

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH MUMBAI  
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT  
&  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.5958/Mum/2018  
(Assessment Year: 2010-11)**

D.Manish & Co. EC-3100, Bharat Diamond Bourse, BKC Complex Bandra(E) Mumbai-400 051	Vs.	ACIT-19(1) Matru Mandir Tardeo Road Mumbai-400 007
<b>PAN/GIR No.AAAFD2847A</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

&  
**ITA No.6325/Mum/2018  
(Assessment Year: 2010-11)**

DCIT-19(1) Room No.203, 2 <sup>nd</sup> Floor Matru Mandir Tardeo Road Mumbai-400 007	Vs.	D.Manish & Co. EC-3100, Bharat Diamond Bourse, BKC Complex Bandra(E) Mumbai-400 051
		<b>PAN/GIR No.AAAFD2847A</b>
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Revenue by	Ms. Samatha MullaMudi, DR
Assessee by	Shri Rahul Sarda, AR
<b>Date of Hearing</b>	<b>18/06/2020</b>
<b>Date of Pronouncement</b>	<b>18/06/2020</b>

**आदेश / O R D E R**

**PER BENCH:**

These cross appeals filed by the assessee, as well as the revenue are directed against order of the Ld. Commissioner of Income tax (Appeals)-30, Mumbai, dated 08/08/2018 for the Asst.Year 2010-11. Since, facts are identical and issues are

common, for the sake of convenience, these appeals were heard together and are disposed-off by this consolidated order.

2. The assessee has raised the following grounds of appeal:

*1. The CIT (Appeals) has erred by treating 3% of the alleged bogus purchases amounting to Rs.5,97,06,315/- and disallowing the same and adding it to the taxable income of your appellant.*

3. The revenue has raised the following grounds of appeal:

*1. "Whether on the facts and in the circumstances of the cases and in law, the Ld.CIT(A) was justified in restricting the addition made by the AO. On account of bogus purchases to 3% of Rs.5,97,06,315/- not withstanding that the addition made on the basis of credible information from DGIT(Inv.) Mumbai based on the Search and seizure action u/s 132 in the case of Bhanwarlal Jain Group?"*

*2. "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in restricting the addition made by the AO on account of accommodation entries of purchase, ignoring that the assessee had not discharged its onus of proving the genuineness of the purchase?"*

*3. 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.*

4. The assessee is engaged in the business of import and export of diamonds. The return of income for the year under appeal was filed on 04.09.2010 declaring total income of Rs.42,09,210/-. The case was reopened u/s 147, by issuing notice u/s 148 of the Act, on 30.03.2017. The reasons for reopening of 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 M/s Mayur Export, Prime Star, Mohit Enterprises and Daksha Diamonds amounting to Rs.5,97,06,315/-. Assessment u/s 143(3) r.w.s. 147 of the I.T.Act, 1961 was completed by the Ld. AO on 29.12.2017 determining the total income at Rs.6,39,15,530/- by estimating profit margin @100% on such purchases.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed detailed written submissions, which has been reproduced at para 4 on pages 3 to 5 of Ld.CIT(A). The sum and substance of arguments of the assessee before the Ld.CIT(A) are that purchase from those parties are genuine in nature, which are supported by necessary evidences, the assessee has filed all details including purchase bills and proof of payment against said purchases by account pay cheques. The Ld.CIT(A) after considering relevant submissions of the assessee and also, by relied upon certain judicial precedents, including the decision of Hon'ble Gujarat High court, in the case of Simith P.Sheth (2013) 35 taxmann.com 385 has scaled down additions made by the Ld. AO towards alleged

bogus purchase to 3% profit on total purchase from those parties.

The relevant findings of the Ld.CIT(A) are as under:-

6.10 In this case, I find that quantitative details were maintained, Ld. AO not doubted the genuineness of sales estimated the profit @100% on the total purchases made from the concerns of shri Bhanwarlal Jain by recording a finding that the appellant made the purchases from some other party. Thus, the issue would boil down to finding out what is the correct element of profit embedded in bogus purchases which the appellant would have made from such unknown entities. In this regard, it is apt to refer certain decisions dealing the similar issue of bogus purchases. The decision of Gujarat High court in the case of Bholanath Poly Fab Pvt.Ltd. 355 ITR 290 (Guj.) where the Hon'ble court was battling with the finding of Hon'ble ITAT that purchases were made from bogus parties since notice issued by the AO to these parties were allegedly received returned/unserved and the assessee was unable to produce any confirmation from these parties. The Tribunal had held that though purchases were made from bogus parties, nevertheless, the purchases themselves were not bogus as the entire quantity of opening stock, purchases and sales were tallying and hence, only the profit margin embedded in such amount would be subjected to tax. The Hon'ble Gujarat High court taking cognizance of the fact held that whether purchases themselves were bogus or whether parties from whom such purchases were made were bogus, is essentially a question of fact and the Tribunal having examined the evidence on record and concluded that the assessee did produce cloth and sell finished goods, the entire amount covered under such purchase would not be subjected to tax and only profit element embedded therein was to be taxed. While coming to the above conclusion, the Hon'ble High court also relied on the decision in the case of Sanjay Oil Cake Ind. 316 ITR 274 (Guj.)

6.11 Similarly, in yet another decision of Hon'ble Gujarat High court in the case of CIT vs. Simit Sheth (2013) 38 taxmann.com 385 Guj.), Hon'ble Court was seized with a similar issue where the AO. Had found that some of the alleged suppliers of steel to the assessee had not supplied any goods but had only provided sale bills and hence, purchases from the said parties were held to be bogus. The A.O. in that case added the entire amount of purchases to gross profit of the assessee. Ld. CIT(A) having found that the assessee had indeed purchased though not from named parties but other parties from grey market, partially sustained the addition as probable profit of the assessee. The Tribunal however, sustained the addition to the extent of 12.5%. Taking into account the above facts, the Hon'ble Gujarat High court held that since the purchases were not bogus, but were made from parties other than those mentioned in books of accounts, only the profits element embedded in such purchases could be added to the assessee's income and as such no question of law arose in such estimation. The Tribunal for arriving the profit embedded in the transactions @12.5% held as under:-

"Having heard the submissions of both sides, we have been informed that the malpractice of bogus purchase is mainly to save 10% sales tax et. It has also

been informed that in this industry about 2.5% is the profit margin. Therefore, respectfully following the decisions of the co-ordinate bench pronounced on identical circumstances, we hereby direct that the disallowances is required to be sustained at 12.5% of the purchase from those parties. With these directions, we hereby decide the ground of the rival parties which are partly allowed.

6.12 As narrated earlier, the Ld. AO in this case has himself held that the purchases were not bogus though the party from whom the purchases were made by the appellant was found to be bogus and that is the reason for which AO considered the addition on the basis of the profit element embedded on such purchases which is estimated @100% of the total purchases. The motive behind obtaining bogus bills thus, appears to be inflation of purchase price so as to suppress true profits. Considering the facts of the case as well as the various case laws cited (supra) especially in the case of CIT vs. Simit P.Sheth(supra) I agree with the action of the AO estimating the addition on the profit element embedded on such bogus purchases.

6.13 However, AO estimated the profit margin @100% solely relied on the decision of apex court in the case of M/s N.K.Protiens Ltd.. In similar cases Assessing Officers have estimates profit margin at 3% of the purchases. Though I am in agreement with the reasoning of the AO for estimating of the profit percentage @100% in this nature of trade. Further, the appellant has stated that the facts of the N.K.Protiens Ltd. Case are completely different. The chart furnished by appellant during the appellate proceedings to distinguish the facts, is reproduced as under:-

Sr.No.	N.K.Protiens Ltd. case	Appellants case
1	The search had taken place at assessee premises	The search had not taken place at your appellant's premises
2	No documents relating to such purchase were discovered at the time of search	All documents relation to such alleged bogus purchases were produced before your goods self.
3	The invoice were taken from billing agencies	There is no such case. All the invoices are genuine and produced from both the sides (i. buyer and seller)
4	The fact of bogus purchase came to knowledge of the department only because of the search taken place at the premises of M/s N.K. Proteins Ltd. place	The alleged bogus purchases were added on the basis of search taken place at the premises of Mr Rjendra Jain/Bhanwarlal Jain Group and not at your appellants premises. However, your appellant had purchased diamonds from them and same

		were accepted by the seller of the diamonds
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6.14 Thus it is seen that the facts of the instant case are completely different and distinct than the facts of the case relied upon by the AO to estimate the profit margin at 100% of such purchases. While deciding the profit element embedded in the bogus purchases cases, Gujarat High court adopted the profit @12.5% by taking the benefit derived out of the saving of taxes, considering the profit margin in that line of trade. In the light of the above, one has to see in the present case, who are in the manufacturing and trading of diamonds, the profit element embedded estimation @100% is correct or not. Coming to the profit margin in the trade, the taskforce group for diamond industry constituted by the Government of India, Ministry of Commerce and Industry, after considering the BAP scheme, recommended presumptive tax for net profit calculated @2% of trading activity and 3% for manufacturing activity or @2.5% across the board. It is also ascertained that the operation profit in case of diamond trading for computation of ALP by the TP wing is consistently in the region of around 1.75% to 3%. It is also brought to my notice that the AOs are also adopting 3% on the purchases made from Shri Bhanwarlal Jain group concerns, as the profit element embedded, in the subsequent assessments finalized on the similar set of facts. In view of the same and also since the profit margin is lesser in this sector, adopting 100% by the AO, is not based on correct footing. Considering the lesser profit margin in this sector i.e. around 2 to 3 percent and the taxes saved is around 1% and also on purchases made from places like Surat, there is no levy of tax, I am of the consider opinion that if the addition is sustained to the extent of 3% of the purchases made as the profit element embedded in such purchases from the three parties belonging to the Shri Bhanwarlal Jain Group concerns, the same will meet the ends of justice. Accordingly I direct the AO to restrict the addition @3% on the total purchase of Rs.5,97,06,315/- as the profit element embedded in such purchases. Grounds of appeal raised on this issue are treated as Partly Allowed.”

6. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. We find that the Ld. AO has made 100% addition on alleged bogus purchases on the ground that the assessee is one of the beneficiary of accommodation entries of bogus purchase bills issued by Hawala dealers. According to the Ld. AO, although assessee has filed certain basic evidences, but failed to file further evidence in the backdrop of clear finding by Investigation wing that those parties are involved in providing accommodation entries without actual delivery of goods. The Ld. AO had also taken support from the investigation conducted

during the course of assessment proceedings, as per which notice issued u/s 133(6) to the parties were returned un-served by the postal authorities. Therefore, he came to the conclusion that purchases from the said parties are bogus in nature. It is the contentions of the assessee before the lower authorities that purchases from the above party are supported by necessary evidences. It has furnished all possible evidences, including books of accounts; stock details and bank statement to prove that payment against said purchases have been made through proper banking channels.

7 Having considered arguments of both the parties and also, considered material available on record, we find that both the sides have failed to prove the case in their favour with necessary evidences. Although, assessee has filed certain basic evidences, but failed to file further evidences to conclusively prove purchases to the satisfactions of the Ld.AO. Further, mere payment by cheque does not prove the genuineness of purchase, more particularly when other circumstantial evidence says otherwise. At the same time, the Ld. AO had also failed to take the investigation to a logical conclusion by carrying out necessary enquires, but he solely relied upon information received from investigation wing, which was further supported by search and seizure operations in the case of Bhanwarlal Jain group. The AO neither pointed out any discrepancies in books of accounts nor made out a case of sales outside books of accounts. In fact, the AO did not disputed sales declared for the year. Under these circumstances, it is difficult to accept arguments of both the sides. Further, in a case where purchases are considered to be purchased from suspicious/hawala

dealers, various High Courts and Tribunals had considered an identical issue in light of investigation carried out by the Sales Tax Department and held that in case of purchases claims to have made from alleged hawala dealers, only profit element embedded in those purchases needs to be taxed, but not total purchase from those parties. The Hon'ble Gujarat High Court, in the case of CIT vs Simith P.Sheth 356 ITR 451 had considered a similar issue and held that at the time of estimation of profit from alleged bogus purchases no uniform yardsticks could be adopted, but it depends upon facts of each case. The ITAT, Mumbai, in number of cases had considered an identical issue and depending upon facts of each case, directed the Ld.AO to estimate gross profit of 10% to 15% on total alleged bogus purchases. In this case, considering the nature of business of the assessee the Ld. AO has made 100% additions, whereas the Ld.CIT(A) has scaled down addition to 3% gross profit on total alleged bogus purchase. Although, both authorities have taken different rate of profit for estimation of income from alleged bogus purchase, but no one could support said rate of gross profit with necessary evidences or any comparable cases. However, the rate of profit adopted by the Id. CIT(A) is supported by various decisions of Tribunal. Therefore, considering facts and circumstances of this case and consistent with view taken by the Co-ordinate Bench in number of cases, we are of the considered opinion that the Id. CIT(A) has taken a fair view and estimated 3% gross profit on alleged bogus purchases to settle dispute between the parties in respect of purchases from all parties. We, therefore, upheld the findings of Id. CIT(A) and dismissed appeal filed by the Revenue as well as the assessee.

8. In the result, appeal filed by the assessee and appeal filed by the revenue for Asst. year 2010-11 are dismissed.

Order pronounced in the open court on this: 18/06/2020

**Sd/-**  
**(MAHAVIR SINGH)**  
VICE PRESIDENT

**Sd/-**  
**(G. MANJUNATHA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 18/06/2020

Thirumalesh 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.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai