

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAM LAL NEGI, JM

ITA Nos.405 to 410/Mum/2019
(Assessment Years: 2008-09 to 2010-11 and 2012-13 to 2014-15)

M/s. Indo Unique Trading Private Limited 401, Mehta Mahal, 4 th Floor, 15 Mathew Road, Opera House, Mumbai-400 004	Vs.	Dy. CIT-5(1)(1) Room No. 806, M. K. Road, Mumbai
PAN/GIR No. AABC 15898 Q		
(Assessee)	:	(Revenue)

and

ITA Nos.421 to 426/Mum/2019
(Assessment Years: 2008-09 to 2010-11 and 2012-13 to 2014-15)

Dy. CIT-5(1)(1) Room No. 806, M. K. Road, Mumbai	Vs.	M/s. Indo Unique Trading Private Limited 401, Mehta Mahal, 4 th Floor, 15 Mathew Road, Opera House, Mumbai-400 004
PAN/GIR No. AABC 15898 Q		
(Revenue)	:	(Assessee)

Assessee by	:	Shri Suchek Achalia
Revenue by	:	Shri Uodal Raj Singh

Date of Hearing	:	22.10.2020
Date of Pronouncement	:	09.11.2020

ORDER

Per Bench:

These are cross appeals of the assessee and the Revenue against the common order of the learned Commissioner of Income Tax (Appeals)-10, Mumbai ('Id.CIT(A) for short) dated 30.10.2018.

2. The issue is sustaining of addition for bogus purchase @ 8% by the Id. CIT(A) as against 9% done by the Assessing Officer (A.O.). The assessee in its appeal has also challenged the validity reopening of the assessment and refusal by Id. CIT(A) to admit the additional evidence.

3. Brief facts of the case are that the assessee company is engaged in the business of import and export of diamond. In these cases assessment was reopened on the basis of information received from DCIT(Investigation), Mumbai that during the previous year, the assessee has taken the accommodation earlier in bogus purchase. The A.O. made 9% addition of the bogus purchase as under:

A.Y.	Amount
2008-09	59,70,604
2009-10	29,43,972
2010-11	30,47,064
2012-13	1,06,04,619
2013-14	1,44,282
2014-15	73,78,860

4. Since the facts are similar, we are referring to the A.O.'s order for A.Y. 2008-09. In the reassessment order, the A.O. elaborately referred to the search and admission by Bhawarlal Jain and modus operandi of bogus transaction. Finally, the A.O. referred to the following examination in the case of the assessee and made a disallowance of 9%, despite noting the assessee's reply that the gross profit from these parties was higher than this 9% margin of the company:

14.1. During the assessment proceeding vide letter dated 01.02.2016 the assessee was asked to produce the above mentioned parties in cross-examination in this office. However the assessee failed to produced the above parties M/s. Navkar Diamond, Mohit International, A2 Jwels and Kothari and Co ((Controlled by Shri Bhanwarlal Jain), for verification. Further, during the course of assessment proceedings the assessee was requested to explain as to why the purchase made from M/s. Navkar Diamond, Mohit

International, A2 Jewels and Kothari and Co should not be disallowed and added to its total income. The assessee was also requested to furnish all the documentary evidence in support of its claim of deduction of account of said purchase. In response to the same, the assessee has stated that the GP margin of purchase made from M/s. Navkar Diamond, Mohit International. A2 Jewels and Kothari and Co, which is higher than the GP margin of the Company.

14.2. From the facts of the case it can be concluded that the assessee did not make any genuine purchases from these suspicious dealers, as during the course of investigation, and as per the affidavit/statements by the proprietor/partner/ or operator of the firm admitted before the Income Tax investigation officer, that they have not done any genuine business. At the same time the assessee has purchased the goods from some other suppliers, may be without bills. It is a well known fact that if any person indulges in the practice of purchasing goods from the grey market and obtaining bogus bills of some other parties, would do so for getting some benefit. The magnitude of the benefit would depend on the facts of each case. The rate of purchase made from undisclosed parties is much lower than the rate of credit purchases, on account of evasion of Income Tax and other taxes. Thus it is concluded that there is inflation of purchases in the books of the assessee and therefore the purchase rate as per purchase bills submitted by the assessee cannot be accepted. The assessee has contended that there is corresponding sales, but here the rate at which these items are purchased is unverifiable. The only course of action available is to ascertain a percentage of the cost on the purchases made from suspicious dealers, as the probable profit of the assessee. As mentioned earlier both the parties were involved in giving bogus bills in A.Y 2012-13 also. The then DCIT 5(2)(1) for the reason mentioned therein has made addition to be 9% of the total transaction made from bogus parties/hawala dealers. Hence, profit earned by the assessee on the purchases made from the suspicious dealers is estimated at 9% of such purchases. The transaction made with these parties is treated as bogus transaction, hence the enhance the profit to be 9% of the total transaction of made with the above concern's.

