

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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
&  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA Nos.7080 - 7083/Mum/2018  
(Assessment Years: 2011-12 to 2014-15)

Decent Dia Jewels Private Limited FW-4010, 'F' Tower Bharat Diamond Bourse Bandra Kurla Complex Bandra(E) Mumbai-400 051	Vs.	DCIT,Central Circle-5(4) Room No.1927, 19 <sup>th</sup> Floor Air India Building Nariman Point Mumbai-400 021
<b>PAN/GIR No.AADCD3620M</b> <b>(Appellant)</b>	..	<b>(Respondent)</b>

&

ITA Nos.7389 - 7392/Mum/2018  
(Assessment Years: 2011-12 to 2014-15)

DCIT,Central Circle-5(4) Room No.1927, 19 <sup>th</sup> Floor Air India Building Nariman Point Mumbai-400 021	Vs.	Decent Dia Jewels Private Limited FW-4010, 'F' Tower Bharat Diamond Bourse Bandra Kurla Complex Bandra(E) Mumbai-400 051
<b>(Appellant)</b>	..	<b>PAN/GIR No.AADCD3620M</b> <b>(Respondent)</b>

Assessee by	None
Revenue by	Shri Abhijit Patankar, CIT-DR
<b>Date of Hearing</b>	<b>20/01/2020</b>
<b>Date of Pronouncement</b>	<b>29/01/2020</b>

**आदेश / ORDER****PER BENCH:**

These cross appeals filed by the assessee, as well as the revenue are directed against separate, but identical orders of the Ld. Commissioner of Income tax (Appeals)-53, Mumbai, all dated 15/10/2018 for the AY 2011-12 to 2014-15. Since, facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are disposed-off by this consolidated order.

2. The assessee, as well as the revenue have taken common grounds of appeal in their respective appeals filed for all assessment years. Therefore, for the sake of brevity grounds of appeal filed by the assessee as well as, the revenue for AY 2011-12 are reproduced as under:-

**ITA NO.7080/Mum/2018 for AY 2011-12:-**

3. The assessee has raised the following grounds of appeal for AY 2011-12:-

1. *On the facts and circumstances of the Appellant's case and in law the Ld. Commissioner of Income Tax (Appeals) erred in confirming that the appellant has entered into accommodation transactions with Rajendra Jain Group, Sanjay Chaudhari Group and Dharmi Chand Group.*

2. *On the facts and circumstances of the Appellant's case and in law the Ld. Commissioner of Income Tax. (Appeals) erred in confirming the addition of Rs. 3,08,65,565/- made by the Ld. AO being 5.49% on account alleged non-genuine purchases of Rs. 56,22,14,315/-.*

3. *The Appellant craves leaves to add to amend, alter, modify and / or withdraw any or all above grounds of appeal, each of which are without prejudice to one another.*

*The appellant prays this Hon'ble Tribunal to delete the addition/disallowances made by the Ld. Assessing Officer, which is confirmed by the Ld. Commissioner of Income Tax (Appeals).*

**ITA NO.7389/Mum/2018 for AY 2011-12:-**

4. The revenue has raised the following grounds of appeal AY 2011-12:

1. *"Whether on the facts and circumstance of the case and in law, the Ld. CIT(A) has erred in reducing the net profit on non genuine purchases from 8% determined by the AO to 5.49%, without the assessee having brought on record any additional evidence or submission before the Ld.CIT(A) while determining the .net profit?."*

2. *"Whether on the facts and circumstance of the case and in law, the Ld. CIT(A) erred in accepting the net profit of the assessee on non genuine purchases at 6% by relying on instruction of 2008 dated 22/06/2008 even though the facts of the case-do not fall within the provisions of these instructions in so far the assessment was made u/s 153A rws 143(3) pursuant to search and seizure operation.?"*

3. *"Whether on the facts and circumstance of the case and in law, the Ld. CIT(A) erred in giving relief to the assessee by determining the net profit at 5.49% on non genuine purchases by relying on instruction no 2 of 2008 dated 22/06/2008 which required/specifies 6% of net profit on total turnover under the Benign Assessment scheme, whereas the assessee declared only 0.51% net profit on total turnover?"*

