



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

**BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER &
SHRI PAWAN SINGH, JUDICIAL MEMBER**

ITA NO.7199/MUM/2018	:	A.Y : 2012-13
Shri Kirtikumar D. Shah 39, 4th Floor, Nanik Niwas D.D. Sathe Marg Banam Hall, Girgaon Mumbai – 400 004	vs.	ACIT-19(2), 2nd Floor Matru Mandir Tardeo Road Mumbai – 400 007
PAN NO: ALNPS6533Q		

ITA No.7183/Mum/2018 & ITA No.7184/Mum/2018	:	A.Y.2013-14 & A.Y.2014-15
Shri Sandeep Kirti Kumar Shah 363-F, Siddhesh Jyoti Balram Street Grant Road Mumbai – 400 004	vs.	Income Tax Officer-19(3)(2) 2nd Floor, Matru Mandir Tardeo Road Mumbai – 400 007
PAN NO: BHQPS4132R		

**Assessee by : Shri Himanshu Gandhi
Revenue by : Shri Satishchandra Rajore**

**Date of Hearing : 25/02/2020
Date of Pronouncement : 26/02/2020**

ORDER

PER R.C. SHARMA, ACCOUNTANT MEMBER

These are the appeals filed by the assessee against the order of CIT(A)-30/19(2)/13292/2016-17 & CIT(A)-30/19(2)/13289/2016-17, CIT(A)-30/19(2)/13280/2016-17 & CIT(A)-30/19(2)/14906/2016-17 dated 10/10/2018 for A.Y.2012-13, 2013-14 & 2014-15, in the matter of order passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961.

2. Common grievance of assessee in all the years are same with regard to the addition upheld on account of bogus purchases.

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3. In the case of Kirtikumar D Doshi, Id. AR placed on record the order of the Tribunal in assessee's own case for the A.Y.2011-12 and 2013-14 wherein under similar facts and circumstances, matter was restored back to the file of the AO for following the jurisdictional High Court and restricted addition to the extent of difference between the GP declared in respect of bogus purchases vis-à-vis normal purchases.

4. We have gone through the orders of the authorities below and found from record that assessee is engaged in trading and manufacturing of diamonds. The AO got information regarding assessee taking accommodation bill with regard to the purchases, accordingly AO reopened the assessment and added 5% of alleged bogus purchases in assessee's income. By the impugned order, CIT(A) restricted the addition to the extent of 3% against which assessee is in further appeal before us.

5. Mr. Himanshu Gandhi, Id. AR appeared on behalf of the assessee contended that exactly similar issue was considered by the Tribunal in assessee's own case by the order dated 16/12/2019. We had carefully gone through the order of the Tribunal for the A.Y.2011-12 and 2013-14 dated 16/12/2019 in assessee's own case wherein the Tribunal held as under:-

“2. Grievance of the assessee in both the years relate to reopening of assessment and estimation of gross profit on the alleged bogus purchases.

3. *Rival contentions have been heard and record perused. Facts in brief are that the assessee is engaged in business of manufacturing, import, export and trading of cut and polished and rough diamonds. The A.O. got information from the Investigation Wing of the Department regarding assessee having obtaining accommodation bill with regard to purchases of diamonds. Accordingly, the case was reopened for the A.Y. 2011-12 and thereafter the addition was made by the A.O. by estimating profit @ 3% on polished diamonds and 5% on rough diamonds. By the impugned order, the ld. CIT(A) confirmed the addition by estimating profit at 3% in polished and rough diamonds both, against which the assessee is in further appeal before the ITAT.*

4. *The ld AR of the assessee Shri Himanshu Gandhi has argued that the A.O. was not justified in making addition in respect of genuine purchases for which complete quantitative details were filed before the A.O. As per the ld. AR, the assessee has filed stock register reflecting goods received and processing and manufacturing thereof and corresponding sale with individual invoice before the A.O. Furthermore, one to one mapping of goods purchases, processed and subsequent sales with quantity was also filed before the A.O. which proves that the assessee has purchased goods and subsequently sold the same goods. Alleging the reopening, he further contended that in the A.Y. 2011-12, the A.O. has not recorded any reason to believe that there is escapement of any income, accordingly, the reopening was not justified.*

5. *With regard to merit of the addition, the ld AR has relied on the decision of Hon'ble Jurisdictional High Court in the case of Pr.CIT Vs. Mohommad Haji Adam & Co. in ITA No. 1004 of 2016 order dated 11/02/2019. He has further submitted that the Hon'ble Jurisdictional High Court decision has been consistently followed by the various Benches of the Tribunal. Respective orders were placed on record. It was contended that when corresponding sale are accepted, the addition on account of bogus purchases should be confined to the difference between the GP declared in respect of bogus purchases as compared to the GP in normal purchases.*

