached herewith for ready reference.*

*3. The assessee is regularly filing his income-tax and wealth tax returns and duly disclosed the above diamonds so purchased at all stages, whatever required. In the instant case, the Income tax return for a total income of Rs. 1.28 crores (app) was filed after payment of over Rs 38 Lacs (app) as income tax. The wealth tax return for a net wealth of Rs 1,90,83,466/- (including Rs. 5,72,193/- relating to item no 28 supra) was filed on 30.07.2010 after payment of wealth tax Rs 1,60,835/-. A copy of such wealth tax return is also attached herewith for ready reference.*

*4. Considering the nature of the case, there cannot be any other more concrete evidence than the payment of wealth tax and filing of wealth tax return along with the jewellery valuation report of a Registered Valuer to prove that the assessee has truly and fully disclosed his wealth/income at all stages.*

*5. Even considering the income levels, the assessee's financials permits him to purchase these kind of jewelleryes. ”*

On the other hand, the Id. DR has primarily reiterated the stand taken by the Assessing Officer which we have already noted in our earlier para and the same is not being repeated for the sake of brevity.

9. We heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials available on record. We note that the Ld. A.O. brushed aside the contention of the assessee without providing any reasonable opportunity to produce bill on the plea that the assessee has failed to produce any evidence of converting the diamond into studded jewellery. The Ld. A.O. has also stated in the order that he caused enquiry through inspector at Surat at the premises of Shri Ganesh Gems but as per his report, the business activities of the said concern were closed since last two years. The Ld. A.O. ignored the fact that there is no finding of the inspector that the said concern was not in existence at the relevant time. The Ld. A.O. wrongly observed in the order that the above named purchases whether made by cash or cheque are only created on paper in the guise of trading liabilities as per books of accounts of the assessee to make their black money white and those are being carried year after year in the balance sheet to retain the huge investments against a little income and own funds consist of share capital and reserve & surplus. In fact, the assessee has never shown the said genuine purchases as trading liabilities and the assessee, being an individual, has neither any share capital nor any reserves and surplus. He also ignored the fact that the said transaction has no tax implication inasmuch as the assessee has not taken any benefit of the same in his profit and loss statement. We note that the Assessee has purchased cut and polished diamonds worth Rs. 4,97,360/- from M/s Shri Ganesh Gems, vide its Bill No. SGGs/PD/004/2009-10 dated 03.04.2009 and duly paid the said amount vide cheque no. 009307 drawn on Hongkong Bank, which was passed on 20.04.2009. The Assessee has used the above diamonds so purchased in making an item of Jewellery (1 Pc. Bangle set with Diamonds in Gold), which appears at serial no. 28 of the Jewellery Valuation Report made for the year ended 31.03.2010. We note that assessee has produced the purchase bill and payment has been made through cheque therefore genuineness of the transaction cannot be doubted. The Assessing Officer has failed to bring any cogent evidence on

record to show that purchases made by the assessee were bogus. Hence, we delete the addition of Rs. 4,97,360/-.

11. In the result, the appeal of the assessee is allowed.

**Order pronounced in the Court on 10.01.2020**

**Sd/-**  
**(S.S.GODARA)**  
**न्यायिकसदस्य / JUDICIAL MEMBER**

**Sd/-**  
**(A.L.SAINI)**  
**लेखासदस्य / ACCOUNTANT MEMBER**

कोलकाता /Kolkata;

दिनांक/ Date: 10/01/2020

(SB, Sr.PS)

Copy of the order forwarded to:

1. Rajya Vardhan Kanoria
2. DCIT, Circle-10(1), Kolkata
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

True copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches