

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B-SMC", HYDERABAD

BEFORE SHRI A. MOHAN ALANKAMONY,
ACCOUNTANT MEMBER

ITA No.1062, 1063, 1064/Hyd/2019		
Assessment Years: 2010-11, 2011-12, 2012-13		
Sri Bhagatram, Prop: Vijay Jewellers & Gems House, H. No. 5-9- 30/25, Basheerbagh, Hyderabad – 500 029. PAN: ACEPB 2866 M	Vs.	Asst. Commissioner of Income Tax, Circle-5(1), Hyderabad.
(Appellant)		(Respondent)

ITA No.1362, 1363, 1364/Hyd/2018		
Assessment Years: 2008-09, 2013-14, 2014-15		
Sri Bhagatram, Prop: Vijay Jewellers & Gems House, H.No. 5-9- 30/25, Basheerbagh, Hyderabad – 500 029. PAN: ACEPB 2866 M	Vs.	Income Tax Officer, Ward-5(3), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Sri K.C. Devdas	
Revenue by:	Sri Sunil Kumar Pandey, DR	
Date of hearing:	02/03/2020	
Date of pronouncement:	20/03/2020	

ORDER

All these appeals are filed by the assessee against the order of the
CIT(A)-4, Hyderabad in appeal Nos. 4/10223, 10225, 10226/17-

18/ACIT, Cir.5(1)/CIT(A)-4/Hyd/2019-20, dated 29/04/2019 for the AYs 2010-11, 2011-12, 2012-13 passed U/s. 143(3) r.w.s 147 & 250(6) of the Act and appeal Nos. 0103, 097, 0335/16-17/ITO, Wd-5(3) and ACIT, Cir. 5(1)/CIT(A)-4/Hyd/2018-19, dated 27/04/2019 are passed U/s. 143(3) r.w.s 250(6) of the Act for the AYs 2008-09, 2013-14 and 2014-15 respectively. Since the assessee has raised similar grounds in all these appeals, they are heard together and disposed off by this common order.

2. The assessee has raised several identical grounds in each of its appeal however, the cruxes of the issues in all these appeals are that:-

- (i) The Ld. CIT(A) has erred in upholding the reopening of the assessment made by the Ld. A.O. U/s. 143(3) r.w.s 147 of the Act for the AYs 2010-11, 2011-12 & 2012-13.
- (ii) The Ld. CIT(A) has erred in enhancing the addition by treating the entire bogus purchases as the assessee's income as against the addition made by the Ld. AO by estimating the income @ 10% of such purchases.

3. Brief facts of the case are that the assessee is an individual engaged in jewellery business such as manufacturing and trading of Gold Ornaments / Diamonds etc. The assessee had filed his return of income for the AY 2010-11, 2011-12 and 2012-13 admitting income of Rs. 13,04,697/-, Rs. 16,40,747/- and Rs. 19,08,845/- respectively

wherein assessment was completed U/s. 143(3) of the Act. The assessee had also filed his return of income for the AY 2008-09, 2013-14 & 2014-15. The assessment for the AY 2008-09 was initially completed u/s. 143(3) of the Act on 07/10/2008. Search and seizure operation U/s. 132 of the Act was conducted on Rajendra Jain, Sri Sanjay Choudhary and Sri Dharmichand Jain on 03/10/2013. During the course of search and post search enquiries it was revealed that they were operating and managing benami concerns through which they were providing accommodation entries for purchases to various beneficiaries amongst which one of the beneficiaries was M/s. Vijay Jewellers & Gems, the proprietary concern of the assessee for all the relevant assessment years as detailed herein below:-

