

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

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI N.K.PRADHAN, ACCOUNTANT MEMBER

ITA NO.99/MUM/2019(A.Y.2009-10)

Income Tax Officer 19(2)(3),  
Room No.218, 2<sup>nd</sup> Floor, Matru Mandir,  
Tardeo, Mumbai -400 007

..... Appellant

Vs.

Mr.Milan R.Parikh,  
17,Purab Apartment,  
42,B-4, Kher Marg,  
Mumbai - 400 006.

..... Respondent

Appellant by : Shri Dharm Veer Singh  
Respondent by : Shri Sanjay R.Parikh

Date of hearing : 13/01/2020  
Date of pronouncement : 13/01/2020

ORDER

PER VIKAS AWASTHY, JM:

This appeal b y the Revenue is directed against the order of Commissioner of Income Tax(Appeals)-58, Mumbai [ in short 'the CIT(A) ] dated 15/10/2018 for the assessment year 2009-10.

2. Shri Sanjay R.Parikh appearing on behalf of the assessee submitted that assessee is a trader in diamonds and precious stones. The assessment for assessment year 2009-10 was reopened on the ground that assessee had made bogus purchases from one of the concerns( i.e. M/s. Amit Diamonds) controlled and managed by Bhanwarlal Jain Group. The Assessing Officer held that the assessee

had obtained bogus purchases bills to the tune of Rs.32,56,320/- from the aforesaid concern linked with Bhanwarlal Jain Group. The Assessing Officer made addition of 12.5%(Rs.4,07,040/-) of the alleged non-genuine purchases. Aggrieved against the assessment order dated 06/02/2016 passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961( in short ' the Act'), the assessee filed appeal before the CIT(A). The CIT(A) after examining the entire factual matrix and various decisions restricted the addition to 5% of the alleged bogus purchases. The assessee accepted the same. The Id. Authorized Representative for the assessee prayed that appeal by the Revenue is without any merit and hence, the same should be dismissed.

3. Per contra, Shri Dharm Veer Singh representing the Department vehemently defended the assessment order and prayed for reversing the findings of CIT(A). The Id. Departmental Representative submitted that assessee has indulged in procuring bogus purchase bills from one of the concerns of Bhawarlal Jain Group. The Department has made detailed investigation and has established that Bhanwarlal Jain Group is engaged in providing accommodation entries with no actual business. The Assessing Officer has made a reasonable addition of 12.5% of non-genuine purchases.

4. We have heard the submissions made by rival sides and have perused the orders of authorities below. A perusal of the assessment order shows that the addition has been made by Assessing Officer by estimating G.P on non-genuine purchases. The CIT(A) pointed that the Assessing Officer has not issued notice to the alleged accommodation entry providers before making addition and restricted the addition to 5% of the alleged bogus purchases. After taking into consideration