आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर

IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR

श्री संदीप गोसाईं, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष

BEFORE SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 1383/JP/2019

Assessment Year: 2010-11

Shri Sunder Das Sonkia, Sonkia Bhawan, SMS, Highway, Jaipur.	बनाम Vs.	I.T.O., Ward-1(2), Jaipur.
PAN No.: AKHPS 7413 G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 09/JP/2020

Assessment Year: 2010-11

I.T.O., Ward-1(2), Jaipur.	बनाम Vs.	Shri Sunder Das Sonkhiya, Prop.- M/s Naveen Jewellers, Sonkhiya Bhawan, Chaura Rasta, Jaipur.
PAN No.: AKHPS 7413 G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri S.R. Sharma (CA) &
Shri Rajnikant Bhatra (CA)

राजस्व की ओर से/ Revenue by : Smt. Rooni Paul (Addl.CIT)

सुनवाई की तारीख/ Date of Hearing : 02/12/2020

उदघोषणा की तारीख/ Date of Pronouncement : 18/01/2021

आदेश/ ORDER

PER: SANDEEP GOSAIN, J.M.

These are the appeal filed by the assessee and the cross appeal filed by the Revenue arise against the order of the ld. CIT(A)-4, Jaipur dated 08/11/2019 for the A.Y. 2010-11. The grounds taken by the assessee and the revenue are as under:

<u>*Grounds of assessee's appeal:*</u>

"1. That on the facts and in the circumstances of the case the Ld. CIT(A) is wrong, unjust and has erred in law in not accepting contention of the appellant that the proceedings initiated by the Assessing Officer u/s 148 of the I.T. Act, 1961 and consequent assessment made by him u/s 143(3) r/w sec. 147 of the I.T. Act, 1961 is wrong and bad in law.

2. That without prejudice to the ground No. (1) above on the facts and in the circumstances of the case the Ld. CIT(A) is wrong, unjust and has erred in law in upholding the rejection of books of accounts of the appellant by the assessing officer u/s 145(3) of the I.T. Act, 1961 on account of alleged unverifiable purchases of Rs. 116043373/- and in further directing application of G.P. rate of 12% on declared turnover on this count resulting in upholding addition to the extent of Rs.4123468/- as trading addition.

3. That the appellant craves the permission to add to or amend to any of the above grounds of appeal or to withdraw any of them."

<u>*Grounds of Revenue's appeal:*</u>

"1. Whether on the facts and in the circumstances of the case and bad in law the Ld. CIT(A) is correct in holding that trading addition of Rs. 2,48,87,372/- made by the A.O. on account of disallowance of 25% of bogus purchases on the basis of corroborative information received from Investigation Wing, Mumbai is not sustainable and only a trading addition of Rs. 41,23,468/- be made by applying GP rate of 12%?"

2. Without prejudice to the above, whether having upheld the applicability of section 145(3), the CIT(A) was justified in estimating the GP at 12% whereas, as per the average GP of 3 years, the GP works out at 17.35% as against 15.73% wrongly noted by Ld. CIT(A)."

2. The hearing of the appeals was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. Facts in brief are that the assessee is an Individual and engaged in export of gems & jewellery after purchasing it from local market. The assessee carried on business in proprietorship under the name & style of M/s S. Naveen Jewellers. The assessee filed return of income declaring NIL income after claiming set of b/f losses. The return was processed u/s 143 (1) of the Income Tax Act, 1961 (in short, the Act) and no notice u/s 143 (2) of the Act was issued. Thereafter the A.O. initiated reassessment proceedings by issuance of notice u/s 148 of the Act on 29-03-2017 after recording following reasons:

> *"As per information available with this office, it was noticed that a search and seizure action u/s 132 of the I. T. Act, 1961 was carried out in the case of Sh. Rajendra Jain Group, Sh. Sanjay Choudhary Group and Sh. Dharmichand Jain Group on 03.10.2013. During the course of search and seizure operation, statements of Sh. Rajendra Jain and Sh. Surendra Jain, the key persons of the Rajendra Jain Group were recorded on oath wherein they had admitted that they are involved in providing accommodation entries in the shape of bogus sales/unsecured loans through the various concerns controlled and managed by them. The list of the paper companies/concerns and beneficiaries are placed on record. They further admitted that they are not doing any real trading of diamonds etc. but indulged in paper transactions only.*
>
> *As established that Sh. Rajendra Jain and Sh. Surendra Jain are engaged in the business of providing accommodation entries in the form of bogus sales and unsecured loans to various beneficiaries concerns through their paper concerns controlled and managed by them. The proprietary concern of the assessee Sh. Sunder Das Sonkia is one of the beneficiary of Sh. Rajendra Jain Group and has obtained accommodation entries in the form of purchase/loan of Rs. 11,60,43,873/- from the concerns controlled and managed by Sh. Rajendra Jain and Sh. Surendra Jain.*

Looking to the facts mentioned above, I have reason to believe that the income to the extent of Rs. 11,60,43,873/- has escaped assessment within the meaning of section 147 of the I. T. Act, 1961. Therefore, it is a fit case to issue notice u/s 148 of the I. T. Act, 1961".

The A.O. proceeded to reassess the assessee and issued notice u/s 143 (2) which were complied by filling explanations producing copies of purchase invoices, Bank statements in support of payments made by cheques to persons from whom purchases made and also export invoices showing that goods so purchased were exported and also filed quantity tally of purchase & export sales and contended that purchases made by assessee are genuine and not bogus. However, the A.O. vide impugned reassessment order by rejecting books of accounts of assessee and invoked provisions of section 145 (3) of the Act and disallowed 25% of said purchases and made trading addition of Rs.2,90,10,840/- in declared income.