Sl. No.	Name of the party	Purchases (Rs.)					
		AY 2010-11	AY 2011-12	AY 2012-13	AY 2008-09	AY 2013-14	AY 2014-15
1	M/s. AVI EXPORT PAN: ABIPJ 5587 A	13,43,500	12,57,116	-	13,51,515	6,69,171	21,63,921
2	M/s. KRIYA IMPEX PAN: AFRPJ 9962 J	6,75,625	-	-	-	5,27,010	-
3	M/s. KARNAWAT PAN: AADCK1927 A	13,98,990	-	-	-	-	-
4	M/s. KALASH PAN: AFRPJ 9962 J	-	14,80,545	-	-	-	-
5	M/s. ARIHANT	-	-	46,69,942	-	-	7,21,653
6	M/s. SUN DIAM	-	-	-	-	5,00,000	20,27,800
	Total	34,18,115	27,37,661	46,69,942	13,51,515	16,96,241	49,13,374

4. For the above stated reason the case of the assessee was reopened U/s. 147 of the Act for the AY 2010-11, 2011-12 and 2012-13 as the assessment was already completed U/s. 143(3) of the Act earlier and for the AY 2008-09, 2013-14 and 2014-15, the case was selected for scrutiny under CASS.

5. **Ground No.2: Enhancing the addition by the Ld. CIT (A) with respect to the addition made by the Ld. AO towards understated profit by holding it to be bogus purchases.**

5.1. During the course of scrutiny assessment pursuant to the reopening of the assessment for the AY 2010-11, 2011-12 & 2012-13 and scrutiny assessment under CASS for the AYs 2008-09, 2013-14 & 2014-15 the Ld. AO called for the details of the purchases made from Rajendra Jain, Sri Sanjay Choudhary and Sri Dharmichand Jain. In response, the assessee submitted the following details during the course of assessment proceedings from time to time.

- (i) Purchase invoices.
- (ii) Stock register wherein the quantity of purchases was recorded.
- (iii) Bank statements for evidencing payment made to the above-mentioned entities toward the purchase of diamonds.
- (iv) Affidavits from parties from whom purchases were made to prove the genuineness of the purchases.
- (v) Books of accounts regularly maintained by the assessee.

5.2 However, the ld. AO made the following observations:

- (i) The assessee did not produce the return of income of the proprietary concern viz., M/s. AVI, M/s. Kriya and M/s. Karnawat from whom the assessee has purchased the Diamonds.

- (ii) The assessee did not produce the financial statements of the proprietary concern viz., M/s. AVI, M/s. Kriya and M/s. Karnawat from whom the assessee has purchased the Diamonds.
- (iii) The assessee did not produce any documentary evidence for the delivery of the goods purchased from the above-mentioned entities such as delivery challans.
- (iv) The assessee failed to provide the details of the persons who delivered the material along with their journey records, the details of their salary and the firm in which they are working.
- (v) The assessee failed to submit the ledger account of M/s. AVI, M/s. Kriya Impex Pvt Ltd and M/s. Kailash enterprises from whom the assessee had purchased the Diamonds though it was requisitioned by the Ld. AO.
- (vi) The assessee failed to produce evidence with respect to his travel to Surat for making the purchases from the above-mentioned entities.
- (vii) The assessee failed to link the Diamonds purchased from the above-mentioned entities with the sale.

6. Based on the above-mentioned observations, the Ld. AO arrived at the following conclusion.

- (i) Since the assessee has failed to furnish evidence for physically receiving the Diamonds purchased, the genuineness of the purchases cannot be established.
- (ii) Only by producing the details of the bank statement for evidencing payment made through banking channel cannot establish that the purchases made by the assessee are genuine. Reliance was placed in the decision of the Jaipur Bench of the Tribunal in the case of M/s. Kachwala Gems vs. JCIT in ITA No. 134/JP/2002, dated 10/12/2003 and the decision of the Hon'ble Apex Court in the case M/s. Kachwala Gems vs. JCIT reported in 288 ITR 10 wherein it was held that *even payment by account payee cheque is not sufficient to establish the genuineness of the purchases.*
- (iii) The onus lies on the assessee to prove the genuineness of the expenditure which is claimed as deduction while computing the taxable income and in the case of the assessee for all the relevant AYs the assessee has failed to do so.
- (iv) The onus also lies on the assessee to prove that the suppliers were genuine, and the Diamonds are purchased from them which the assessee has failed to do so.
- (v) The assessee had not made any serious effort to discharge his onus with strong and clinching evidence. Reliance was

placed in the decision of the Hon'ble Kolkata High Court in the case of CIT vs. Korlay Trading Co. Ltd reported in 232 ITR 820 wherein it was held that initial burden was on the assessee to prove the genuineness of the purchases.

