

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D', NEW DELHI
(Through Video Conferencing)**

**BEFORE, SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.6605/Del/2016
(ASSESSMENT YEAR-2013-14)**

Asst. CIT, Central Circle-29, New Delhi	Vs.	M/s K. K. Exports, 2601/4, Beadonpura, Karol Bagh, New Delhi-110005 PAN:AAAFK 5882G
(Appellant)		(Respondent)

Appellant By	Sh. C.P. Singh, Sr. DR
Respondent by	Sh. Salil Aggarwal, Adv. Mr. Shailesh Gupta, CA
Date of Hearing	14.08.2020
Date of Pronouncement	30.09.2020

ORDER

PER SUDHANSHU SRIVASTAVA, JM:

This appeal is preferred by the department and is directed against order dated 26/10/2016 passed by the Ld. Commissioner of Income-tax (Appeals)-31, New Delhi [CIT (A)] for assessment year 2013-14.

2.0 The brief facts are that the assessee company is engaged in the business of manufacturing and trading of jewellery. For the year under consideration, the assessee filed its return of income declaring income at Rs. 56,82,370/- under provisions of the Income-tax Act, 1961 (in short 'the Act'). The case was selected for scrutiny assessment and the scrutiny assessment under section 143(3) of the Act was completed on 31/03/2016, wherein, income of the assessee – company was assessed at Rs. 3,69, 28, 770/- after making certain additions/disallowances. The assessee company preferred appeal before the Ld. CIT (A), which was partly allowed by learned CIT (A) in favour of assessee.

2.1 Aggrieved by the said order of learned CIT (A), the revenue is now in appeal before this Tribunal and has raised the following grounds of appeal:

“1. On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law & on facts in deleting the addition on account of bogus purchases amounting to Rs. 3,12,42,835/- made by the A.O. ignoring the fact that te additions were made on the findings of survey action conducted by the Income Tax Investigation Wing on Sh. Sanjay Chowdhary and his concerns.

2. On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law & on facts in not appreciating

that Sh. Sanjay Chowdhary' accepted in his statement recorded on 03-10-2013, 04-10-2013 and u/s 131 on 10-01-2014 that he was not doing any sale/purchase of diamonds and providing only accommodation entries.

- 3. On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law' & on facts in not appreciating that the affidavit dated 08-10-2013 and 10-01-2014 regarding retraction were filed by Sh. Sanjay Chowdhary before the A.O. only and were not filed before the Income Tax Investigation Wing during post survey enquiry.*
- 4. On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law & on facts in not appreciating that NIL stock of diamonds was found during the course of survey action on business concerns of Sh. Sanjay Chowdhary.*
- 5. On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law & on facts in not appreciating that no insurance of diamond stock was made by the concerns of Sh. Sanjay Chowdhary from where purchases were made by the assessee.*
- 6. That the order of the CIT (A) is perverse, erroneous and is not tenable on facts and in law.*
- 7. That the grounds of appeal are without prejudice to each other.*
- 8. The appellant craves leave to add, alter or amend any/ all of the grounds of appeal before or during the course of the hearing of the appeal.”*

3.0 The learned Sr. DR relied on the findings so recorded by the Assessing Officer (AO) and argued that the AO has made an addition of Rs. 3,12,42,835/- on account of bogus purchases made

by the assessee – company from M/s Mayank Impex and M/s Nazar Impex (P) Ltd. It was submitted that the addition has been made on the basis of survey conducted by the DGIT (Inv) under section 133A of the Act on one Shri Sanjay Chaudhary and his concerns namely M/s Mayank Impex and M/s Nazar Impex (P) Ltd. The Ld. Sr. DR further argued that Shri Chaudhary, in his statement recorded under section 133A and under section 131 of the Act, had accepted that he was not carrying out any sale and purchase of diamonds and was engaged in providing accommodation entries of sale and purchase. The learned Sr. DR further argued that the AO has also rejected the affidavit dated 8.10.2013 filed during the course of assessment proceedings in which Shri Chaudhary had retracted from the earlier statements recorded by the Investigation Wing, Mumbai on the pretext of being given under duress. The learned Sr. DR, argued that since the said retraction was not filed before the office of DDIT (Inv.), Mumbai, as such, the same could not have been taken as a basis to give relief to the assessee. He further argued that the affidavit submitted by Shri Choudhary is a self-serving document and cannot be accepted as correct because in the

statement recorded during the survey he has accepted that he was just providing accommodation entries.

4.0 The Ld. Authorised Representative (AR) vehemently supported the order passed by learned CIT (A) and argued that similar allegations were also made in the case of the assessee among other allegations in earlier years, wherein, purchases were made from the aforesaid parties and the assessee had approached the Income Tax Settlement Commission (ITSC) and the learned CIT (A), after going through the said order of ITSC, has recorded a finding at page 15, Para 4.10 that on *“identical facts and circumstances prevailing in earlier years the Income Tax Settlement Commission at New Delhi which after due consideration held in favour of the appellant with the observation that the applicant cannot be asked to discharge the burden of proof of existence or genuineness of the alleged sellers as long as purchases are recorded in the books and payments of purchase and brokerage have been made through cheques.”* It was submitted by learned AR that in view of the aforesaid findings so recorded by learned CIT (A), the impugned addition has rightly been deleted by learned CIT (A).

4.1 The learned AR also relied on the order under section 147/143(3) for Assessment Year (AY) 2007-08 dated 25.6.2014 in the case of a group concern namely M/s Khanna Jewellers Pvt. Ltd, and submitted that in the case of group concern the case was reopened on similar allegations and that too on the basis of statement of Shri Sanjay Chaudhary. However, the department in the said case accepted the said retraction by Shri Sanjay Chaudhary while passing the order under section 147/143(3) and no adverse inference was drawn against M/s Khanna Jewellers Pvt. Ltd. It was submitted that this fact has also been noted by learned CIT (A) at page 14 Para 4.6, while giving relief in the instant case.

4.2 The learned AR further stated that purchases are fully vouched and payments have been made against these purchases by account payee cheques and it is an undisputed fact that the quantity of diamonds received by assessee against these purchases has been duly entered by the assessee in its stock registers. It was also submitted that purchases debited by the assessee in its Profit and Loss Account are duly reflected in income as also sales made

after purchase or the closing stock declared by the assessee in its audited accounts.

4.3 The Ld. AR also argued that the Ld. DR has not been able to rebut the findings so recorded by the learned CIT (A) by bringing any adverse material on record. Rather, the Ld. DR has merely placed reliance on the documents already dealt by learned CIT (A). In short, his submission was that in the absence of rebuttal to the documentary evidence furnished by the assessee evidencing the factum of purchases, the addition cannot be sustained and has rightly been deleted by the Ld. CIT (A).

5.0 We have heard the rival submissions and have also perused the relevant material on record. At the outset, we note that the Ld. Sr. DR was not able to controvert with concrete evidence to the contrary, the findings recorded by the Ld. CIT (A) while deleting the addition made by the AO of an amount of Rs. 3,12,42, 835/- and we note that the relief granted by learned CIT (A) is based on positive documentary evidences, which were brought on record by assessee. The same are discussed below:

- (i) The sole basis of the AO to have made the impugned addition was the statement of one Shri Sanjay Choudhary wherein he has accepted providing accommodation entries through his various concerns. We have gone through the assessment order, wherein, we note that the said person was produced before the AO on 26.02.2016 and the said person retracted from his earlier statement given before the DGIT (Inv). The said retraction was also backed by an affidavit of Shri Sanjay Choudhary. This retraction remains uncontroverted till date. Thus, in our considered view, the whole basis of the Revenue Authorities to have made the impugned addition based on the statement recorded before DGIT (Inv) does not survive and, therefore, the learned CIT (A) has rightly deleted the addition by placing reliance on the said retraction.
- (ii) We also note that the learned CIT (A), while giving relief, has relied on the order under section 147/143(3) for AY 2007-08 dated 25.6.2014 in the case of a group concern namely M/s Khanna Jewellers Pvt. Ltd, wherein, on similar allegations, the case was reopened and that too on the basis of statement of Shri Sanjay Chaudhary. However, the department in the said case accepted the said retraction by Shri Sanjay Chaudhary while passing the order under

section 147/143(3) and no adverse inference was drawn against M/s Khanna Jewellers Pvt. Ltd. The said fact has also been duly noted by learned CIT (A) at page 14 Para 4.6, while giving relief in the instant case. Thus, once Revenue has accepted the transaction with Sh. Sanjay Chauhary to be genuine in group case of the assessee, the same cannot be agitated or doubted in the assessee's case and, therefore, it is our considered opinion that the learned CIT (A) has rightly deleted the addition by placing reliance on the assessment order in the case of group concern namely M/s Khanna Jewellers Pvt. Ltd.

- (iii) That further, on going through the order of lower authorities, an important fact that emerges is that a similar allegation was also made in the case of the assessee, among other allegations, in the earlier assessment years when it had made purchase from M/s Nazar Impex (P) Ltd. (a concern said to have been controlled by Shri Sanjay Chaudhary) and the assessee had approached ITSC for settlement of its case and the ITSC has held the said transactions to be genuine. The finding of the ITSC in assessee's case vide an order dated 27.5.2014 for AY 2005-06 to 2012-13 is reproduced as under-

“On the issue of purchase diamonds from bogus concerns, we agree with the submission of Ld. AR that the applicant cannot be asked to discharge the burden of proof of existence or genuineness of the alleged sellers as long as purchases are recorded in the books and payments have been made through account payee cheques. The applicants have furnished copies of purchase bills, bank statements, copies of return filed and copies of ledger accounts and sale tax registration which are shown at pages 146-579 of the paper book.”

5.1 In view of the aforesaid facts and material available on record, we have no hesitation in upholding the order of learned CIT (A). While upholding the order passed by the learned CIT (A), we rely on the judgment of the Hon’ble Jurisdictional High Court in the case of CIT vs. M/s Surendra Buildtech Pvt. Ltd. in ITA No. 141/2012 wherein the Hon’ble Court held that where the Revenue failed to rebut the findings recorded by the learned CIT (A) by bringing any contrary material on record, the finding recorded by the lower authority based on documentary evidences needs to be upheld.

5.2 Grounds No. 6 to 8 are general in nature and do not require any adjudication.

6.0 In the final result, the appeal of the department is dismissed.

Order pronounced on 30/09/2020.

Sd/-

(G.S.PANNU)
VICE PRESIDENT

Dated: 30/09/2020

DRAGON

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI