



ITA No.7301/Mum/2019
Manubhai Gems Private Limited
Assessment Year :2010-11

आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

माननीय श्री अमरजीत सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI AMARJIT SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.7301/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2010-11)

Manubhai Gems Private Ltd. Shop No.5/6/7 Megh Opp. HSBC, Factory Lane Corner Borivali West, Mumbai-400 092.	बनाम/ Vs.	DCIT-Central Circle-2(3) Room No. 803, 8 th Floor Old CGO Building Annexe M.K. Marg, Mumbai-400 020.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AAACW-7711-P		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Vijay Mehta- Ld. AR
Revenue by	:	Shree V.Sreekar-Ld.DR

सुनवाई की तारीख/ Date of Hearing	:	11/02/2020
घोषणा की तारीख / Date of Pronouncement	:	16/03/2020

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2010-11 contest the order of Ld. Commissioner of Income-Tax (Appeals)-48, Mumbai, [in short referred to as ‘CIT(A)’], *Appeal No. CIT(A)-48/IT-196/DCCC--2(3)/2015-16* dated 31/10/2019 on following grounds of appeal:-



1. The learned Commissioner of Income Tax (Appeals) erred in confirming addition of Rs.13,02,88,386/- on alleged ground of bogus purchases u/s 69C.
2. The learned Commissioner of Income Tax (Appeals) erred in holding that cash has been paid on the date on which bogus purchase bill has been entered in the books of accounts and the same is not supported by facts of the case as well as facts on record.
3. The learned Commissioner of Income Tax (Appeals) erred in holding that addition on account of peak credit is also upheld.
4. The learned Commissioner of Income Tax (Appeals) failed to appreciate that the alleged transactions with three parties were mere book entries and were not supported by movement of goods nor of funds and therefore the same cannot be treated as income.
5. The appellant prays that:
 - i) Addition of Rs. 13,02,88,386/- may be deleted;
 - ii) Proceedings for recovery of disputed demand may be stayed till hearing and final disposal of the appeal;
 - iii) The appeal may be fixed for out of turn hearing;
 - iv) Any other relief your Honours may deem fit.

1.2 The Ld. Authorized Representative for Assessee (AR), vide letter dated 07/02/2020, filed additional ground of appeal which read as under:-

The learned CIT(A) ought to have held that the addition made by the Assessing Officer in respect of peak credit is beyond the scope of reassessment and hence, unsustainable.

The Ld. AR pleaded for admission of the same by submitting that the adjudication of the said ground does not require appreciation of new facts and raises pure question of law. For the said submissions, reliance has been placed on the decision of Hon'ble Supreme Court in **National Thermal Power Corporation Vs. CIT [229 ITR 383]**; **Jute Corporation of India Ltd. Vs. CIT [187 ITR 688]** and the decision of Hon'ble Bombay High Court in **Ahmedabad Electricity Co. Ltd. vs. CIT [199 ITR 351]**. Going by the ratio of aforesaid decisions, the additional ground was admitted.



1.3 We have carefully heard the arguments advanced by both the representatives vis-à-vis grounds of appeal. We have also perused relevant material on record including documents placed in the paper-book. The judicial pronouncements as cited before us has been deliberated upon. Our adjudication to the issues raised in the appeal would be as given in succeeding paragraphs. From the perusal of Auditor's report, it transpires that the assessee was formerly known as Westend Diamonds Private Ltd.

2.1 Briefly stated, the assessee being resident corporate assessee stated to be engaged in trading of gold Jewellery was assessed for year under consideration u/s. 143(3) r.w.s. 147 on 29/03/2015 wherein the income of the assessee was determined at Rs.1429.07 Lac after sole addition of alleged bogus purchases for Rs.1302.88 Lacs as against returned income of Rs.126.18 Lacs e-filed by the assessee on 01/10/2010 which was processed u/s.143(1).

2.2 Upon receipt of certain information from Sales Tax Department that the assessee made bogus purchases to inflate the expenses, the assessee was subjected to survey action u/s 133A on 13/12/2012. Accordingly, the case for year under consideration was reopened vide notice u/s 148 dated 23/12/2013. In response, the assessee offered the original return as filed on 01/10/2010. The reasons of reopening were duly communicated to the assessee, in due course.