6. *On the other hand, the ld DR has relied on the order of the A.O. and contended that during the course of search at Bhanwar Lal group, it was found that the assessee has taken accommodation bills of purchases without taking delivery.*

7. *We have considered the rival contentions and carefully gone through the orders of the authorities below and found from the record that the assessee is engaged in manufacturing, export and trading of diamonds. We also found that before the A.O., the assessee has filed quantitative details of purchases, stock register reflecting goods received and processing and manufacturing thereof and corresponding sales with individual invoice*

with respect to alleged bogus purchases. The A.O. made addition by estimating GP on such alleged bogus purchases. By the impugned order, the ld. CIT(A) has given partial relief and the assessee is in further appeal before us. After going through the facts of the case, we observe that with respect to issue regarding addition in respect of bogus purchases, the Hon'ble Jurisdictional High Court in the case of Pr.CIT Vs M/s Mohommad Haji Adam & Co. (supra) have held as under:

"8. In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assesses additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the a s s e s s e e ' s s a l e s . T h e r e w a s n o d i s c r e p a n c y b e t w e e n t h e purchases shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of N.K. Industries Ltd.. (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under-

So far as the question regarding addition of Rs.3,70,78,125/- as gross profit on sales of Rs.37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6% gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66%. Therefore, considering 5.66% of Rs.3,70,78,125/-which comes to Rs.20,98,621.88 we think it fit to direct the revenue to add Rs.20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said question is answered partially in favour of the assessee and partially in favour of the revenue."

8. The Coordinate Bench of the ITAT, Mumbai in the case of Shri Rameshkumar Daulatraj Vs ITO in ITA No. 4192/Mum/2018 order dated

07/05/2019 after following the above decision of Hon'ble Bombay High Court held as under:

"9. When these facts were confronted to the learned Sr. DR, he requested for application of reasonable profit rate and according to him the profit rate applied by the AO and confirmed by CIT(A) is quite reasonable in view of the decision of Hon'ble Gujarat High court in the case of Smith P.Seth (supra). We have considered the rival contentions and are of the view that Hon'ble Bombay High Court in the case of Mohammad Haji Adam & Co. and Ors. (supra) has considered this issue and respectfully following the same, we direct the AO to restrict the profit rate only to the extent of differential percentage as declared on the bogus purchases and as declared on the regular purchases, Hence, we direct the AO accordingly."

9. It is clear from the above decisions that in case of bogus purchases where sales are accepted and assessee has filed quantitative details of purchases and also stock register reflecting goods received, the addition is required to be made only to the extent of difference between the GP declared by the assessee on normal purchases vis a vis bogus purchases. Respectfully following the order of the Hon'ble Jurisdictional High Court and the Coordinate Bench of the ITAT, Mumbai, we restore the matter back to the file of the A.O. to restrict the addition to the extent of lower GP declared by the assessee in respect of bogus purchases as compared to GP on normal purchases. The assessee is also directed to give full details to the A.O. with regard to GP earned on normal purchases and also GP earned on alleged bogus purchases. We direct accordingly.

10. In the result, both the appeals of the assessee are allowed in part for statistical purposes only."

6. As the facts and circumstances during the year under consideration are perimatria, respectfully following the order of the Tribunal in assessee's own case, we restore the matter back to the file of the AO for deciding afresh in terms of the direction given by the Tribunal in its order dated 16/12/2019.

7. In the result, appeal is allowed for statistical purposes.

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8. Both the assessee's are involved in trading and manufacturing of rough and polished diamonds. During the course of assessment, AO added 3% in case of purchases from Rahul Exports, Amit Diamonds. However, in respect of Dutch Diamond and Mile Stone, addition was made to the tune of 5% of the value of the purchases. By the impugned order CIT(A) restricted addition to the extent of 3% against which assessee is in further appeal before us.

9. We have considered rival contentions and carefully gone through the orders of the authorities below. Facts in both the cases are similar wherein assessee is involved in trading and manufacturing of rough and polished diamonds. AO made addition in respect of bogus purchases ranging from 3-5% of the alleged purchases. By the impugned order, CIT(A) restricted the addition of 3%. The facts of the case are similar to the facts as decided by us in case of Kirtikumar D Shah in ITA No.7199/Mum/2018. Following the reasoning given hereinabove, we restore both the appeals to the file of AO for deciding afresh in terms of the directions given by us in case of Kirtikumar D Shah. We direct accordingly.

10. In the result, both the appeals are allowed for statistical purposes.

Order pronounced in the open court on this 26/02/2020

**Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER**

**Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER**

Mumbai; Dated 26/02/2020

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.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar
ITAT, Mumbai)