4. Being aggrieved by the order of the A.O., the assessee carried the matter before the ld. CIT(A), who after considering the submissions of the parties as well as after perusing the material placed on record, given part relief to the assessee by observing as under:

"9. I have perused the written submissions submitted by the Ld. A/R and the order of AO. I have also gone through various judgments cited by the Ld. A/R

and those contained in the order of AO. I have also gone through the relevant pages in the paper book filed by the Ld. A/R.

9.2 It is seen that the AO has disallowed purchase of Rs. 2,90,10,843/- found to be unverifiable by invoking provisions of sec. 145(3) of the Act thereby rejecting books of accounts. The issue regarding unverifiable purchase has been decided by the Hon'ble ITAT, Jaipur and Hon'ble Rajasthan High Court wherein it was held that when purchases are unverifiable, income is to estimated and for estimation of income of the assessee, application of G.P. is the best course of action based on average G.P. rate on past history.

9.3 In this case the Authorized Representative filed a GP chart of 3 years. As per the same, the average G.P. rate comes to 15.73% which has come down to 9.34% in A.Y. 2010-11. The assessee contended that in earlier years he was exporting mainly coloured gem stones while in this year export is of diamond only wherein G.P. margin is much lesser as is commonly known in trade than that in coloured gem stones. It is thus contended that past year declared G.P. rates are not comparable with the G.P. rate declared in this year. The assessee filed details of purchases and exports of this year in support of contention which was found correct. Looking to these facts and also keeping in mind that certain purchases remained unverifiable, provisions of section 145(3) of the I.T. Act, 1961 are hereby applicable as the books of accounts are not reliable. Therefore, the Assessing Officer is directed to apply GP rate of 12% on total turnover of Rs. 15,52,82,240/- which results in addition of Rs. 41,23,468/-. Accordingly, assessee gets relief of Rs. 2,48,87,372/-.

5. Against the above order of the ld. CIT(A), the assessee is in appeal and the revenue is in cross appeal before the ITAT by taking above mentioned grounds.

6. Ground No.1 of the assessee's appeal relates to challenging the order of the ld. CIT(A) in upholding the proceedings initiated by the A.O. U/s 148 of the Act. The ld AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the ld. CIT(A) and also relied upon the written submissions filed before the Bench and the same is reproduced below:

The assessee reiterates the objections raised before A.O. objecting initiation of reassessment proceedings reproduced in assessment order. It is prayed that the same may kindly be considered while disposing the ground of appeal.

It is submitted that from the plain reading of the reasons recorded, it can be noted that notice u/s 148 is issued solely on the basis of information received from Investigation Wing, Mumbai where it referred to various evidences found during search operation in case of Rajendra Jain group of cases. The primarily condition for initiating action u/s 147 is that A.O. must have reason to believe that any income chargeable to tax has escaped assessment. This satisfaction must be of A.O. himself and not a borrowed satisfaction. Reason to belief cannot be at the instance of investigation conducted by others or third party statement etc. In the present case, the reasons says that assessee has suppressed its profits by taking accommodation entry of Rs. 11,60,43,373/- in the nature of bogus purchases from four companies. The A.O. has not examined the information received by him to verify whether assessee has made any purchases from these parties and whether the same is reflected in the accounts or not. The reasons recorded are vague, all consequent proceeding are also illegal and invalid. The AO mechanically and blindly

acted upon the information received from the Investigation Wing, Mumbai without applying his own mind to arrive at believe that income of the assessee has escaped assessment. For this, reliance is placed on the following cases: -

i. Sarthak Securities Co. (P) Ltd. Vs. ITO 329 ITR 0110 (Del.) (HC) decision dt. 18.10.2010.

2. Banke Bihari Properties Pvt. Ltd. Vs. ITO (2016) 46 CCH 0546 (Del.) (Trib.) decision dt. 22.04.2016.

3. M/s Surbhi Minchem Pvt. Ltd. Vs. ITO order dt. 16.05.2014 in ITA No. 102 & 103/Jodh/2014.

4. Vinayak Shyam Enterprises Pvt. Ltd. Vs. ITO order dt. 21.05.2014 in ITA No. 104/Jodh/2014

5. CIT Vs. Kamdhenu Steel & Alloys Ltd. &Ors. (2012) 68 DTR 38 (Del.) (HC)

He further submitted that where the AO acted mechanically on the information supplied by the Directorate of the IT (Inv.)about the alleged bogus/accommodation entries provided by certain individuals/companies, without applying his own mind, he was not justified in invoking jurisdiction u/s 147.

Hence, the reopening of assessment only at the instance of Investigation Wing, Mumbai and that too on vague reasons is illegal and bad in law.

In this connection it is further submitted that the department is only relying on the alleged statement of Directors of Jain Group of Companies taken behind the back of the assessee by I.T. authorities and no copy of said statement is supplied to the assessee till date. Further the said alleged statement cannot be relied in absence of any cogent material or evidence in support thereof. It is also submitted that department's contention regarding not providing cross examination of said persons to

assessee will not vitiate the value of alleged evidence in the form of statement of Director, relying upon the judgment of Rajasthan High Court Rameshwar Lal Mali Vs. CIT 256 ITR 536 is no a correct interpretation of law for the reasons that it is on different facts and circumstances of the facts of assessee's case. The assessee further submits that the right to cross examine the third party whose statement is relied by department is principle of natural justice and its denial is violation thereof. The Hon'ble Apex Court in case of Shree Ram Durga Prasad (RB) Vs. Settlement Commission (1989) 176 169, 174 (SC) held that any order made in violation of principle of natural justice is void and nullity which is further supported from the decision of Hon'ble Supreme Court in case of CCE Vs. Andaman Timber Industries 127 DTR 241 held that assessment based on statement without giving an opportunity to cross examine him is not sustainable in law.

Now it is settled law that by obtaining statements from the third person(s) cannot and should not be the only basis to reopen the case of assessee unless some other positive material or corroborative evidence is available on record. In the case of B & Brothers Engineering Works Vs. DCIT (2003) 78 TTJ (Ahmd TM) 876 it was held that admission by itself could not lead to conclusion that 'on money' was received. The recording of confessional statement is not the end of the matter and no assessment can be mechanically concluded on a confessional statement being an uncorroborated testimony such a statement cannot be considered as sacrosanct as held in ACIT Vs. Agarwal (1994) 50 ITD 52. Thus, such statements cannot be considered as an information for assessing officer to form reason to believe escapement of income.

The Ld. A.O. and CIT (A) has not considered properly the above facts of the case and judicial pronouncement and rejected the objections filed by assessee. It is submitted that reopening of assessment on facts of the

case is wrong and bad in law. The issue of notice u/s 148 to assessee cannot be sustained in law."

7. On the contrary, the ld DR has relied on the order of the A.O.

8. We have heard the ld. Counsels of both the parties and have perused the material placed on record. We have also deliberated upon the decisions cited in the orders passed by the authorities below as well as cited before us and we have also gone through the orders passed by the revenue authorities. From the facts of the present case, we noticed that the case was reopened on the basis of information received by the A.O. regarding search operation conducted in the case of Jain Group of companies and information of which was available to the A.O. In the present proceedings, although, the ld AR had challenged the reopening on the basis of the extract of statement of Shri Praveen Kumar Jain and submitted that there were no reasons to believe and the A.O. reopened the case and the A.O. had simply formed an opinion without brining on record any corroborate evidence. According to the ld AR, the information in this case was received from the Investigation Wing of the Income Tax Department and therefore, in this way, there was only statement of third person on the basis of which the A.O. had reopened the case of the assessee. However, we are not included to accept the contention of the assessee as the information in this case was received by the A.O. from

the Investigation Wing and the A.O. after examining the same had recoded reasons for reopening the assessment, we are of the view that the proceedings U/s 147 of the Act could be initiated on the basis of investigation report, in this respect, we draw strength from the decision in the case of **Ankit Agrochem (P) Ltd. Vs JCIT (2018) 89 taxmann.com 45 (Raj)** wherein it was held by the Hon'ble Jurisdictional High Court that proceedings initiated U/s 147 of the Act on the basis of report received from DIT(Inv.) were valid. The relevant portion of decision is reproduced below:

> *"As per Explanation 2 (b) to section 147, where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed the excessive loss, deduction, allowance or relief in the return, the same is deemed to be case where income chargeable to tax has escaped assessment. [Para 13].*
>
> *In the instant case, a perusal of the reasons recorded by the Assessing Officer for issuing notice under section 148 reveals that during the assessment proceedings it was noticed that the assessee had received share application money from several entities which was utilized during the year and subsequently returned in financial year 2013-14. That apart on further examination of certain information received from the Directorate of Investigation which had carried the investigation in the case of the entities, details whereof has been set out in the reasons recorded, it was ascertained that those entitles which were companies with no real business and are only engaged in business of providing*

accommodation entries of bogus nature to beneficiary concerns which was further 'confirmed by the directors/dummy directors/key persons of the said entities in their respective statements. Thus, on the basis of the material on record, Assessing Officer opined that the appellant company has received and utilized the share application money received from bogus sources lacking genuineness, creditworthiness, genuine identity, which fall within the purview of section 68. [Para 14].

It is true that the reasons recorded or the material available on record must have nexus to the subjective opinion formed by the Assessing Officer regarding the escapement of the income but then, while recording the reasons for belief formed, the Assessing Officer is not required to finally ascertain the factum of escapement of the tax and it is sufficient that the Assessing Officer had cause or justification to know or suppose that income had escaped assessment. It is also well settled the sufficiently and adequacy of the reasons which have led to formation of a belief by the Assessing Officer that the income has escaped the assessment cannot be examined by the Court [Para 16)".

6.4 In view of the discussion as above, the Assessing Officer had specific information based on which after due recording of reasons and approval, the assessment has been reopened. The action of the Assessing Officer u/s 147 is upheld. Ground of appeal is dismissed."

9. After having considered the entire facts of the present case, we are also of the view that the reasons recorded or the material available on record must have nexus to the subjective opinion formed by the A.O. regarding the escapement of the income but then, while recording the reasons for belief formed, the A.O. is not required to finally ascertain the

factum of escapement of the tax and in our view, it is sufficient for the A.O. in case he had cause or justification to know or suppose that income had escaped assessment. It is also well settled that the sufficiency and adequacy of the reasons which have led to formation of a belief by the A.O. that the income has escaped assessment cannot be examined by the Court. Therefore, in view of above discussion, we are of the view that the A.O. had specific information based on which and after recording of reasons and approval, the assessment has been reopened. Therefore, up uphold the decision on ld. CIT(A) on this ground and dismissed the ground raised by the assessee.