- (vi) The assessee was not able to give any convincing and cogent explanation as to how the goods were procured and brought to Hyderabad from the aforesaid parties.
- (vii) It was established by the Revenue that Shri Rajendra Jain, Sri Sanjay Choudhary and Sri Dharmichand Jain group were providing accommodation entries to various beneficiaries.
- (viii) Therefore, it is concluded that the assessee obtained only accommodation entries from the abovesaid group.

7. Thereafter the Ld. AO opined taking cue from the decisions of various Higher Judiciaries that when genuineness of purchase is doubted then only the profit margin embedded in such transaction would be taxed. The Ld. AO further opined that that the assessee had procured the Diamonds from grey market by paying cash at a lesser cost and hence proper bills and vouchers were not available. In order to meet the deficiency and enhance the expenditure, the assessee had obtained accommodation entries by procuring bills at higher cost from the above stated parties who in turn had accepted the cheque from the assessee and after realising the cash handed over the cash to the

assessee after retaining their commission and there was no physical movement of Diamonds from the aforesaid parties to the assessee. In such manner the assessee had intentionally inflated the purchases. Thereafter, the Ld. AO after verifying the purchases along with the bank statements estimated the undisclosed income @ 10% of the purchases as detailed herein below for all the relevant AYs: -

Sl no	Asst. Years	Purchases by way of cheque from aforesaid parties (Rs.)	Enhanced cost of purchases held by Ld. AO	10% of the enhanced Purchases disallowed by the Ld. AO (Rs.)
1.	2010-11	34,18,115	34,18,115	3,41,811
2.	2011-12	34,04,537	34,04,537	3,40,454
3.	2012-13	46,69,942	46,69,942	4,66,994
5.	2008-09	16,96,241	13,51,515	1,35,152
6.	2013-14	16,96,241	16,96,241	1,69,624
7.	2014-15	93,04,866	49,13,374	4,91,337

7.1. (Apparently, it appears that the Ld. AO has committed error in arriving at the aggregate purchases by way of cheque from the aforesaid parties for the AY 2008-09 and 2014-15 by stating in the order as Rs. 16,96,241/- and Rs. 93,04,866/- respectively whereas the correct value of the aggregated purchases adopted for computation is rightly taken as Rs. 13,51,515/- and Rs. 49,13,374/- respectively)

8. Accordingly, the Ld. AO added the amount of Rs. 3,41,811; Rs. 3,40,454; Rs. 4,66,994; Rs. 1,35,152; Rs. 1,69,624 and Rs. 4,91,337 to the income of the assessee for the relevant AYs 2010-11; 2011-12; 2013-14; 2008-09; 2013-14 and 2014-15 respectively.

9. Subsequently, the assessee filed an appeal before the Ld. CIT (A). However, on the given date of hearing neither assessee nor his AR appeared before the Ld. CIT (A). Hence, the Ld. CIT (A) passed *ex-parte* order based on the materials on record. On examining the facts of the case, the Ld. CIT (A) arrived at the conclusion that since the assessee has failed to prove the genuineness of the transaction, the entire purchases made ought to be treated as bogus and therefore, the entire purchases should be disallowed as deductible expenses while computing the income of the assessee. Accordingly, the Ld. CIT (A) enhanced the addition.

10. Aggrieved by the order of the Ld. CIT (A), the assessee is in appeal before us.

11. Before us the ld. AR submitted that the Ld. AO has blindly acted on the information passed by the DDIT-CC-4, Surat without any application of mind. The Ld. AR further submitted that the assessee had furnished invoices for the entire purchases made and the suppliers had also confirmed that diamonds were purchased by the assessee. It was further argued that the payment for the entire purchases was made through cheque. The Ld. AR further argued that since there is no finding by the ld. AO with cogent evidence in the case of the assessee that the transactions are bogus and since the entire addition is made on presumption based on the information obtained from the DDIT-CC-4,

Surat, the addition made by the Ld. AO is erroneous. The ld. AR further submitted that the assessee is a senior citizen aged about 80 years faced with old age ailments, having financial constraints and virtually closed down his business. It therefore pleaded that justice may be rendered by deleting the erroneous addition. The Ld. DR on the other hand argued in support of the order of the Ld. CIT (A).

12. We have heard the rival submissions and carefully perused the materials on record. From the facts of the case it is apparent that the assessee has furnished proper invoices for the purchase of the Diamonds. The assessee had also obtained confirmation statements from the entities those who have supplied the Diamonds to the assessee. The Diamonds were also duly recorded in the stock book. The payments were made by cheque for the purchase of Diamonds. In this situation, the primary onus cast upon the assessee has been complied. It is not mandatory for the assessee to maintain delivery challan for the purchase of the Diamonds since the assessee's volume of trade is low. Further, it is a normal practice for the diamonds to be physically carried by entities from the place of purchase to the place of sale. Proof of such travel only supports the genuineness of the transaction, but it is not mandatory and cannot be taken as conclusive evidence. In the case of the assessee, no doubt, the suppliers of the Diamonds were under scanner wherein the DDIT-CC-4, Surat having obtained some information intimated to the Ld. AO of the assessee. The Ld. AO ought

to have further investigated on the matter with respect to the assessee's transaction and obtained further information from the Ld. DDIT-CC-4, Surat along with supporting evidence and thereafter come to the conclusion whether in the case of the assessee bogus transactions were effected. Such detailed examinations were not conducted by the Ld. AO in the case of the assessee for all the relevant AYs. Instead, it appears that the entire addition is made by the Ld. AO based on surmises and conjectures and on the mere information received from the Ld. DDIT-CC-4, Surat. Since the assessee had complied with the initial onus caste upon him, now the onus shifts on the Revenue to prove the matter otherwise which the Revenue has not diligently complied. Further it is obvious that the return of income and the financial statements of the entities from whom the assessee had purchased the diamonds will not be in the possession of the assessee. The Ld. Revenue Authorities could have always summoned the vendors and obtained the particulars which they have failed to do so. Further the Revenue has also not brought to our notice about the particulars and status of the assessment made in the hands of the vendors who have been issuing bogus purchase invoices. Therefore, considering the facts and circumstances of the case, I am of the view that the addition made by the ld. AO itself is not justifiable, consequently the enhancement of the addition made the Ld. CIT (A) is erroneous. Hence, I hereby direct the Ld. AO to delete the additions made on account of bogus purchases for all the relevant AYs

in the hands of the assessee. The Ld. AR had raised the issue of jurisdiction at the time of hearing (Ground No.1) however, I refrain from addressing the issue as infructuous since I have deleted the additions made in the hands of the assessee on merits. I also make it clear that I have arrived at the above conclusion based on the peculiar facts and circumstances of the case and therefore it does not carry any precedential value.

13. In result, the appeals of the assessee are allowed for all the relevant assessment years.

Pronounced in the open Court on 20th March, 2020.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 20th March, 2020.

OKK

Copy to:-

- 1) Sri Bhagatram C/o. M/s. Sekhar & Co., 133/4, Rashtrapathi Road, Secunderabad – 500 003.
- 2) The ACIT, Circle-5(1), Hyderabad.
- 3) The CIT(A)-4, Hyderabad
- 4) The Pr. CIT-4, Hyderabad
- 5) The DR, ITAT, Hyderabad
- 6) Guard File