2.3 The Survey was conducted at 3 premises viz. Shop Nos. 5 to 7 situated at Borivali (West), premises situated at A-101-102 at Borivali (West) and Plot No.42 situated at Ghatkopar. During the course of survey certain books of accounts, documents, loose papers and



computer back up etc. was impounded from the premises. The survey report was handed over on 20/03/2013. In the survey report, it was stated that the while making purchases from following parties, the standard operating procedure was not followed by assessee as followed for regular purchases: -

No.	Name of the Parties	Amount of Purchases (Rs.)	AY
1.	Saileela Trading Pvt. Ltd.	1271.20 Lacs	2010-11
2.	Niddish Impex Pvt. Ltd	157.45 Lacs	2010-11
3.	Tulsiani Trading Pvt. Ltd.	117.95 Lacs	2010-11
4.	Prateek Enterprises	1.02 Lacs	2010-11
5.	H.S.Trading Co.	0.29 Lacs	2010-11
6.	Shri Vallabh Traders	0.93 Lacs	2011-12
	Total	1548.84 Lacs	

These 6 concerns were stated to be figuring in the list of entities which were proclaimed by the Sales Tax Department as providers of accommodation bill and their names featured in the list of hawala / suspicious dealers as enlisted by the Maharashtra Sales tax Department.

2.4 During survey proceedings, the statement of one of the directors of the assessee company, *Shri Samir Ashwin Sagar*, was recorded. The relevant portions of the statements have already been extracted on page nos. 4 to 6 of the quantum assessment order. The said director admitted that bullion was purchased from entities listed at serial nos. 1 to 3 whereas packing material was purchased from the other 3 entities. In response to question nos. 46 & 51, it was admitted that the bills were received from parties listed at serial nos. 1 to 3 whereas some purchase of bullion was made in the open market. In response to question no.51, the assessee admitted that the purchases were made out of



unaccounted income. The statement recorded on oath before Sales Tax authorities by the 3 entities was also shown to the director. In response to question no.53, it was admitted that packing material was purchased from the open market whereas bills were obtained from parties listed at serial nos. 4 to 6. It was also stated that packing material was utilized in the course of business. In response to question no. 54, it was stated that purchases made from *M/s Saileela Trading Private Limited* were for Rs.1271.20 Lacs. However, the whole of the amount was not undisclosed income of the assessee since the assessee made cheque payments of Rs.340 Lacs to the said entity out of which cash was generated which was used to make purchases in the open market. Therefore, the same was required to be deducted from the said amount of Rs.1271.20 Lacs. Finally, the assessee admitted and declared Rs.1207.93 Lacs as its income for AY 2010-11 and another Rs.0.93 Lacs for AY 2011-12.

2.5 However, the said statement was subsequently retracted by another director i.e. Shri Aswin Sagar who submitted an affidavit dated 18/12/2012 on 08/04/2013 retracting the statement given during survey proceedings. After retraction, the assessee stated that purchases to the extent of Rs.1163.89 Lacs was reversed by issuing the sales bills to entities listed at serial nos. 1 to 3 in subsequent year. The material stated to be purchased from these entities was reflected in the closing stock as on 31/03/2010. Therefore, there would be no impact of these purchases on the profit for the year under consideration. Further, the purchases to the extent of Rs.1163.89 Lacs was never made either from these parties or from any other brokers and the purchase bills were mere



book entries. However, the said retraction was termed as mere after-thought by Ld. AO.

2.6 Subsequently, the assessee was asked to substantiate the purchase transactions by filing requisite documentary evidences. It was alleged by revenue that all the entities gave their statement before Sales Tax Department that they had provided accommodation entries to the assessee and have accepted that they have not sold any goods to the assessee but only supplied bills. In the above background, Ld. AO show-caused the assessee to make disallowance of these purchases.

2.7 In response, the assessee submitted documentary evidences such as stock register, purchase bills, sales bill, ledger extracts etc. However, the assessee failed to produce any of the parties for verification of the transactions.