10. Ground No. 2 of the assessee's appeal and ground No. 1 and 2 of the Revenue's appeal are interlinked and interconnected and clubbed together and we decide these grounds by common order. These grounds relate to challenging the order of the ld. CIT(A) in upholding the rejection of books of accounts of the appellant by the assessing officer u/s 145(3) of the Act on account of alleged unverifiable purchases of Rs. 11,60,43,373/- and in further directing application of G.P. rate of 12% on declared turnover on this count resulting in upholding addition to the extent of Rs.41,23,468/- as trading addition and also in holding that trading addition of Rs. 2,48,87,372/- made by the A.O. on account of

disallowance of 25% of bogus purchases on the basis of corroborative information received from Investigation Wing, Mumbai is not sustainable and only a trading addition of Rs. 41,23,468/- be made by applying GP rate of 12%. At the outset, the ld AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the ld. CIT(A) and also relied upon the written submissions filed before the Bench and the same are reproduced below:

> *"The assessee's ground of appeal relates to objecting the action of Ld. CIT(A) as wrong, unjust and has grossly erred in law in confirming that purchases of Rs. 11,60,43,373/- made by the appellant is not genuine and is bogus purchases and is further wrong and has erred in law in rejecting books of accounts of the appellant u/s 145 (3) of the I. T. Act, 1961 and in confirming an addition of Rs. 41,23,468/- to the declared income of the appellant by applying G.P. rate of 12.00% on declared turnover.*
>
> *The Ld. A.O. on the ground that information was received from investigation Wing of the department at Mumbai that during the course of search operation carried out by Investigation Wing of the Department in case of Rajendra Jain group Mumbai on 3-10-2013 it is revealed from documents and evidences: –*
>
> *From the documents and evidences found during the search, it has been established that the assessee Shri Sunder Das Sonkia, Prop. M/s S. Naveen Jewellers also arranged accommodation entry from Sh. Rajendra Jain group and obtained bogus purchase bills of Rs. 11,60,43,473/- from M/s AVI Exports, M/s Aadi Impex, M/s Sun Diam P. Ltd., M/s Kalash*

Enterprises the paper concern of Rajendra Jain group which are treated as bogus and non-genuine.

In this connection it is submitted that in course of assessment proceedings the assessee company produced complete details of purchases effected from the said party which

(i) Purchase invoice received from the party.

(ii) VAT Registration No. of party under MVAT Act.

(iii) Permanent account No. of party under I. T. Act, 1961.

(iv) Payments having been made by account payee cheques which stood debited in the Bank account of appellant company and credited in Bank A/c of seller party.

(v) Confirmation from party confirming the purchase transaction.

The Ld. A.O. in course of assessment proceedings raised a query regarding purchases from said parties. The assessee replied that he has submitted documentary evidences as stated above for verification of the purchases made from said parties. The assessee submitted that it had discharged the initial burden casted on him and relied on various judgements. The assessee also stated that it does not know that what enquiries and which connection investigation wing carried on the alleged investigation and on what basis and evidences in the eyes of law it is concluded by department that the said parties are entry provider and assessee is not concerned/answerable and liable for the transactions carried on by the third party in its books of accounts including Bank A/c. The assessee further submitted that alleged statements made on behalf of alleged concerns cannot be relied and used in case of assessee and for this relies on judgement in case of S. P. Agarwalla Alias Sukhdev Prasad

Agarwala Vs. ITO (1983) 140 ITR 1010 (Cal) wherein it was held that mere confusion statement by a third party that he was a mere name lender in transaction without naming the assessee would not be sufficient to hold that same transaction as bogus. However Ld. A.O. not found any of contention of assessee as tenable.

The Ld. A.O. further held that onus is on assessee to prove the purchases claimed by it the assessee submits that it had made purchases from the party as recorded in its books of accounts and produced all the documents from party to prove genuiness of purchases it submits that it had discharged the initial burden casted upon it to prove the genuineness of purchases from the said parties as has been held by ITAT, Jaipur Bench, Jaipur in its decision in case of Sagar Mal Daga & Co. Vs ITO (2004) XXXII TAX WORLD 40 and Radha Mohan Lal Agarwal Vs. I.T.O. (2003) XXX Tax World 190. The ITAT, Jaipur Bench, Jaipur in case of M/s Sambhav Gems Ltd. (2006) XXXVI T.W. 254 in case of Shri Jatin Hariyani (2007) XXXVII T.W. 116 in case of Vaibhav Gems Ltd.; Vivek Kala Vs. ACIT (2007) XXXVIII T.W. 65 S.M. Company Vs. ACIT (2007) XXXVIII T.W. 236, Euro Jewels Vs. ACIT (2008) XXXIX T.W. 105 has upheld the above legal views and purchases supported with similar documents as furnished by assessee in assessment proceedings were held as genuine and not bogus.

The Ld. A.O. for making disallowance of 25% of said alleged purchases of Rs. 11,60,43,873/- relied on judgement in case of Sanjay Oil Cake Industries. The judgement of Sanjay Oil Cake Industries Vs. CIT (2008) 10 DTR 153 (Guj.) is not applicable. In this connection it is submitted that the facts of the said case are quite different from the facts of the party from whom assessee made purchases. These are as under: -

Facts in case of Sanjay Oil Cake Industries	***Facts of the parties from whom assessee made***

		purchases
(i)	*It was found that parties were not traceable – only bills and sales tax No. were furnished.*	*Parties are traceable as they besides having sales tax No. hold PAN – they filed regular I.T. Returns gave duly signed confirmations and did not presented itself before A.O. with books of accounts which it maintained.*
(ii)	*There is a finding that CIT (A) had gone through the purchase price of raw material prevalent at that time and admittedly, the goods in the form of raw materials were purchased at a price which was lower than the market price, that no purchase bills at the said price were available, and accordingly, apparent sellers were providing accommodation entries to the assessee and, therefore a conclusion was drawn that purchase price was inflated (though the facts as appear from order suggests deflation of price and not inflation of price).*	*No such facts were brought on record in this case. In respect to these parties there is no finding that purchases declared by assessee company were not on prevalent market price.*
(iii)	*It was found that the amounts were credited on account of cheques of the assessee and they were being withdrawn by some unknown person whose address or whereabouts could not be known.*	*No such facts were brought on record in this case.*

Without prejudice to above it is submitted that A.O. has not disbelieved purchases but only disbelieved the purchase vouchers. The trading account as such has not been disturbed as op. stock, closing stock and sales as declared have been accepted. The A.O. has only doubted the

sellers from whom purchases was made by assessee. He relied on the following decisions:

1. *CIT Vs. Sathya Narayan P. Rathi (2013) 351 ITR 350*
2. *(2013) 356 ITR 451 CIT Vs. Simit P. Seth*
3. *Vijay Kedia (HUF) Vs. ACIT (ITA No. 197 & 248/JP/2016) decided on 29-01-2018*
4. *DCIT Vs. Gem Paradise (ITA No. 747 & 65/JP/12) order dated 26-12-2017.*
5. *Shri Rajkumar Agarwal, the ITAT Jaipur Bench, Jaipur has decided vide ITA No. 504/JP/2013.*

The turnover and trading results of assessee for the last three years are as under:-

A.Y.	***Turnover***	***Gross profit***	***G.P. rate***	***Remarks***
2008-09 (Only stones)	*1,88,54,584*	*25,33,190*	*18.28%*	
2009-10 *(i) Diamond* *(ii) Stones & Studded jewellery*	 *2,54,77,175/-* *2,53,28,369/-*	 *25,47,717/-* *50,66,543/-*	 *10.00%* *20.00%*	*In appeal Hon'ble ITAT accepted the declared G.P. rate of 10% vide order dated 15-04-2020 in Appeal No. 1126/JP/2020*
2010-11 ***(i) Diamond*** *(ii) Stones & Studded jewellery*	 ***14,54,88,165/-*** *97,94,075/-*	 *1,29,33,991* *15,26409/-*	 *8.92%* *15.59%*	

It is further submitted that export of assessee upto A.Y. 2008-09 was only of colour stones precious or semi precious. However from A.Y. 2009-10 it started shifting to business of diamonds and in that year the export

turnover was of colour stones precious or semi precious and diamonds. But in A.Y. 2010-11 the export sale is of mainly diamonds and therefore the export sale jumped to Rs. 15,92,82,240/-. As it is commonly known that the profit margin in diamond is much lesser than in colour stones which ranged between 6% to 9% and therefore G.P. rate of this year has fallen as compared to earlier years. The purchases made has been exported as it is and there is bill to bill tally of purchase and export. In support of contention the assessee submitted the photo copies of purchase bills before Ld. CIT(A) also. Thus the results of this year cannot be compared with results of earlier year as complete nature of business is changed from this year. The results declared for this year by assessee is much better as compared to other traders engaged in export trade of diamonds. In view of this the allegation of reducing profit by obtaining non-genuine bogus purchase bills is wrong and not sustainable. There is increase in total gross profit and thus results can be held progressive and thus no addition is called for. He relied on the decision of ITAT, Surat Bench in case of Brij Kishore Radhey Shyam Sonkhiya Vs. DCIT (ITA No.(s) 364-369/SKT/2018 order dated 02-08-2019) wherein exactly on similar facts the Hon'ble ITAT held that no addition can be called for on the facts of the case.

In view of above facts and position of law it is prayed that addition of Rs.41,23,468/-confirmed by Ld.CIT(A) by applying arbitrary G.P. rate of 12.00% as against the declared G.P. rate of 9.34% is wrong and bad in law which deserves to be deleted."

11. On the contrary, the ld DR has relied on the order of the A.O.

12. We have heard the ld. Counsels of both the parties and have perused the material placed on record. We have also deliberated upon

the decisions cited in the orders passed by the authorities below as well as cited before us and we have also gone through the orders passed by the revenue authorities. As per facts of the present case, during the course of search operation carried out by Investigation Wing of the Department in case of Rajendra Jain group Mumbai on 3-10-2013, it was revealed to the department that the assessee Shri Sunder Das Sonkia, Prop. M/s S. Naveen Jewellers also arranged accommodation entry from Sh. Rajendra Jain group and obtained bogus purchase bills of Rs. 11,60,43,473/- from M/s AVI Exports, M/s Aadi Impex, M/s Sun Diam P. Ltd., M/s Kalash Enterprises the paper concern of Rajendra Jain group which were treated as bogus and non-genuine. However, in order to prove his contention, the ld AR had drawn our attention to the documents submitted during the course of assessment proceedings, which are in the shape of purchase invoice received from the party, VAT Registration No. of party under MVAT Act, permanent account No. of party under I. T. Act, payments having been made by account payee cheques which stood debited in the Bank account of assessee company and credited in Bank A/c of seller party, confirmation from party confirming the purchase transaction etc. It was submitted by the ld AR that the assessee had discharged the initial burden casted on him and relied on various judgements. The assessee further submitted that alleged statements

made on behalf of alleged concerns cannot be relied and used in case of assessee and for this purpose he relied on judgement in case of ***S. P. Agarwalla Alias Sukhdev Prasad Agarwala Vs. ITO (1983) 140 ITR 1010 (Cal)*** wherein it was held that "*mere confusion statement by a third party that he was a mere name lender in transaction without naming the assessee would not be sufficient to hold that same transaction as bogus.*" We further found in the present case that the assessee had discharged the initial burden casted upon it to prove the genuineness of purchases from the said parties as has been held by the Coordinate Bench of ITAT, Jaipur Benches, Jaipur in case of **Sagar Mal Daga & Co. Vs ITO (2004) XXXII TAX WORLD 40 and Radha Mohan Lal Agarwal Vs. I.T.O. (2003) XXX Tax World 190 and even the Coordinate Bench of the ITAT, Jaipur Benches, Jaipur in case of M/s Sambhav Gems Ltd. (2006) XXXVI T.W. 254 and in case of Shri JatinHariyani (2007) XXXVII T.W. 116** had upheld the above legal views and purchases supported with similar documents as furnished by assessee in assessment proceedings were held as genuine and not bogus. However, the A.O. for made disallowance of 25% of alleged purchases of Rs. 11,60,43,873/- by relying on judgement in case of **Sanjay Oil Cake Industries Vs. CIT (2008) 10 DTR 153 (Guj.).** From the facts of the present case, we found that judgement of Sanjay

Oil Cake Industries (supra) is not applicable to the facts of the present case. The facts of the said case were different from the case of the assessee and that distinction has been mentioned hereinbelow:

Facts in case of Sanjay Oil Cake Industries		**Facts of the parties from whom assessee made purchases**
(i)	It was found that parties were not traceable – only bills and sales tax No. were furnished.	Parties are traceable as they besides having sales tax No. hold PAN – they filed regular I.T. Returns gave duly signed confirmations and did not presented itself before A.O. with books of accounts which it maintained.
(ii)	There is a finding that CIT (A) had gone through the purchase price of raw material prevalent at that time and admittedly, the goods in the form of raw materials were purchased at a price which was lower than the market price, that no purchase bills at the said price were available, and accordingly, apparent sellers were providing accommodation entries to the assessee and, therefore a conclusion was drawn that purchase price was inflated (though the facts as appear from order suggests deflation of price and not inflation of price).	No such facts were brought on record in this case. In respect to these parties there is no finding that purchases declared by assessee company were not on prevalent market price.
(iii)	It was found that the amounts were credited on account of cheques of the assessee and they were being withdrawn by some unknown person	No such facts were brought on record in this case.

	whose address or whereabouts could not be known.	

Apart from above, we noticed that the assessee has also relied upon the decision in the case of **CIT Vs. Sathya Narayan P. Rathi (2013) 351 ITR 350** the Hon'ble Court noticed that "*the assessee was not able to prove the purchases to the extent of Rs. 61.40 lakhs, the Assessing Officer disallowed the entire amount, but in first appeal it was felt that the profit element therefrom alone could be assessed, so that only 30 per cent of such purchases amounting to Rs. 18.42 lakhs was taxed. The Tribunal reduced the percentage of possible overstatement of purchases to 12.5 per cent. The Revenue came in appeal to the High Court on the plea that the entire amount should have been treated as bogus purchase. The High Court pointed out that it was found by the Tribunal that the stock details indicated that the assessee could not have made the sales, which were accounted in the books without acquiring a corresponding stock. It was, therefore, not a case of bogus purchase, but the inference can only be that it is an unproved purchase. In such a case, the approach of the Tribunal that a reasonable disallowance for possible inflation could be warranted, has to be upheld.*"

Recently the Hon'ble Gujrat High Court in the case of ***CIT Vs. Simit P. Seth*** **reported at** ***(2013) 356 ITR 451*** *has* held as under: -

"In the present case, the Commissioner of Income-tax (Appeals) believed that when as a trader in steel the assessee sold certain quantity of steel, he would have purchased the same quantity from some source. When the total sale is accepted by the Assessing Officer, he could not have questioned the very basis of the purchases. In essence, therefore, the Commissioner (Appeals) believed the assessee's theory that the purchases were not bogus but were made from the parties other than those mentioned in the books of account.

That being the position, not the entire purchase price but only the profit element embedded in such purchases can be added to the income of the assessee. So much is clear by the decision of this court. In particular, the court has also taken a similar view in the case of CIT v. Vijay M. Mistry Construction Ltd. vide order dated January 10, 2011 passed in Tax Appeal No. 1090 of 2009-since reported in [2013] 355 ITR 498 (Guj) and in the case of CIT v. Bholanath Poly Fab P. Ltd. vide order dated October 23, 2012, passed in Tax Appeal No. 63 of 2012 – since reported in [2013] 355 ITR 290 (Guj)."

Recently the ITAT, Jaipur Bench, Jaipur in case of ***Vijay Kedia (HUF) Vs. ACIT (ITA No. 197 & 248/JP/2016)*** **decided on 29-01-2018 held as under: -**

"We further noted that when the corresponding sale is not in dispute then the question is only regarding the correct amount of purchases and verification of the same. The Ld. DR has relied upon the various decisions of Hon'ble Gujarat High Court however, we find that in all those decisions there was a finding of facts that the assessee inflated the purchases upto 25% and therefore, it was not a case of non verification of the purchase and rejection of books of accounts but the fact was established in the investigation that the assessee inflated the purchase price and accordingly the

addition of 25% being inflated purchases was made and upheld by the Tribunal which was again upheld by the Hon'ble High Court. On the contrary in the case of the assessee the AO not given any finding of inflated purchases by the assessee but doubted the very transactions of purchases due to non production of these parties before the AO. The AO has not given the finding that the prices of the goods was inflated by the assessee but the AO doubted the genuineness of the purchases on the ground that the suppliers were found to be accommodation entries providers. When the AO rejected the book results u/s 145 (3) of the Act, then the AO after rejection of the books of account can proceed to make the assessment on the basis of best judgement instead of resorting make the addition to the book results. Accordingly, in the facts and circumstances of the case and in view of the decision of this Tribunal in assessee's own case for A.Y. 2006-07 we do not find any error or illegality in the orders of the Ld. CIT (A) in restricting the addition to the average GP rate based on the past history. Hence, the grounds raised in the Revenue appeals are rejected being without any substance or merits."

Accordingly, in view of the above facts and circumstances of the case and the decision of this Tribunal in case of ACIT Vs. M/s Allied Gems Corporation (Supra) the grounds raised by the Revenue in this appeal are without any substance or merits."

Similar views were upheld by ITAT, Jaipur Bench, in case of **DCIT Vs. Gem Paradise (ITA No. 747 & 65/JP/12) vide order dated 26-12-2017. In the case of Shri Rajkumar Agarwal, the ITAT Jaipur Bench, Jaipur has decided vide ITA No. 504/JP/2013 as follows:**

"Accordingly, the addition made by the authorities below on account of unverifiable purchases is restricted to gross profit rate addition to be computed by the A.O. on the basis of past history of the assessee comprising the G.P. rate declared and accepted by

the A.O. as well as G.P. rate which has attained finality. Therefore, for limited purposes computing the income by applying the average G.P. rate of the past history at minimum 3 years. Needless to say that the assessee be given an appropriate opportunity of hearing. As regards the rejection of books of accounts following the earlier decision of the Tribunal cited (supra), we uphold the action of the Assessing Officer".

13. Lastly, we also found that the assessee has also relied upon the decision of the Coordinate Bench of ITAT in assessee's own case in **ITA No. 1126/JP/2018 order dated 15/04/2020 for the A.Y. 2009-10** wherein the additions made by the ld. CIT(A) were deleted by holding as under:

"5. We have considered the rival contentions and perused the material available on record. It is settled legal proposition that once the books of account were rejected, the AO can proceed to reassess the income on the basis of best judgment instead of resorting to making the addition to the books results. Further, for estimating the GP rate, the past results so declared and accepted/attained finality provides a reliable basis for estimating the GP rate. The same is the consistent position of this Bench as referred in decision in case of Bhura Mal Raj Mal Surana (ITA No. 409,407,499 & 622/JP/12 dated 15.12.2017) which has also been relied upon by the ld CIT(A) while passing the impugned order. In the instant case, the ld. CIT(A) has therefore rightly held that after rejection of books of accounts, the past history of the assessee has to be seen for estimating the gross profit rate. At the same time, we find that the basis of estimating the gross profit rate of 19.25% as against declared GP rate 14.99% is not discernable from the order of the ld. CIT(A) where he has only stated that

purchases to the tune of Rs 2,11,15,458/- were found bogus/unverifiable which constitute 50% of total purchases. Further, he has not taken into consideration the fact that the assessee has started diamond trading business during the year under consideration wherein he has disclosed gross profit rate of 10%. Given that the assessee has disclosed gross profit rate of 10% in respect of diamond trading which is stated to be pretty robust as per industry standards and in respect of trading of semi precious stone and studded jewellery, he has disclosed a gross profit rate of 20% which is better than the average gross profit rate of last three assessment years, in the facts and circumstances of the present case, we find that even where the books of accounts have been rejected, there is no basis for making trading addition in the hands of the assessee. In this regard, reference can be drawn to the decision of Hon'ble of Rajasthan High Court in case of CIT vs Gotan Lime Khanij Udhyog (2002) 256 ITR 243 wherein it was held as under:

"3. We have perused the statement of case and the finding recorded by the Tribunal in the light of observations made in the statement of case and heard the learned counsel. Section 145 as it stood at the relevant time, reads as under :

"145. Method of accounting.—(1) Income chargeable under the head 'Profits and gains of business or profession' or 'Income from other sources' shall be computed in accordance with the method of accounting regularly employed by the assessee :

Provided that in any case where the accounts are correct and complete to the satisfaction of the Assessing Officer but the method employed is such that, in the opinion of the Assessing Officer, the income cannot properly be deduced therefrom, then the computation

shall be made upon such basis and in such manner as the Assessing Officer may determine :

Provided further that where no method of accounting is regularly employed by the assessee, any income by way of interest on securities shall be chargeable to tax as the income of the previous year in which such interest is due to the assessee :

Provided also that nothing contained in this sub-section shall preclude an assessee from being charged to income-tax in respect of any interest on securities received by him in a previous year if such interest had not been charged to income-tax for any earlier previous year.

(2) Where the Assessing Officer is not satisfied about the correctness or the completeness of the accounts of the assessee, or where no method of accounting has been regularly employed by the assessee, the Assessing Officer may make an assessment in the manner provided in section 144."

4. A perusal of the aforesaid provision goes to show that the ordinary mandate of the statute is that where income chargeable under the head 'Profits and gains of business or profession' or 'Income from other sources' is returned on the basis of accounts maintained by the assessee by employing a method of accounting regularly, such income is to be computed in accordance with the method regularly employed by the assessee. With effect from 1-4-1997, by the Finance Act, 1995, the position has been altered by directing that the income chargeable under the head 'Profits and gains of business or profession' or 'Income from other sources' shall be subject to the provisions of sub-section (2) in accordance with either cash or mercantile system of accounting regularly employed by the assessee. Thus, for the purpose of

computing income on the basis of method of accounting adopted by the assessee, the same is confined to maintenance of accounts on cash basis or mercantile system of accounting, i.e., to say, on accrual basis. No other system, even if employed regularly by the assessee, is acceptable for computing the income as per the provisions of the Act. However, this provision ipso facto does not mean that rejection of books of account of an assessee must yield to different conclusion in the computation of income as returned by the assessee on the basis of accounts made by him employing any other method of accounting.

5. Be that as it may, the provision which was in force in the accounting period relevant to assessment year in question envisaged that where the accounts are correct and complete to the satisfaction of the Assessing Officer but the method employed is such that in the opinion of the Assessing Officer, the income cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the Assessing Officer may determine. It also envisaged that where no method of accounting is regularly employed by the assessee, any income by way of interest on securities shall be chargeable to tax as the income of the previous year in which such interest is due to the assessee, that is to say, on accrual basis. Thus, sub-section (1) deals with method of accounting employed by the assessee with reference to computing income chargeable under the head 'Profits and gains of business or profession' or 'Income from other sources' on the basis of method of accounting employed by the assessee. It does not deal with correctness or completeness of accounts, but with any defect in method of account.

On the other hand, sub-section (2) envisaged that where the Assessing Officer is not satisfied about the correctness or the completeness of the accounts of the assessee, or where no method of

accounting has been regularly employed by the assessee, the Assessing Officer may make assessment in the manner provided in section 144 of the Act, that is to say, as per best of his judgment.

Both these provisions do not envisage that by resorting to best judgment assessment the assessing authority must reach to a different figure of income and profit than what has been disclosed by the assessee. Best judgment is also to be based on the material available on record. Therefore, notwithstanding rejection of books of account, the material disclosed by the assessee along with other material that may be collected by the ITO forms the basis of computation of income. On that basis what conclusion is to be reached is independent of results shown in the books of account, if any, maintained by the assessee. Section 145 only provides the basis on which computation of income is to be made for the purpose of determining the amount of tax payable by an assessee. The provision by itself does not deal with additions or deletions in the income. Therefore, merely because there is some deficiency in the books of account or merely because of rejection of books of account, it does not mean that it must lead necessarily to additions in the returned income of the assessee. What changes in either case is the basis for computing the income chargeable under the head 'Profits and gains of business or profession' or 'Income from other sources'. The result would depend on the other principles of computing the income. Therefore, we hold that merely changing the basis or method of arriving at end-result of working out the computation of taxable income under the Act, necessarily does not result in devising at profits or gains from business or other sources different from one returned by the assessee, where he has returned his income, which is different from the result reached by the assessee as per method of accounting

employed by him, by adopting different basis by the assessing authority.

6. *In light of aforesaid discussions and respectfully following the decisions referred supra, the addition of Rs 21,65,807/- so confirmed by the ld CIT(A) is hereby directed to be deleted and the ground of appeal so taken by the assessee is allowed."*

14. After having gone through the decision of the Coordinate Bench in assessee's own case, we found that turnover and trading results of the assessee for the last three years are as under:

A.Y.	**Turnover**	**Gross profit**	**G.P. rate**	**Remarks**
2008-09 (Only stones)	1,88,54,584	25,33,190	18.28%	
2009-10 (iii) Diamond (iv) Stones & Studded jewellery	 2,54,77,175/- 2,53,28,369/-	 25,47,717/- 50,66,543/-	 10.00% 20.00%	In appeal Hon'ble ITAT accepted the declared G.P. rate of 10% vide order dated 15-04-2020 in Appeal No. 1126/JP/2020
2010-11 **(iii) Diamond** (iv) Stones & Studded jewellery	 **14,54,88,165/-** 97,94,075/-	 1,29,33,991 15,26409/-	 8.92% 15.59%	

From the facts, we also noticed that export of assessee up to A.Y. 2008-09 was only of colour stones precious or semi-precious. However, from A.Y. 2009-10, the assessee started shifting to business of diamonds and in that year the export turnover was of colour stones precious or semi-

precious and diamonds. However, in the year under consideration i.e. A.Y. 2010-11, the export sale is of mainly diamonds and therefore the export sale jumped to Rs. 15,92,82,240/- and it is a common fact that the profit margin in diamond is much lesser than in colour stones which ranged between 6% to 7%. Therefore, as per the assessee, the G.P. rate of this year has fallen as compared to earlier years. The purchases made has been exported as it is and there is bill to bill tally of purchase and export. Photo copies of purchase bills has also been placed on record by the assessee. Therefore, according to us, in view of difference in the circumstances, the results of this year i.e. A.Y. 2010-11 cannot be compared to the results of earlier year as the complete nature of business is changed from this year. In view of the above facts, the allegation of reducing profit by obtaining non-genuine bogus purchase bills is wrong and not sustainable. There is increase in total gross profit and thus results can be held as progressive and therefore, in such circumstances, no additions are called for. We have also considered the decision of the Coordinate Bench of Surat ITAT in case of **Brij Kishore Radhey Shyam Sonkhiya Vs. DCIT (ITA No.(s) 364-369/SKT/2018 order dated 02-08-2019** wherein exactly on similar facts the Coordinate Bench has held that *"no addition can be called for on the facts of the case".* Therefore, even the Coordinate Bench of Jaipur ITAT in assessee's own

case having similar facts, deleted the entire addition confirmed by the ld. CIT(A). Therefore, keeping in view the above facts and circumstances and discussion, we are also of the view that the additions confirmed by the ld. CIT(A) by applying G.P. rate of 12% as against the declared G.P. rate of 9.34% is uncalled for and bad in law and deserves to be deleted and hance the same is directed to be deleted.

15. In the result, the appeal of the assessee is allowed partly and the appeal of the Revenue is dismissed.

Order pronounced in the open court on 18th January, 2021.

Sd/-	Sd/-
(विक्रम सिंह यादव)	(संदीप गोसाई)
(VIKRAM SINGH YADAV)	(SANDEEP GOSAIN)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 18/01/2021
*Ranjan
आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. अपीलार्थी/The Appellant- Shri Sunder Das Sonkia, Jaipur.
2. प्रत्यर्थी/ The Respondent- The I.T.O., Ward-1(2), Jaipur.
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त(अपील)/The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 1383/JP/2019 & 09/JP/2020)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar