

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

**BEFORE SHRI SAKTIJIT DEY, AM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 6259/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2014-15)

ACIT – 19(2), 2 nd floor, Matru Mandir, Tardeo Road, Mumbai-400 007	बनाम/ Vs.	Popatlal Nathalal Shah, GW 7022 floor, G Tower, Bharat Diamond Bourse, BKC, Bandra (E), Mumbai-400 051
स्थायीलेखासं./जीआइआरसं./PAN No. AAAFP0468K		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Kumar Padmapani Bohra, DR
प्रत्यर्थीकीओरसे/ Respondent by	:	Ms. Aarti Vissanji, AR

सुनवाईकीतारीख/ Date of Hearing	:	18.12.2019
घोषणाकीतारीख / Date of Pronouncement	:	29.01.2020

आदेश / ORDER

PER S. RIFAUR RAHMAN (ACCOUNTANT MEMBER):

The present appeal has been filed by the revenue against the order of Ld. Commissioner of Income Tax (Appeals)-30, Mumbai, in short 'Ld. CIT(A)' dated 16.08.18 for AY 2014-15.

2. The brief facts of the case are that assessee is engaged in trading of rough and polished diamonds. The return of income for the year under appeal was filed on 29.11.2014 declaring total income of Rs. 6,74,62,087/-. The case was selected for scrutiny and notice issued u/s 143(2) of the I. T. Act on 28.0.2015. The reasons for the assessment is based on the information that Search & Seizure operations were conducted on 03.10.2013 by the Investigation wing, Mumbai, in the group cases of one Shri Bhanwarlal Jain and during the course of the operations, it was found that several name lending dummy directors, partners/proprietors of various concerns belongs to the native place of Shri Bhanwarlal Jain & family through which accommodation entries are provided for bogus sales and bogus unsecured loans. It is also noticed that the concerns were literally controlled, operated and managed by Shri Bhanwarlal Jain and his family. The persons in charge of the concerns admitted this, in their sworn statements recorded during the course of search operation and they have also admitted that they were made to the position by Bhanwarlal Jain. Post search investigation reveals that the assessee has taken accommodation entries of purchases from

Mohit, Mayur Exports and Prime Star amounting to Rs. 9,23,99,829/-. Assessment u/s 143(3) of the IT. Act, 1961 was completed by the Ld. AO on 29.12.2017 determining the total income at Rs. 15,98,61,920/- by estimating profit margin @ 100% on such purchases.

3. Aggrieved by the above order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the case of both the parties, partly allowed the appeal filed by the assessee.

4. Now before us, the revenue has preferred the appeal by raising the grounds of appeal as under:-

1) "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in restricting the addition on account of bogus purchases @ 3% on total purchases of Rs. 9,23,99,829/- as the profit element embedded in these purchases, overlooking that the alleged suppliers were admittedly engaged only in giving accommodation entries to several parties including the assessee?"

2) *"Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in presuming that purchase have been made from unknown parties whereas bills have been received from accommodation entry provider.?"*

3) *"Whether on the facts and in the circumstances of the case and in law, if the Ld CIT(A) has made a presumption that purchases have been made from unknown parties, the Ld. CIT(A) has not clarified how the payment was made and whether section 69 of the IT Act, 1961 will be applicable.?"*

4) *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT erred in not considering the order of Hon'ble Supreme Court in the case of N K Protein Ltd. dated 16.01.2017, which is on the similar issue of bogus purchases and when the apex court order was already the law of the land when the Ld. CIT(A) has pronounced its order on 16.08.2018.?"*

5) *The appellant prays that the order of the Ld.CIT(A) on the above grounds be set aside and that of the AO be restored.*

6) *The appellant craves leave to amend or alter or add a new ground which may be necessary.*

5. At the outset, Ld. AR appearing on behalf of the assessee submitted that the grounds raised by the revenue are squarely covered by the order of Coordinate Bench of Hon'ble ITAT in cross appeal filed by the assessee in ITA No. 6029/Mum/2018 for the same AY 2014-15 in assessee's own case, wherein the Hon'ble ITAT has dismissed the appeal on the grounds of merit.

6. On the other hand, Ld. DR supported the orders passed by AO and submitted that Ld. CIT(A) erred in restricting the addition on account of bogus purchases @ 3% on total purchases of Rs. 9,23,99,829/- as the profit element embedded in these purchases, overlooking that the alleged suppliers were admittedly engaged only in giving accommodation entries to several parties including the assessee.

7. We have heard counsels for both the parties and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that the identical ground raised in the present appeal has already been decided by the Coordinate Bench of ITAT in cross appeal filed by the assessee

in ITA No. 6029/Mum/2018 for the same AY 2014-15 in assessee's own case, wherein the Hon'ble ITAT has dismissed the appeal on the grounds of merit. For the sake of clarity, which is reproduced below:-

6. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that the Tribunal in assessee's own case in the preceding year i.e. AY 2012-13 in ITA No. 5939/Mum/2016 order dated 08.11.2017 has already confirmed the profit rate at the rate of 3% by observing in Para 7 as under: -

"7. We have heard the ld. Departmental representative (for short 'D.R'), perused the orders of the lower authorities and the material available on record. We have given a thoughtful consideration to the facts of the case and are of the considered view that the CIT(A) had by way of a very well-reasoned order restricted the addition in the hands of the assessee to the extent of 3% of the aggregate value of the purchases which were claimed by the assessee to have been made from the aforementioned dummy concerns, viz. (i) Mohit Enterprise; (ii) Mayur Exports; and (iii) Prime Star. We find that it remains as a matter of

fact borne from record that the assessee had failed to substantiate the genuineness and veracity of the purchases which were claimed to have been made from the aforementioned bogus suppliers. We further find that the A.O while concluding that the assessee had not made any genuine purchases from the aforementioned parties, had arrived at such a conclusion after taking cognizance of certain material facts, viz. (i) the persons in charge of the aforesaid bogus concerns had in their statements recorded on oath by the investigation wing during the course of the Search and survey action, had admitted that they were only dummies and the concerns were as a matter of fact managed and controlled by Shri. Bhanwarlal Jain and his family members;(ii) the said concerns were only providing accommodation bills and not carrying on any genuine business transactions; and (ii) assessee had failed to substantiate the genuineness and veracity of the purchases claimed to have been made from the aforesaid parties on the basis of irrefutable documentary evidences. We have given a thoughtful consideration to the facts before us and are of the considered view that the A.O had rightly concluded that the purchases claimed by the assessee to have been made from the aforesaid

dummy concerns could safely be characterized as bogus. We are of the considered view that the CIT(A) had rightly appreciated that now when the assessee had absolutely failed to lead any primary evidence to substantiate the genuineness and veracity of the purchases transactions under consideration, therefore, there remained no occasion for the A.O to have held the purchase transactions under consideration as genuine. We are further persuaded to be in agreement with the CIT(A) that now when the sales of the assessee had not been doubted and dislodged by the A.O, therefore, it could safely be gathered that the assessee had purchased the goods under consideration, though not from the aforementioned dummy concerns from whom bogus bills have been taken, but from certain unidentified parties operating in the open/grey market. We are further of the view that the CIT(A) had rightly appreciated that the addition in the hands of the assessee was liable to be restricted only to the extent of the profit element which was embedded in making of purchases from the open/grey market. We find that the CIT(A) though was not oblivious of the fact that in respect of bogus purchases made in a normal business, the courts had consistently estimated the profit

margin involved in making of purchases from the open/grey market @12.5% of the value of the bogus purchases, but then, not loosing sight of the fact that unlike those cases, in the trade line of diamond business the profit margin did not exceed 3%, had thus in all fairness restricted the addition in the hands of the assessee to 3% of the aggregate value of the bogus purchases which were claimed to have been made from the aforesaid parties. We have given a thoughtful consideration to the facts of the case and are persuaded to be in agreement with the view taken by the CIT(A). We thus being of the considered view that the CIT(A) had fairly concluded that the addition in respect of the purchases which were claimed by the assessee to have been made from the aforementioned bogus concerns, viz.(i) Mohit Enterprise; (ii) Mayur Exports; and (iii) Prime Star, were liable to be restricted to 3% of the aggregate value of the purchases, therefore, find no reason to dislodge his well-reasoned order. We thus, in the backdrop of our aforesaid observations, finding ourselves as being in agreement with the view taken by the CIT(A), dismiss the appeal of the assessee.”

7. *Respectfully following the Tribunals' decision in assessee's own case, we dismiss the appeal of the assessee.*

8. Therefore, respectfully following the decision of Coordinate Bench of ITAT, which is applicable *mutatis mutandis* in the present case, we **dismiss** the grounds raised by the revenue.

9. In the net result, the appeal filed by the revenue stands **dismissed**.

Order pronounced in the open court on 29th Jan 2020.

Sd/- (Saktijit Dey) न्यायिकसदस्य / Judicial Member मुंबई Mumbai; दिनांक Dated : Sr.PS. Dhananjay	Sd/- (S. Rifaur Rahman) लेखासदस्य / Accountant Member 29.01.2020
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
 2. प्रत्यर्थी/ The Respondent
 3. आयकरआयुक्त(अपील) / The CIT(A)
 4. आयकरआयुक्त/ CIT- concerned
 5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
 6. गार्डफाईल / Guard File
- आदेशानुसार/ BY ORDER,**

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai