

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

**BEFORE SHRI MAHAVIR SINGH , JM
&
SHRI M.BALAGANESH, AM**

**ITA No.225/Mum/2019
(Assessment Year : 2009-10)**

M/s. A.J.M. & Co., DC-8132, Bharat Diamond Bourse, Bandra-Kurla Complex, Bandra East Mumbai – 400 051	Vs.	Dy. CIT-15(1)(1) Aayakar Bhavan Churchgate Mumbai
PAN/GIR No.AAKFM0310R		
(Appellant)	..	(Respondent)

Assessee by	Shri Vijay Kumar S. Biyani
Revenue by	Shri Michael Jerald
Date of Hearing	08/01/2020
Date of Pronouncement	15/01/2020

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.225/Mum/2019 for A.Y.2009-10 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-24, Mumbai in appeal No.CIT(A)-24/DCIT-15(1)(1)/IT-26/2016-17 dated 11/04/2016 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 18/11/2016 by the Id. Dy. Commissioner of Income Tax – 15(1)(1), Mumbai (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the addition of Rs.16,36,417/-

computed at 12.5% on the value of bogus purchase of Rs.1,30,91,939/- in the facts and circumstances of the case.

3. We have heard rival submissions and perused the materials available on record. We find that the assessee is a company engaged in the business of manufacturing and trading of diamonds. It is not in dispute that assessee had made purchases from two parties i.e. Aadi Impex and Sparsh Exports Pvt. Ltd., amounting to Rs.1,12,96,602/- and Rs.1,04,86,660/- respectively whose names matched with the list of havala dealers published by the Sales Tax department, Maharashtra and information thereon was passed on to the Income Tax Investigation Wing which inturn triggered reopening of assessment in the case of the assessee. The Id. AO accepted to the fact that even though the assessee was able to furnish certain evidences with regard to the said purchases, however, he observed that assessee could not substantiate beyond any doubt, the fact of delivery of those goods by the said alleged suppliers. We find that the Id. AO had further observed that however, the consumption of these goods in the manufacturing process could not be ruled out as admittedly those goods have been subsequently sold by the assessee. Accordingly, he concluded that the fact of purchase of these goods from grey market cannot be ruled out and in which case, the assessee could have made certain savings towards VAT and certain incidental profit thereon. Hence, he proceeded to tax the profit element embedded in the value of such alleged purchases @12.5% on estimated basis and made an addition of Rs.16,36,417/-. This addition @12.5% on the value of alleged bogus purchases was upheld by the Id. CIT(A). We find that this Tribunal in most of the cases in respect of assessee's engaged in manufacturing and trading of diamonds had estimated the profit element at 3%. To meet the ends of justice and respectfully following the various judicial precedents, we direct the Id. AO to tax 3%

of the value of alleged bogus purchases as profit element. Accordingly, the grounds raised by the assessee are partly allowed.

4. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on this 15/01/2020

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 15/01/2020
KARUNA, *sr.ps*

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.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai