

आयकर अपीलिय अधिकरण, सुरत न्यायपीठ, सुरत  
IN THE INCOME TAX APPELLATE TRIBUNAL  
SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, Hon'ble JUDICIAL MEMBER  
AND Dr. ARJUN LAL SAINI, Hon'ble ACCOUNTANT MEMBER

(Virtual Hearing)

आ.अ.सं./I.T.A No.1154/AHD/2017

निर्धारण वर्ष/Assessment Year: 2012-13

The Income Tax Officer, Ward-3(1)(5), Surat.	Vs .	Shri Ramprakash V. Vijayvergiya, 11, Shakti Chambers, rughnathpura Main Road, Surat. <b>[PAN: AEVPV 0917 N]</b>
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओर से /Assessee by	None.
राजस्वकीओर से /Revenue by	Shri Ritesh Mishra – CIT(DR)

सुनवाई की तारीख/ Date of hearing:	04.01.2021
उद्घोषणा की तारीख/Pronouncement on:	04 .01.2021

**आदेश / O R D E R**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by Revenue is directed against the order of Learned Commissioner of Income Tax (Appeals)-3, Surat dated 17.02.2017 for the A.Y. 2012-13. The Assessee raised the following grounds of appeal:

“1. On the facts and circumstances of the case and in law, the CIT(A) has erred in restricting the addition made by the AO on account of disallowance of non-genuine purchases from Rs.4,98,74,852/- to Rs.62,34,360/-.

2.On the facts and circumstances of the case and in law, the CIT(A) has erred in directing to make an addition of 12.5% of unverified purchases which is not as per law. Once purchases are not genuine then either entire such purchases are to be

*disallowed or books of accounts ought to have been rejected and G.P. estimated.*

*3. On the facts and circumstances of the case and in law, the CIT(A) has not considered the fact that even in the case of M/s.Mayank Diamonds Pvt.Ltd referred by him, the Hon'ble Guj.High Court has directed to estimate G.P. @ 5%, and not made 12.5% of unverified purchases were directed to be added.*

*4. On the facts and circumstances of the case and in law, It is therefore, prayed that the order of the Ld.CIT(A) Surat may be set aside and either the ratio of M/s Mayank Diamond may be applied or the addition made by the AO be upheld.”*

2. Brief facts of the case are that the assessee is a proprietor of Meghna Exports, engaged in the business of imports, exports, manufacturing, trading and financial activities of rough & polish diamonds. The assessee filed its return of income for relevant assessment year on 14.08.2012 declaring total income of Rs.3,43,200/-. The case was selected for scrutiny. The assessment was completed on 26.03.2015. The Assessing Officer (AO) while passing the assessment order made addition of Rs.4.98 crore on account of bogus purchases. The AO during the assessment noted that as per the information available in his office, he noted that some of the purchasing parties, from which the assessee has shown purchases belongs to Bhanwarlal Jain Group. Bhanwarlal Jain Group is engaged in providing accommodation entries without actual delivery of goods. The assessee has shown purchases of Rs.2.63 crore from Ankit Exports and 2.35 Crores from Megha Gems which are managed by

Bhanwarlal Jain Group. On the basis of the information available with the AO about the accommodation entries provided by Bhanwarlal Jain Group, the AO issued show cause notice to the assessee as to why bogus purchases of Rs.4.98 crore should not be added to his total income. The assessee filed his reply dated 19.03.2015. In the reply, the assessee stated that they have already filed confirmation, purchase bills, bank statements, stock register, and copy of income tax return (ITR) of parties. It was also stated that all transactions were routed through banking channel. The contention of assessee was not accepted by AO. The AO concluded that the merely transaction routed through banking channel is not sufficient evidence. Bhanwarlal Jain Group was engaged in providing accommodation entries which clearly proved that all the concern belongs to Bhanwarlal Jain Group engaged in providing bogus entries of cash in books. With regard to the contention of the assessee not made any transaction with Bhanwarlal Jain Group, the AO took his view that the said group was controlling 70 concerns which were managed by Bhanwarlal Jain Group in providing accommodation entries. The AO finally concluded that the assessee failed to prove the genuineness of purchases. The AO made addition of 100% of the alleged bogus purchases.

3. On appeal before the Id.CIT(A), additions/disallowances of purchases was restricted to 12.5 % of the impugned/bogus

purchases. The Id.CIT(AO while sustaining the purchases to the extent of 12.5% held that the assessee has shown Gross Profit of only 1.66% of sales. Therefore, the disallowance 12.5% of impugned purchases would be reasonable to meet the end of justice. Aggrieved, by the order of the Id.CIT(A) the Revenue has filed present appeal before this Tribunal.

4. This appeal came up on hearing on 26.10.2020; none appeared on behalf of the assessee. Despite the fact that authority letter on behalf of the assessee of Shri Suresh Anchaliya and company CA is on record. The notice of hearing for 04.01.2020 is *also* served *on assessee* through registered post. Despite the service of notice, neither the assessee nor his representative appeared, nor is any application for adjournment filed. Therefore, we left no option except to decide the appeal after hearing submission of Id. Departmental Representative (DR) and on the basis of material available on record.

5. The learned CIT-DR for the revenue submitted that Investigation Wing, Mumbai of Income Tax Department carried extensive search and seizure action under section 132 on Bhanwarlal Jain Group. Bhanwarlal Jain Group during the search and post search action admitted that this group is engaged in providing accommodation entries. The assessee is one of the beneficiaries of bogus entries. The AO on the basis of the report of Investigation Wing was having information about the modus

operandi adopted by Bhanwarlal Jain Group. The assessee is one of the beneficiaries of bogus entries. During the assessment the AO issued show cause notice for disallowance of purchases. The AO after affording opportunity to the assessee and considering the submission made before him, treated the entire purchases from Bhanwarlal Jain Group as a bogus purchases. The Id.CIT(A) restricted the addition to the extent of 12.5% of Rs.4.98 crore, thereby granted relief for Rs.4.36 crore.

6. The Id.CIT(A) relied on the decision of jurisdictional High Court in the case of Mayank Diamonds Private Limited reported in [2014] [11] TMI 812 (Guj). In the said case, the Hon'ble High Court sustaining the disallowance of similar purchase to the extent of 5% of Gross Profit. The Id.CIT(A) despite referring the decision of Mayank Diamonds Pvt Ltd.(supra), instead of restricting the Gross Profit to 5%, restricted the disallowance of bogus purchases to the extent of 12.5% only. The CIT-DR submits that this case is squarely covered by the ratio of decision in Mayank Diamonds Pvt. Ltd. (supra) and the disallowance may be restricted to 5% of gross profit.
7. We have considered the submission of CIT-DR and have gone through the order of Lower Authorities. We have noted that during the assessment, the AO made the disallowance of 100% of impugned/bogus purchases, allegedly made from Bhanwarlal Jain Group Companies.

8. Before the Id.CIT(A) the assessee filed detailed submission, as recorded in para 7 of the impugned order. In the submission, the assessee stated that assessee provided sufficient evidentiary proof of purchases from Ankit Exports and Megha Diamonds consisting of account confirmation of purchased parties, copy of purchase bills, stock register, one to one mapping of purchases and subsequent sales and the correspondence sales bills. It was further stated that in reply to the show cause notice the assessee specifically stated that purchases were from both the concern in normal course of business and that they have no business dealings belonging with Bhanwarlal Jain Group and that they do not know group as far as transactions of purchases are concerned. There is no corroborative evidence to prove that assessee has bogus accommodation entries from this Hawala Group. The AO relied on the statement of Bhanwarlal Jain Group without providing copy and cross-examination of those persons who made statement regarding the Hawala Entries. The AO merely relied on third party information which has no concern with the assessee. The AO has not issued notice under section 133(6) or summon under section 131 of the Act for verification of genuineness of purchases. The assessee also relied on various case laws.
9. The Id.CIT(A) after considering the submission and the material placed before him held that the AO has not discussed any details about the documents furnished by the assessee, books of

accounts, stock register produced by assessee nor any defect was pointed out to discredit the evidence. The assessee provided day to day stock register. The day to day stock register shows that the receipt and issue of diamonds and stock in hand along with name of parties to whom and sale is made. The stock register is maintained for both rough diamonds as well polished diamonds. Corresponding sales is made within a week in case of most of the impugned purchases. If impugned purchases are stated as bogus, stock in hand will become negative. No sales are possible in absence of purchases. The AO has not doubted the sales. The ld.CIT(A) after referring the various case laws i.e. Bholanath Polyfab Pvt Ltd. in ITA No.137/AHD/2009, decision of Gujarat High Court in Mayank Diamonds Pvt Ltd. (supra) noted that in identical cases the Gross Profit addition was restricted by him to the extent of 5% of GP. However, the ld.CIT(A) distinguished the fact of the present case that the assessee has Gross Profit of 1.66% of on sales.

10. We have noted that the ld.CIT(A) has not referred GP for earlier or subsequent years or Net Profit in assessee's own case. The ld.CIT(A) in a single sentence held that the assessee has merely shown Gross Profit of 1.66% of sales. In our view, in absence of any material evidence the ld.CIT(A) ought to have followed the decision of Mayank Diamonds Pvt Ltd.,(supra). Therefore, considering the facts and circumstances of the case, and the

decision of jurisdictional high Court in Mayank Diamonds Pvt Ltd (supra), we direct the AO to restrict the disallowance to 5% of the gross profit, accordingly, appeal of the Revenue is partly allowed.

11. In the result, appeal of the Revenue is Partly Allowed.

Order pronounced on 04-01-2021 at the time of hearing of the appeal.

**Sd/-**  
**(Dr.ARJUN LAL SAINI)**

(लेखा सदस्य/ACCOUNTANT MEMBER)

सुरत/ **Surat**, दिनांक **Dated:** 4<sup>th</sup> Jan, 2021

S.Gangadhara Rao, Sr.PS

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

**Sd/-**  
**(PAWAN SINGH)**

(न्यायिक सदस्य/JUDICIAL MEMBER)

**By order**

/ / **TRUE COPY** / /

**Assistant Registrar, Surat**