

**आयकर अपीलीय अधिकरण "एच" न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"H" BENCH, MUMBAI**

**माननीय श्री शक्तिजी दे, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI SAKTIJIT DEY, JM AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**(Hearing Through Video Conferencing Mode)**

आयकर अपील सं./ I.T.A. No.767/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2010-11)

<b>Kumbh Gems</b> FW-3150, G-Block Bharat Diamond Bourse Bandra Kurla Complex, Bandra (E) Mumbai-400 051.	<b>बनाम/ Vs.</b>	<b>ACIT-Circle-23(2)</b> Room No.122, Matru Mandir, Tardeo Road Mumbai-400 007.
<b>PAN/GIR No.-AADFK-5586 G</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

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आयकर अपील सं./ I.T.A. No.1078/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2010-11)

<b>ACIT-Circle-23(2)</b> Room No.122, Matru Mandir, Tardeo Road Mumbai-400 007.	<b>बनाम/ Vs.</b>	<b>Kumbh Gems</b> FW-3150, G-Block Bharat Diamond Bourse Bandra Kurla Complex, Bandra (E) Mumbai-400 051.
<b>PAN/GIR No. AADFK-5586-G</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri Deven Kapadia-Ld. AR
<b>Revenue by</b>	:	Shri Gurbinder Singh -Ld.Sr. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	01/12/2020
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	14/12/2020

**आदेश / O R D E R****Manoj Kumar Aggarwal (Accountant Member)**

1. These cross-appeals for Assessment Year (AY) 2010-11 assails the order of Ld. Commissioner of Income Tax (Appeals)-33 [CIT(A)], Appeal No.CIT(A)-33/Rg.23/48/17-18 dated 12/12/2018 which has restricted the addition on account of *alleged bogus purchases* to 30%. The assessee is aggrieved by confirmation of addition to the extent of 30% whereas the revenue is aggrieved by partial deletion of the addition.

2. We have carefully heard the rival submissions and perused relevant material on record including judicial precedents as cited during the course of hearing. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

3.1 The assessee was subjected to reassessment proceedings for the year under consideration pursuant to receipt of certain information from DGIT (Investigation) that assessee obtained accommodation purchase bills aggregating to Rs.206.01 Lacs from an entity namely M/s Naman Exports. This entity was identified as one of the benami concerns being run by Bhanwarlal Jain Group to provide accommodation entries to various beneficiaries. These facts came to light during search operation u/s 132 on the group on 03/10/2013. The assessee is stated to be engaged in trading of diamonds. The original return of income filed by the assessee on 08/09/2010 was processed u/s 143(1).

3.2 Accordingly, the case was reopened as per due process of law and an assessment was framed u/s 143(3) r.w.s. 147 for the year under consideration on 18/12/2017 wherein the whole of such purchases were disallowed and added back to the income of the assessee. In support of

the transactions, the assessee had submitted invoice copies, bank statement evidencing payment to the supplier through banking channels and computerized stock register. The assessee also filed Income Tax Return as well as financial statements of the supplier. However, the assessee failed to supply manual stock register and also could not substantiate the mode of transport. Therefore, rejecting assessee's submissions, Ld. AO added aggregate purchases of Rs.206.01 Lacs to the income of the assessee.

4.1 The assessee assailed the stand of Ld. AO by submitting that there was no evidence to disallow the same. The assessee had already produced relevant documentary evidences and discharged the primary onus casted in this regard. The attention was drawn to the facts that purchased goods were exported and accepted by Customs Department. The sales proceeds were received through banking channels as per RBI guidelines. The assessee purchase 813.94 Carats which was used for the purpose of export. The assessee also pleaded to restrict the disallowance in the range of 2% to 9% as held in numerous other cases linked to Bhanwarlal Jain group.

4.2 The Ld. CIT(A) noted that there was a long gap between purchase and payment thereof which was not characteristics of normal transactions. However, without making actual purchases, exports could not have been possible and therefore, the additions were to be restricted to the extent of 30%. The said adjudication has given rise to cross-appeals before us.

5. Upon due consideration of factual matrix as enumerated in preceding paragraphs, it is quite evident that the supplier from whom the assessee is stated to have made purchases, was found to be a benami

concern being managed and operated by Bhanwarlal Jain Group. During search operations, it was found that these concerns were not doing any actual business but engaged in providing accommodation bills to various beneficiaries. As against this, the assessee has made export of the material so purchased from the supplier which is evident from the sale invoices and shipping bills as placed on record. The assessee maintained computerized stock records. It is also true that there could be no sale without actual purchase of material. Therefore on the facts and circumstances, the conclusion which could be drawn was that the purchases were sourced out of the books whereas the purchase bills were procured from the tainted group. In such a scenario, the correct approach would be to estimate the net profit earned by assessee on these transactions, which Ld. CIT(A) has rightly done so. However, keeping in view the fact that the assessee has already reflected Gross profit and Net profit rate of 4.04% & 2.10% respectively, the estimation as made by Ld. CIT(A) was on the higher side. We estimate the same @5% of the tainted purchases of Rs.2,06,01,000/-. The same comes to Rs.10,30,050/-. The balance addition stand deleted. The Ld. AO is directed to re-compute the income of the assessee in terms of our order. No other arguments or points have been urged before us.

6. The revenue's appeal stands dismissed whereas the assessee's appeal stands partly allowed.

*Order pronounced on 14<sup>th</sup> December, 2020.*

**Sd/-**

**(Saktijit Dey)**

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 14/12/2020

Sr.PS:-Jaisy Varghese

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

**आदेश की प्रतिलिपि □ ग्रेषित/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

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.