14.3. Accordingly, the addition on account of Gross profit ratio worked out as under:
A. Y: 2008-09

Sr. No	Name of the Concern	Transaction Amount	% of GP margin	A.Y	Amount
1.	Kothari & Co	2,93,30,777	9%	2008-09	26,39,770
2.	Navkar Diamond	1,60,80,245	9%	2008-09	14,47,222
	Mohit International	62,62,718	9%	2008-09	5,63,644
	A2 Jewels	1,46,66,315	9%	2008-09	13,19,968
	Total		...		59,70,604

14.4. In view the above Gross Profit of the transaction made from the above parties totaling to Rs. 59,70,604/- is added to the total income of the assessee. In view of the fact

as stated above, I am satisfied that it is a fit case of initiation of penalty proceedings u/s 271 (1)(c) since the assessee has furnished inaccurate particulars of income & thereby concealed income.

5. Upon the assessee's appeal, the Id. CIT(A) upheld the validity reopening. On merits, he noted that the assessee has placed on record before the A.O. various details in the form of purchase bills from the aforesaid parties, account confirmation of the above parties, bank statement of the above parties for payment made to the purchase parties, ITR acknowledgement, balance sheet and profit and loss account of the aforesaid parties. Hence, the Id. CIT(A) also noted that all the information that could have been supplied have been provided by the assessee. Hence, he rejected the contention that the A.O. has not issued any notice to the supplier. He also rejected the assessee's plea of cross examination of parties. He distinguished the ITAT decision in the assessee's own case by observing that the A.O. has done further examination by asking the assessee to produce the parties and that in that case affidavit from supplier were produced. Finally he held as under:

8.3.31 Thus taking in to account the entirety of the facts, the profit embedded in accommodation entries of purchase of diamonds is estimated @ 8% of the purchase amount of Rs.6,63,40,055/-for AY 2008-Q9and an addition of Rs.53,07,204/- to the total income of the appellant is sustained. The appellant gets relief of Rs.6,63,400/- (Rs.59,70,604/- minus 53,07,204/-).

8.3.32 For AY 2009-10, the profit embedded in accommodation entries of purchase of diamonds is estimated @ 8% of the purchase amount of Rs.3,27,10,808/- and an addition of Rs.26,16,865/- to the total income of the appellant is sustained. The appellant gets relief of Rs.3,27,107/- (Rs. 29.43,972/- minus 26,16,865/-).

8.3.33 For AY 2010-11, the profit embedded in accommodation entries of purchase of diamonds is estimated @ 8% of the purchase amount of Rs.3,38,56,262/- and an addition of Rs.27,08,501/- to the total income of the appellant is sustained. The appellant gets relief of Rs.3,38,563/- (Rs.30,47,064/- minus Rs.27,08,501/-).

8.3.34 For AY 2012-13, the profit embedded in accommodation entries of purchase of diamonds is estimated @ 8% of the purchase amount of Rs.11,78,29,100/- and an addition of Rs.94,26,328/- to the total income of the appellant is sustained. The appellant gets relief of Rs.11,78,291/- (Rs.1,06,04,619/- minus Rs.94,26,328/-).

8.3.35 For AY 2013-14, the profit embedded in accommodation entries of purchase of diamonds is estimated @ 8% of the purchase amount of Rs.16,03,131/- and an addition of Rs.1,28,250/- to the total income of the appellant is sustained. The appellant gets relief of Rs.16,0327- (Rs.1,44,282/- minus Rs.1,28,250/-).

8.3.36 For AY 2014-15, the profit embedded in accommodation entries of purchase of diamonds is estimated @ 8% of the purchase amount of Rs.8,19,87,329/- and an addition of Rs.65,58,986/- to the total income of the appellant is sustained. The appellant gets relief of Rs. 8,19,874/- (Rs.73,78,860/- minus Rs. 65,58,986/-).

7. Against the above order, the assessee and the Revenue are in cross appeal before us.
8. At the outset, the Id. Ld. Counsel of the assessee submitted that the revenue's appeal are not maintainable as the tax effect is below the limit fixed by CBDT. Further, the Id. Counsel of the assessee submitted that the issue is squarely covered by ITAT order in assessee's own case for A.Y 2007-08.
9. Per contra, the Id. Departmental Representative (Id. DR for short) could not dispute this proposition that the issue is covered by ITAT decision in assessee's own case nor did he disputes that tax effect in Revenue's appeal is below the limit fixed by the CBDT for filing the appeals before the ITAT.
10. Upon careful consideration, we note that the ITAT in assessee's own case for A.Y. 2007-08 vide order dated 16.08.2017 has held as under:

10. We have heard rival contentions and perused the record. We notice that the assessing officer has reopened the assessment for the second time after expiry of four years from the end of the assessment year, othe basis of information received from the investigation wing about the bogus nature of transactions entered by Shri Bhanwarlal Jain

group. Even though the AO has mentioned the reasons that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment, yet he has not specified the manner of failure.

11. On the contrary, we notice that the assessee has proved the genuineness of purchases by obtaining confirmation letters in the form of affidavits from all the suppliers. The AO has done independent enquiry during the course of assessment proceedings by issuing notices u/s 133(6) of the Act to all the suppliers. We notice that the notices were duly served upon the suppliers and they have also responded by filing their replies duly confirming the transactions. The AO has rejected the replies by observing that the replies lacked details and they did not mention about the nature of transactions. In our view, the said observations are vague in nature. On the contrary, a perusal of the affidavits furnished by the suppliers would show that they have confirmed the sales effected by them to the assessee. Further they have also verified and signed the ledger account copies as available in the books of account. When the suppliers confirm that the transactions of sales made by them to the assessee are genuine, that too, in response to the notices issued by the AO u/s 133(6) of the Act during the course of assessment proceedings, in our view, the said replies cannot be rejected without bringing on record any material to show that they are not true. We notice that the AO did not bring any material on record and he simply relied upon the report given by the investigation wing. As per Ld A.R, the statement given by Shri Bhanwarlal jain is a general statement only. The assessee, as stated earlier, has furnished confirmation of ledger accounts and also affidavits to prove the genuineness of transactions. We notice that the AO could not controvert those documents.

12. In view of the foregoing discussions, we are of the view that the assessee has duly discharged the burden to prove the genuineness of purchases. On the contrary, the AO has simply relied upon the report given by the investigation wing. In this view of the matter, we are of the view that no addition is called for on account of alleged bogus purchases. Accordingly we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the impugned addition.

11. We find that facts in the present case are identical. Further sales have not been doubted. Rather in the present case as noted by the Id. CIT(A) all the details are on record and hence the Id. CIT(A) held that there was not any need of issuing notice to the impugned supplier. Since there is an order of ITAT in the assessee's own case which has not been reversed by Hon'ble Jurisdictional High Court and Id. DR has not been able to rebut this, we follow the co-ordinate bench decision in the assessee's own case and decide the issue in favour of the assessee.

12. Hence, following the aforesaid ITAT decision, we direct accordingly. Since, we have decided the issue on merit in favour of the assessee, adjudication on reopening and

other issues raised by the assessee is only of academic in nature. Hence, we are not engaging into the same.

13. As regards the Revenue's appeals are concerned, the further contention of the ld. AR is that the same are not maintainable on the touchstone of Circular by the CBDT vide Circular No. 17/2019, order dated 08.08.2015, which specified that the appeal by the Revenue shall not be filed if the tax effect is below Rs.50 lacs. In the present case, the tax effect is below 50 lacs as evident by the relief given by the ld. CIT(A) is as under:

A.Y.	Relief granted by ld.CIT(A)
2008-09	6,63,400
2009-10	3,27,107
2010-11	3,38,563
2012-13	11,78,291
2013-14	1,60,327
2014-15	8,19,874

14. The ld. DR did not point out that these appeals fall in any of the exception carved out in the said CBDT instruction.

15. In the result, the Revenue's appeals are dismissed and the assessee's appeals are allowed.

Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board on 09.11.2020.

Sd/-

(Ram Lal Negi)
Judicial Member

Mumbai; Dated : 09.11.2020
Roshani, Sr. PS

Sd/-

(Shamim Yahya)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai