

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

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

ITA NO. 6971/MUM/2018(A.Y.2013-14)

ITA NO. 6972/MUM/2018(A.Y.2009-10)

Mudra Exim Pvt. Ltd.,  
321, Amrit Diamond House,  
Opera House, Mumbai 400004  
PAN:AACFM3522P

..... Appellant

Vs.

Income Tax Officer 5(2)(3),  
Aaykar Bhavan, M.K.Road,  
Mumbai 400 020

..... Respondent

Appellant by : Shri Himanshu Gandhi  
Respondent by : Shri R. Bhoopati

Date of hearing : 18/12/2019  
Date of pronouncement : 06/01/2020

ORDER

These two appeals have been filed by the assessee. ITA No.6971/Mum/2018 is against the order of Commissioner of Income Tax (Appeals)-10, Mumbai [in short 'the CIT(A) ], dated 28/09/2018 for the assessment year 2013-14. In ITA No.6972/Mum/2018 the assessee has impugned the order of CIT(A) dated 28/09/2008 for assessment year 2009-10. Since the issue raised in both the appeals is arising from same set of facts and identical issue is involved, these appeals are taken up together for adjudication and are disposed of by this composite order.

For the sake of convenience, the facts are extracted from assessment year 2013-14:

**ITA No.6971/Mum/2018:**

2. The assessee is engaged in the business of import and export of diamonds. During the course of scrutiny assessment proceedings, the Assessing Officer observed that the assessee has indulged in obtaining accommodation entries from Marc Gems (amounting to Rs.3,35,06,028/-), one of Bhanwarlal Jain Group concerns. The Assessing Officer made addition of 8% of such non-genuine purchase i.e. Rs.26,80,482/-. Aggrieved against the assessment order dated 17/03/2016 passed under section 143(3) of the Income Tax Act, 1961 (in short 'the Act'), the assessee filed an appeal before the CIT(A). The first appellate authority vide impugned order confirmed the addition made by Assessing Officer and dismissed the appeal of assessee.

3. Shri Himanshu Gandhi appearing on behalf of the assessee submitted that the authorities below have erred in estimating addition of 8% on alleged bogus purchases by the assessee from Bhanwarlal Jain Group concern. The Id.Authorized Representative of the assessee submitted that assessee had furnished tax invoices and bank statements to the lower authorities, however, the documents furnished by the assessee were not taken into consideration. The Id. Authorized Representative for the assessee prayed that if at all addition is to be made it should be restricted only to the extent of the difference in gross profit not disclosed by the assessee on the alleged bogus purchases. The Id. Authorized Representative for the assessee prayed for restoring the issue back to the file of Assessing Officer in the light of decision of Hon'ble Bombay High Court in the case of PCIT vs. Mohammed Haji Adam & Co in Income Tax Appeal No.1004 of 2016 decided on 11/02/2019.

4. On the other hand, Shri R. Boopati representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee.

5. Both sides heard, orders of lower authorities perused. The assessee is engaged in the business of import and export of diamonds. It is alleged that the assessee has procured bogus bills to the tune of Rs.3,35,06,028/- from M/s. Marc Gems, one of Bhanwarlal Jain Group concern. Consequently, the Assessing Officer estimated gross profit @8% of such alleged bogus purchases. The CIT(A) has upheld the addition made by Assessing Officer. The contention of the assessee is that the addition may be restricted to the extent of difference between actual gross profit and G.P declared on non-genuine purchases from hawala dealers. Taking into consideration entirety of facts, I deem it proper to restore this issue back to the file of Assessing Officer for fresh adjudication in the light of the decision of Hon'ble Jurisdictional High Court in the case of PCIT vs. Mohammed Haji Adam & Co (supra). Needless to say that while deciding the issue afresh, the Assessing Officer shall grant reasonable opportunity of hearing to the assessee, in accordance with law.

6. The impugned order is set aside and the appeal of assessee is allowed for statistical purpose, in the terms aforesaid.

**ITA No.6972/MUM/2018:**

7. Both sides are unanimous in stating that the facts in assessment year 2009-10 are similar to assessment year 2013-14. I find that the addition on account of accommodation entries in the assessment year

under appeal have been made on similar lines as were made in assessment year 2013-14. The finding given in assessment year 2013-14 would *mutatis mutandis* apply to assessment year 2009-10 as well. For the reasons given while deciding appeal of the assessee in assessment year 2013-14, the present appeal of the assessee is allowed for statistical purposes in similar terms.

8. In the result, both appeals by the assessee are allowed for statistical purposes.

Order pronounced in the open court on Monday, the 6<sup>th</sup> day of January, 2020.

Sd/-  
(VIKAS AWASTHY)  
JUDICIAL MEMBER

Mumbai, Dated 06/01/2020  
Vm, Sr. PS(O/S)

**Copy of the Order forwarded to :**

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,  
  
(Dy./Asstt. Registrar)  
**ITAT, Mumbai**