4. *"Whether on the facts and circumstance of the case and in law, the Ld. CIT(A) erred in restricting the disallowance to 5.49% of bogus purchase whereas, the instruction no,2 of 2008 dated 22/02/2018 required a minimum estimation of net profit at 6% of total turnover?"*

*The appellant prays that the order of Commissioner of Income-tax (Appeal) on the above ground be set aside and that of the Assessing Officer be restored. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary*

5. The brief facts of the case are that the assessee company is engaged in the business of import, manufacturing and export diamonds. The company stated that it is 100% export oriented unit. The assessee purchased diamonds from local market and after processing, the same has been exported to various countries. A search and seizure action u/s 132 of the I.T.Act, 1961 was conducted in the case of the assessee on 05/05/2014. During the course of search, it was noticed that the assessee had taken accommodation entries of bogus purchases from various suspicious concerns ,like companies controlled by Rajendra Jain group, Sanjay

Chaudhari Group and Dharmi Chand Group. This fact has been further supported by the fact of search action conducted by the investigation wing, Mumbai in the cases of Rajendra Jain group, Sanjay Chaudhari Group and Dharmi Chand Group on 03/10/2013. Consequent to search, notice u/s 153A of the I.T.Act, 1961 was issued. In response to the notice, the assessee has not submitted any returns. Thereafter, notices u/s 142(1) was issued on 23/09/2016. The assessee has finally filed return on 08/10/2016, in response to notice issued u/s 153A. The case was selected for scrutiny and during the course of assessment proceedings, the Ld. AO on the basis of information gathered during the course of search and survey and also, taken note of various informations received from investigation wing, consequent to search operations carried out in the cases of entry providers, came to the conclusion that the assessee has obtained accommodation entries of bogus purchase bills from various parties and accordingly, made additions towards such bogus purchases @8% profit and made additions of Rs. 4,49,77,145/-.

6. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has submitted that the Ld. AO was erred in making additions towards purchase from certain parties, on the basis of statement recorded from them, during the course of search in their cases, ignoring, the fact that the assessee has justified purchase with necessary evidences. The assessee, further stated that all purchases are genuine and which are recorded in books of accounts. Further, the director of the assessee company had denied the content of the statement of Rajendra Jain. All transactions were done through proper banking channel. Therefore, merely for the reasons that some parties were not responded to u/s 133(6) notices and also, on

the basis of statement of third parties additions cannot be made towards purchase, when assessee has discharged its burden by filing necessary evidences.

7. The Ld.CIT(A) after considering relevant submissions of the assessee and also, taken support from the recommendation of the Task Force group for diamond industry set up by the Government of India, Ministry of Commerce and industry, which after considering the Benign Assessment Process (BAP) scheme recommended a net profit of 2% for trading activity and 3% for manufacturing activity and 2.5% across the board for diamond industry and also by relied upon certain judicial precedents, including the decision of ITAT, Mumbai bench in the case of Renisha Impex Pvt.Ltd. in ITA No. 4464/Mum/2016 and ITA No. 4453/Mum/2016, has scaled down additions made by the Id. AO towards profit on alleged non genuine purchases from certain parties to 6% profit on such non-genuine purchases. The Ld.CIT(A), further allowed gross profit declared by the assessee for the relevant years and made additions towards difference in gross profit on total alleged non bogus purchase. The relevant findings of the Ld.CIT(A) are as under:

*4.27. The data of the profits disclosed, the impugned purchased, and the disallowances made by the assessing officer is tabulated below:*

A.Y	TOTAL SALES	GROSS PROFIT		NET PROFIT		PURCHASES (RS.)	ALELGED BOGUS PURCHASE	DISALLOWANCE IN ASSESSMENT	NET PROFIT % AFTER DISALLOWANCE
		AMT.(RS.)	%	AMT.(RS)	%				
2011-12	3,11,38,50,054	12,18,25,187	3.91	1,58,44,033	0.51	2,77,90,46,535	56,22,14,315	4,49,77,145	1.95
2012-13	4,30,73,45,369	12,75,67,536	2.96	2,29,62,442	0.53	3,97,07,15,479	83,55,39,715	6,68,43,177	2.08
2013	5,00,29,95	16,72,39,	3.3	2,66,57,	0.5	4,44,73,63,25	28,17,28,6	2,25,38,290	0.98

3-14	,789	282	4	509	3	0	27		
2014-15	7,81,73,37,933	26,91,60,012	3.4	5,78,52,222	0.7	7,03,56,74,56	6,12,49,098	6,12,49,098	1.52

4.28 In the case of Naitik Gems the issue involved purchases from entities belonging to Rajendra Jain entities and the purchases were from

Sparsh Exports PVt Ltd. The assessing officer made a disallowance of 6% of such purchases. This was based on the Instruction no 2 of 2008 related to benign assessment in the cases of assesses in the diamond business. The Ld. CIT(A) reduced the disallowance to 3% of the purchases based on the recommendation of the Task Force group for diamond industry set up by the Government of India, Ministry of Commerce and Industry which after considering the Benign Assessment Procedure (BAP) scheme recommended a net profit of 2% for trading activity, 3% for manufacturing activity and 2.5% across the board for diamond industry. The appeal filed by the assessee in ITA No. 4760/Mum./2017 was dismissed vide order dated 2.11.2017- In the case of Renisha Impex P, Ltd. in ITA 4464/M/16 and ITA 4453/M/16 in the order, dated 12.9.2017, as against 100% disallowance made by the assessing officer, the Hon'ble ITAT upheld disallowance of 4% of impugned purchases. This was a case of purchases from Praveen Jain entity. In the case of Suresh L Satyani in ITA 3452/M/16 vide order dated 8.3.2017, the Hon'ble ITAT upheld the order of CIT(A) who had considered the disallowance @ 9% but considered granting credit for net profit offered- This was a case where purchases were from Bhanwarlal Jain entities.

4.29. In the case of the appellant, therefore the fair and reasonable margin is considered to be @ 6% of the impugned purchases. The appellant in the case before me has shown net profit at Rs. 1,58,44,033/- in its profit and loss account in the current AY 2011-12, which is 0.51 % of the turnover. Thus after considering the net profit disclosed, disallowance is computed @ 5.49% of the impugned purchases. **Accordingly, the addition to the total income is restricted to 5.49 % of the purchases of Rs. 56.22,14,315/- which works out to Rs., 3,08,65,565/-.** The appellant gets a relief of Rs, 1,41,11,580/-.

8. None appeared for the assessee. We have heard the Ld. DR and perused the material available on record and gone through orders of the authorities below. We find that the Ld. AO has made additions towards alleged non genuine bogus purchase from certain parties, on the basis of information gathered during the course of search and survey in the case of the assessee and its associates and also, on the basis of information received from investigation wing,

as per which certain parties were involved in providing accommodation entries of bogus purchase bills to various parties and the assessee being one of the beneficiary of accommodation entry of such bogus purchase bills issued by suspicious dealers/entry providers. The Ld. AO has extensively discussed the issue in light of *modus operandi* used by the entry providers, their statement recorded during the course of search and also inputs gathered during the course of search and survey conducted in the case of the assessee and came to the conclusion that although, the assessee has filed necessary basic evidence in support of purchases, but failed to file further evidences to prove the purchase to the satisfaction, more particularly in the backdrop of report of investigation wing and the statement of those parties, during the course of survey. It is the contention of the assessee before the lower authorities that purchases from those parties are genuine, which are supported by necessary evidences. All purchases were recorded in books of accounts. Payments against said purchase have been made through proper banking channels. The Ld. AO has neither pointed out any discrepancies in books of accounts, nor made out a case of sales outside books of accounts. In absence of any incorrectness in books of accounts, no addition could be made towards alleged non genuine purchases, only on the basis of information collected from third party source, when the assessee has justified purchases with necessary evidences.

9. Having considered relevant material on record, we find that the Ld.CIT(A) has categorically recorded facts with regard to *modus operandi* of entry providers, in light of their financial statements and came to the conclusion that all those companies are showing high turnover without there being any asset base, which clearly proves the fact that they are involved in providing accommodation entries

without there being any actual business activity. The Ld.CIT(A) has also recorded categorical finding that the findings of the Ld. AO that Shri Rajendra Jain and other entities are engaged in the business of providing accommodation entries is not merely based on their statements recorded u/s 132(4) of the Act, but it is further supported by incriminating material seized during the course of search, which clearly suggest the fact that they are involved in providing accommodation entries. Thus, the findings of the search operations are based not only on the confessional statements of the Rajendra jain group, but also on several other individuals, who are part and parcel of the entire operation of business of the Rajendra jain group. The Ld.CIT(A), further noted that independent searches have been conducted on few beneficiaries, based on the inputs of the search in the case of entry providers and such beneficiaries have admitted taking of accommodation entries from the group concerns of entry providers. In fact, a search action in the case of the assessee was conducted, which proved taking accommodation entries. The Ld.CIT(A), further noted that although, the director of the company denied the contents of statements given by the entry provider and their employees, but, on perusal of evidence collected during the course of search in the form of e-mail , it is seen that the employees of assessee company Ravi Jangle, Vilas Palasmakar etc have been allotted e-mail by the assessee on the web portal of the said group, also the password of these e-mails starts with the decent only. On perusal of these e-mail, it is seen that the email have been sent to Anoop Jain of Anadi Impex, a company controlled by Rajedndra Jain for requisition of accommodation purchase bills, as per the specification mentioned in the e-mail for cut and polished diamonds. Hence, these emails exchanged between concerns of Rajendra Jain and employees of assessee independently proves that the assessee is indulged in accepting accommodation bills in the form of bogus

purchase from entry providers. Therefore, the Ld.CIT(A) came to the conclusion that there is no error in the findings recorded by the Ld. AO to arrive at conclusion that purchases claims to have been made from certain parties are non genuine, which are not supported by necessary evidences. The Ld.CIT(A), further taking note of the fact of diamond industry and its margins and also, taken support from the recommendation of the task force group for diamond industry set up by the Government of India, Ministry of Commerce and Industry, which after considering the BAP scheme recommended a net profit of ranging to 2% to 3% depending upon the nature of the business has scaled down additions made by the Ld. AO towards alleged non genuine purchases to 6% profit on such alleged non genuine purchases. Further, he has allowed relief to the assessee, in respect of gross profit already declared in the books of accounts of the assessee for the relevant assessment year and accordingly, directed the Ld. AO to adopt net profit of 6% on non genuine purchases and further allow deductions towards gross profit already declared by the assessee for the relevant assessment years. Facts remains unchanged, the assessee neither appeared before us, nor filed any details to prove that findings of fact recorded by the Ld.CIT(A) is incorrect. We further noted that the findings recorded by the Ld.CIT(A) is based on the recommendation of the Task force constituted by the Ministry of Commerce and Industry, Government of India and also, the decision of co-ordinate bench of ITAT, in the case of Renisha Impex Pvt.Ltd. in ITA No. 4464/Mum/2016 and ITA No. 4453/Mum/2016. Therefore, we are of the considered view that the Ld.CIT(A) was right in estimating 6% gross profit on alleged non genuine purchases and further allowed deductions towards gross profit already declared by the assessee for the relevant period . Hence, we are inclined to uphold the findings of the Ld.CIT(A) and

dismissed appeal filed by the assessee, as well as the revenue for AY 2011-12.

**ITA Nos. 7081 to 7083/Mum/2018 and ITA.Nos.7390 to 7392/Mum/2018 for AY 2012-13 to 2014-15:-**

10. The facts and issues involved in these appeals filed by the assessee, as well as the revenue are identical to the facts and issues, which we had considered in ITA No. 7080/Mum/2018 and ITA No.7389/Mum/2018 for AY 2011-12. The reasons given by us in proceedings paragraph in ITA No. 7080 & 7389/Mum/2018 shall mutatis mutandis apply to these appeals, as well. Therefore, for detailed reasons recorded in preceding paragraph in ITA No. 7080/Mum/2018 and ITA No.7389/Mum/2018 ,we dismiss appeal filed by the assessee, as well as appeals filed by the revenue for AY 2012-13 to 2014-15.

11. In the result, appeals filed by the assessee, as well as appeals filed by the revenue for AY 2011-12 to 2014-15 are dismissed.

Order pronounced in the open court on this 29/01/2020

**Sd/-**  
**(SAKTIJIT DEY)**  
JUDICIAL MEMBER

**Sd/-**  
**(G. MANJUNATHA)**  
ACCOUNTANT MEMBER

Mumbai; Dated: 29/ 01/2020  
Thirumalesh 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.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**