

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

**BEFORE SHRI C.N. PRASAD, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.1102/Mum/2018
(Assessment Year : 2008-09)**

M/s. Siddhant Diamonds Pvt. Ltd., FE9011/FC9031 Block, Bharat Diamond Bourse Bandra Mumbai – 400 051	Vs.	Dy. CIT-5(3)(1), Room No.583, 5 th Floor Aayakar Bhavan Mumbai – 400 020
PAN/GIR No.AAECs8548Q		
(Appellant)	..	(Respondent)

Assessee by	Ms. Mrugakshi K. Joshi
Revenue by	Shri V. Sreekar
Date of Hearing	03/02/2020
Date of Pronouncement	19/02/2020

आदेश / O R D E R

PER M. BALAGANESH (A.M.):

This appeal in ITA No.1102/Mum/2018 for A.Y.2008-09 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-10, Mumbai in appeal Nos.CIT(A)-10/DC-5(3)(1)/64/16-17 & CIT(A)-10/DC-5(3)(1)/65/16-17 dated 21/11/2017 (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 04/03/2016 by the Id. Dy. Commissioner of Income Tax – Circle 5(3)(1), Mumbai(hereinafter referred to as Id. AO).

2. The ground No.1 raised by the assessee is challenging the validity of reopening u/s.147 of the Act. It was stated to be not pressed by the Id. AR at the time of hearing. The same is taken as a statement made from the Bar and accordingly, the ground No.1 raised on the validity of reopening of assessment is dismissed as not pressed.

3. The ground No.2 is with regard to challenging the action of the Id. CIT(A) in confirming the addition of profit element on alleged bogus purchases @8% made from M/s A2 Jewels.

3.1. We have heard rival submissions and perused the materials available on record. It is not in dispute that assessee is engaged in the business of import / export of diamonds, manufacturer and exporter of diamond studded jewellery and precious and semi-precious stones. During the year under consideration, the assessee has made total purchases of Rs.7,37,11,824/- and out of which, the Id. AO had considered purchase of Rs.44,75,494/- made by the assessee from M/s. A2 Jewels as bogus based on the information received from Maharashtra Sales Tax Department and DGIT Investigation Wing of Income Tax Department that the said party was engaged in the business of providing accommodation bills and that no actual delivery of goods had happened from his side. It is not in dispute that the said goods purchased by the assessee had been duly consumed / sold in the course of its business. The Id. AO concluded that the goods had been purchased by the assessee in the grey market in order to have saving towards VAT and other incidental levies etc and accordingly proceeded to tax only the profit element embedded on such purchases. We find that the Id. AO had adopted a profit percentage at 12.5% of Rs.44,75,494/- and arrived at the disallowance of Rs.5,59,437/- and completed the assessment. This

profit percentage was reduced by the Id. CIT(A) to 8% after endorsing all the other observations made by the Id. AO.

3.2. At the time of hearing before us, the Id DR was not able to point out whether any appeal was preferred by the revenue before us against the order of the Id CIT(A). We find that this Tribunal in the case of Dev Diamonds vs. ACIT in ITA No.1439 – 1442/Mum/2016 dated 08/08/2019 had held that the adoption of profit percentage @3% on non-genuine purchases would be just and fair after taking into account, the representation of the task group constituted by the Department of Commerce wherein the margin in diamond industry in manufacturing sector and trading sector was duly mentioned. The relevant operative portion of the said judgment is as under:-

“12. It is the finding of the Ld. CIT(A) that what advantage the assessee could have got on purchasing the diamonds in gray market was only 1% being the VAT, as the assessee made purchases in the grey market without paying VAT, but obtained only the accommodation entries. Further as per the report of the task group constituted by the Department of Commerce the margin in trading in the diamond industry was only 1 to 3%. Therefore, taking the average of the industry average i.e. 2% and the advantage which the assessee got from purchases from the gray market i.e. 1% towards VAT, in our view at best the disallowance can be made only at 3%. Therefore, taking the totality of the facts and circumstances into consideration, we are of the view that the profit element margin embedded in these purchase transactions should be taken @3% for all these Assessment years. Accordingly, we direct the Assessing Officer to estimate the profit element @3% of the purchases treated as non-genuine and re-compute the income of the assessee for all these Assessment years.

13. In the result, appeals of the assessee are partly allowed.”

3.3. Respectfully following the said decision, we direct the Id. AO to determine the profit percentage at 3% on the non-genuine purchases.

Accordingly, the ground raised by the assessee on merits are partly allowed.

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

Order pronounced in the open court on this 19/02/2020

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Mumbai; Dated 19/02/2020
KARUNA, *sr.ps*

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

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