2.8 Vide submissions dated 26/03/2015, the assessee *inter-alia*, submitted that due to tension and anxiety, it remained to be brought to the notice that purchases to the extent of Rs.1163.89 Lacs were reversed in books of accounts in subsequent financial year by issuing sales bills to same 3 entities. The details of the purported sale have already been extracted on page nos. 7 & 8 of the quantum assessment order. Therefore, it was submitted that net purchases made from the said parties would be as follows: -

No.	Name of the Parties	Total Purchases (Rs.)	Less Transactions Reversed	Net Purchases made from the said parties
1.	Saileela Trading Pvt. Ltd.	12,71,20,169/-	8,88,48,169/-	3,82,72,000/-
2.	Niddish Impex Pvt. Ltd	1,57,45,395/-	1,57,45,395/-	Nil
3.	Tulsiani Trading Pvt. Ltd.	1,17,95,790/-	1,17,95,790/-	Nil
4.	Prateek Enterprises	1,02,402/-	Nil	1,02,402/-
5.	H.S.Trading Co.	29,250/-	Nil	29,250/-



6.	Shri Vallabh Traders	93,499/-	Nil	93,499/-
	Total	15,48,86,505/-	11,63,89,354/-	3,84,97,151/-

In the above background, it was submitted that the assessee made purchases from open market only to the extent of Rs.384.97 Lacs (AY 2010-11 Rs.384.04 Lacs & AY 2011-12 Rs.0.93 Lacs).

2.9 Regarding estimation on peak credit basis as proposed by Ld. AO, the assessee submitted that peak was to be computed on the basis of payment of Rs.382.72 Lacs made by the assessee to these entities and not on the basis of suspicious purchases of Rs.1548.86 Lacs because no payment was made for bills of Rs.1163.89 Lacs and the same were circular transactions only.

2.10 Relying upon the decision of Hon'ble Supreme Court in **CIT V/s S.Khader Khan & Sons (35 Taxmann.com 413)**, a plea was also raised that statements made during the course of survey u/s 133A would not have evidentiary value and additions could not be sustained solely on the basis of statements without there being any corroborative material on record to prove the existence of undisclosed income. The attention was also drawn to CBDT circular dated 10/03/2002 with regard to principles to be followed while extracting confessional income during the course of search and survey operations.

2.11 After due consideration of factual matrix, Ld. AO rejected assessee's submissions. It was noted by Ld. AO at para 6.6 that the assessee had made circular transactions to the extent of Rs.1163.89 Lacs since the purchases were shown to be made in AY 2010-11 which was subsequently reversed in next AY 2011-12. The stated purchases



were also included in closing stock as on 31/03/2010. Finally, it was concluded that the assessee has not been able to prove the factum of purchases from above parties and the assessee failed to discharge the primary onus to establish the genuineness of purchases and sales. Therefore, it was concluded as under:-

6.9 Thus the only possibility is that the material has not been received from these parties, rather the material, shown to be purchased from the sales tax hawala parties were actually purchased in cash, to regularized the said cash purchase in its books of account the assessee has taken accommodation entries from these bogus parties. What is likely that assessee is rotating its funds in the business and the peak theory needs to be applied to work out the unexplained investment u/s 69C of the Income Tax Act, 1961.

2.12 The Peak calculation was made on the following basis: -

- (i) Cash has been paid on the date on which the bogus purchase bill has been entered in the books of account.
- (ii) Cash has been received back by the assessee on the date on which the cheque has been issued by it to the bogus parties.
- (iii) Ledger account of all the 6 parties have been merged to work out the actual cash receipt or payment made by the assessee on day to day basis.

Accordingly, Ld.AO worked out incremental credit to the extent of Rs.1302.88 Lacs and disallowed the same u/s 69C.

3.1 Before Ld. CIT(A), the assessee assailed the stand of Ld. AO by way of elaborate submissions but the same could not find favor with Ld. CIT(A). The Ld. CIT(A) summarily rejected the retraction of statement made by one person by another person.

3.2 During the course of appellate proceedings, remand proceedings were initiated which was duly confronted to the assessee. The assessee reiterated that there were circular transactions for Rs. 1163.89 Lacs, a fact which was duly accepted by Ld. AO and therefore, the additions should be based on remaining suspicious purchases. However, the



same could not convince Ld. CIT(A) who upheld the action of Ld. AO in making additions on the basis of peak credit theory. Aggrieved, the assessee is under further appeal before us.

Adjudication on Legal Grounds

4.1 The Ld. Authorized Representative for assessee (AR), primarily relied upon the decision of Hon'ble Bombay High Court in **CIT V/s Jet Airways (I) Ltd. (331 ITR 236)** for the legal submissions that reassessment proceedings were initiated upon formation of belief that the assessee booked bogus purchase in excess of Rs.12.08 Crores and it has inflated its income and has shown less income in the return of income. However, ultimately the additions have been made in the hands of the assessee on account of unexplained expenditure u/s 69C on the allegation that unexplained cash was utilized for effecting purchases outside the books of account and therefore, the additions as made on peak credit basis would be beyond the scope of reassessment proceedings and hence, unsustainable in law.

4.2 The same was vehemently controverted by Ld. DR who submitted that the sole subject matter of reassessment proceedings was addition on account of bogus purchases and the additions on peak basis was nothing but merely a manner of computation of disallowance and therefore, the reassessment proceedings were perfectly valid and the cited decision would have no application on the facts of the present case.

4.3 At the outset, we deem it fit to extract the reasons recorded for reopening which read as under: -



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The assessee is engaged in the business of trading in Gold Jewellery, Diamond Jewellery, selling in Gold coins, bullions. Assessee has filed its return of income on 1.10.2010 declaring total income of Rs.1,27,27,172. A survey operation in the case of assessee was carried out on 13-12-2012 by DDIT(Inv) V(2) Mumbai, based on the information that the assessee is engaged in bogus purchases from various Sales Tax Hawala Parties,

As a result of survey, it was found that though the company had a clearly defined procedure for purchases, but the same was violated in case of purchases made from several parties namely Saileela Trading Pvt.Ltd., Pratik enterprises, HS trading co., shri vallabh traders. The total purchases made from these parties was computed at Rs.15,47,93,006/- for A.Y, 2010-11 and Rs. 93,499/- for A.Y. 2011-12. The assessee has admitted Rs.12,07,93,006/- for A.Y, 2010-11 and Rs.93,499/- for A.Y. 2011-12 as unaccounted income.

4. During the course of the survey on 13.12.2012 Shri Samir Ashwin Sagar, director of assessee company deposed voluntarily under oath confirming the figures of bogus purchases by the assessee totaling to Rs.12,08,86,505/- for various years as mentioned above in answer to query no.54 in his statement.

5. There is no doubt whatsoever that by booking bogus purchase in excess of Rs.12.07 crore during the F.Y.2009-10 as mentioned above, assessee has inflated its expenses and has shown less Income in return of income.

6. In view of the foregoing discussion, I am satisfied that it is a fit case for re-opening of assessment u/s 147 of the Act as the income chargeable to tax has escaped assessment for A.Y. 2020-11.

After going through the contents of quantum assessment order vis-à-vis recorded reasons, we find that the quantum assessment order has not travelled beyond the facts which led to formation of belief that certain income escaped in the hands of the assessee. As rightly pointed out by revenue, the sole subject matter of reassessment proceedings was booking of bogus purchases by the assessee and ultimately the additions have been made on account of bogus purchases only. The disallowance made u/s 69C was only manner of arriving at the said disallowance.

4.4 The submissions of Ld. AR that the reassessment proceedings were triggered upon formation of belief that excess bogus purchases were to be disallowed u/s 37(1) as against the fact that ultimately the additions have been made on account of unexplained expenditure u/s



69C would not materially alter the basic fact that the reassessment proceedings were triggered upon formation of belief that the assessee booked excess purchases in the books. In the assessment order, it has been held by Ld. AO that the assessee made purchases in cash from outside parties by utilizing undisclosed income and merely took bogus bills from certain suppliers. Finally, he made additions u/s 69C and the manner of disallowance adopted by Ld. AO was peak credit basis. Therefore, it could not be said that the additions as made by Ld. AO travelled beyond recorded reasons. As rightly pointed out by Ld. DR, the sole subject matter of reassessment proceedings was allegation of bogus purchases and ultimately the additions have been made on that account only.

The Ld. AR has also relied on Explanation-3 to Sec. 147 for the submissions that addition on additional issues could be made only if certain addition was made on issue which led to reopening of the assessment. However, we do not find any new issue which has come to the notice of Ld. AO during the course of reassessment proceeding and therefore, the said plea has to be rejected.

In our considered opinion, at the time of formation of belief, the only requirement would be that there must be certain *prima-facie* material before Ld. AO which would suggest possible escapement of income. Nothing more would be required at that stage to reopen the case. Of course, after going through the factual matrix, it would be open for Ld. AO to make additions by invoking any particular statutory provisions which would best apply to given factual matrix. Therefore, we are not convinced with legal grounds raised by Ld. AR and hence, decline to



accept the same. The additional ground raised by the assessee stands dismissed.

Adjudication on Merits

5.1 So far as the merits of the case are concerned, the conclusion of Ld. CIT(A) in rejecting the plea of retraction of a statement of a particular person by another person would require no interference on our part since the retraction, in our opinion, should be by the same particular person only, who made the statement. Therefore, the retraction has rightly been disregarded, for all purposes.

5.2 At the same time, additions merely on the basis of statements made during survey proceedings u/s 133A would not hold much evidentiary value unless the same were backed up by some cogent corroborative material. For the same, we draw strength from the decision of Hon'ble Supreme Court in **CIT V/s S.Khader Khan & Sons (35 Taxmann.com 413)**. We find that the additions as made by Ld. AO primarily stem out of the statement made by the director of the assessee coupled with information from Sales Tax Department that the assessee obtained bogus purchase bills from certain entities.

5.3 Proceeding further, it is noted that additions have been made u/s 69C on the conclusion that the material was purchased in cash from market by utilizing undisclosed income and accommodations bills were procured from hawala parties to regularize the said cash purchases. As observed by Hon'ble Delhi High Court in **CIT V/s Lubtec India Ltd. (311 ITR 175)** that what is postulated in Section 69C is that first of all the assessee must have incurred that expenditure and thereafter, if the explanation offered by the assessee about the source of such



expenditure is not found satisfactory by Ld. AO, the same may be added to the income of the assessee. Unless there is something which would show that an expenditure was, in fact, incurred by the assessee, addition u/s 69C would not be sustainable under law. In the background of stated legal proposition, it would be pertinent to note that purchases to the extent of Rs.1163.89 Lacs were reversed by the assessee in subsequent years and the transactions of purchases as well as sales were stated to be mere paper entries. The stock thus purchased through paper entries, was reflected in closing stock as on 31/03/2010. No discrepancies have been found in quantitative details as well as stock register maintained by the assessee for assessment year under consideration as well as for subsequent AY 2011-12. The same is evident from financial statements as well as quantum assessment order for AY 2011-12, as placed on record. From the perusal of these documents, it is quite discernible that the figures of opening stock as well as sales in AY 2011-12 has been accepted while framing assessment order and these figures have not been disturbed.

5.4 The aforesaid position of circular transactions has also been accepted by Ld.AO in para 6.6 of quantum assessment order wherein it has been accepted that the assessee has made circular transactions to the extent of Rs.1163.89 Lacs. The said factual matrix has also been elaborated by us in preceding para 2.11. These facts would lead us to inevitable conclusion that the transactions, to that extent, were to be considered as mere paper entries and the same were to be disregarded while making the additions in the hands of the assessee. If these transactions were removed from assessee's financials, there would be



no impact on the profit for this year as well as subsequent year. Therefore, Ld. AR's plea, to that extent, were to be accepted and no such additions against these purchases would be sustainable in the hands of the assessee.

5.5 So far as the balance purchase of Rs.384.03 Lacs for the year under consideration is concerned, it is noted that the assessee has made cheque payment of Rs.382.72 Lacs to one of the stated entities during the year and as per the statement of the director, cash was generated and the material was purchased in cash from the open market. To regularize the cash purchases, bills were procured from stated entities. Going by the same, we are of the considered opinion that the additions, which were to be sustained in the hands of the assessee against these purchases, would be to account for profit element embedded in such purchase transactions to factorize for profit earned by assessee by procuring goods from grey / unorganized market. The method of peak credit as adopted by Ld. AO would not be a suitable method under the circumstances rather an adhoc estimated addition would meet the cause of justice. Keeping in view the assessee's nature of business, we estimate the additions at 5% of balance purchases of Rs.3,84,03,652/- which comes to Rs.19,20,183/-. The balance addition stands deleted. The method of estimation would be in line with the recent decision of Hon'ble Bombay High Court rendered in **Pr.CIT V/s Rishabhdev Tachnocable Ltd. (ITA NO. 1330 of 2017 dated 10/02/2020)** wherein Hon'ble Court has approved the estimated additions on similar lines, as sustained by Tribunal.



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5.6 To summarize, the addition to the extent of Rs.19,20,183/- stand confirmed and the balance additions stands deleted. The other relief sought by the assessee would not require any specific adjudication on our part.

6. Resultantly, the appeal stands partly allowed in terms of our order.

Order pronounced in the open court on 16th March, 2020.

Sd/-

(Amarjit Singh)

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 16/03/2020

Sr.PS, Jaisy Varghese

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

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

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आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.