

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B" MUMBAI  
BEFORE SHRI S.RIFAUZ RAHMAN (ACCOUNTANT MEMBER) AND  
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.2666 /MUM/2019  
(Assessment Year: 2007-08)**

Bhatia Jewellers  
Shopping Arcade,  
Hotel Taj President,  
Cuffe Parade, Colaba,  
Mumbai – 400 005

Asst. Commissioner of Income  
Vs. Tax, Ward 17(1),  
Aaykar Bhavan, M.K. Road,  
Mumbai- 400 020

**PAN No. AACFB9829N  
(Assessee)**

**(Revenue)**

Assessee by : Ms. Pramita Rathi, A.R  
Revenue by : Shri Thorian Oommen, D.R

Date of Hearing : 03/02/2021  
Date of pronouncement : 04/02/2021

**ORDER**

**PER RAVISH SOOD, J.M:**

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-55, Mumbai, dated 01.01.2018, which in turn arises from the assessment order passed by the A.O under Sec. 143(3) r.w.s 147 of the Income Tax Act, 1961 (for short 'Act'), dated 28.03.2015 for A.Y. 2007-08. The assessee has assailed the impugned order on the following grounds of appeal before us:

- "1. On the facts and circumstances of the case and in law, the Hon'ble Commissioner of Income Tax (Appeals) [CIT(A)] has erred in upholding the reopening of assessment done by the learned Assessing officer (AO) u/s 147 of the Act.
2. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the disallowance of Rs.7,51,450 being the total amount of purchases from Moulimani Impex Pvt. Ltd. i.e alleged bogus party."
2. Briefly stated, the assessee firm which is engaged in the business of manufacturing of gold and diamond stud jewellery had filed its return of income for A.Y. 2007-08 on 26.10.2007, declaring its total income at Rs.55,

73,700/-. On the basis of information received by the A.O from the office of the DGIT(Inv.), Mumbai that incriminating documents unearthed in the course of the search proceedings conducted under Sec. 132(1) of the Act on S/ssh. Rajendra Jain, Sanjay Chaudhary and Dharmichand Group revealed that the assessee had obtained an accommodation entry of purchase of Rs. 7,51,450/- from M/s Moulimani Impex Pvt. Ltd., a group entity of the aforesaid persons that was engaged in paper transactions of trading in diamonds, the case of the assessee was reopened under Sec.147 of the Act.

3. During the course of the assessment proceedings, the assessee, on being queried as regards the genuineness and veracity of the impugned purchases of Rs.7,51,450/- that was claimed to have been made from the aforementioned party, viz. M/s Moulimani Impex Pvt. Ltd, stressed on the genuineness of the transaction, and the fact that the same was duly accounted for in its books of accounts. In order to fortify the authenticity of the aforesaid purchase transaction the assessee placed on record the copy of the purchase bill and also drew support from the fact that the payment of the purchase consideration was made through banking channel. Apart from that, the assessee produced the stock ledger wherein the aforesaid purchase transaction was duly reflected. In order to verify the veracity of the aforesaid purchase transaction the A.O issued summon under Sec. 131 of the Act to the aforesaid party viz. M/s Moulimani Impex Pvt. Ltd., which, however, was not complied with by the latter. In the backdrop of the aforesaid facts, the A.O was of the view that the assessee had failed to substantiate the genuineness and veracity of the impugned purchases under consideration. Further, observing that the assessee could also not prove the usage of the material purchased, the A.O holding a conviction that as the assessee had merely booked the purchases without actually getting any material, disallowed the entire amount of the impugned purchases of Rs.7,51,450/- under Sec. 69C of the Act.

4. Aggrieved, the assessee assailed the assessment order before the CIT(A), wherein the latter finding no infirmity in the view taken by the A.O upheld his order and dismissed the appeal.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. It was submitted by the Id. A.R that though the assessee had substantiated the authenticity of the purchases made from the aforementioned party, viz. M/s Moulimani Impex Pvt. Ltd by placing on record the copy of the purchase bill, copy of the bank account from which the purchase consideration was paid and had also evidenced the authenticity of the transaction by producing the stock ledger wherein the impugned purchases were duly recorded, the A.O, however, had most arbitrarily dubbed the purchases therein made as bogus. In order to substantiate the fact that the impugned purchases formed part of the correlating sales and/or closing stock for the year under consideration, the Id. A.R took us through the financial statements of the assessee for the year under consideration as well as those for the immediately last two preceding years, which revealed that the trading results for the year under consideration was substantially highly pitched as in comparison to those of the aforementioned preceding years. Ld. A.R in order to impress upon us that the lower authorities had drawn baseless adverse inferences as regards the authenticity of the purchase transactions under consideration submitted, that the impugned purchases constituted hardly 2% of the total purchases made by the assessee during the year under consideration. In the backdrop of the aforesaid facts, it was averred by the Id. A.R that both the lower authorities had erred in making/sustaining the addition w.r.t the purchases made by the assessee from the aforementioned party.

5. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities.

6. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. As is discernible from the orders of the lower authorities, the case of

the assessee was reopened by the A.O on the basis of an information received from the office of DGIT(Inv.), Mumbai that as per the incriminating documents unearthed in the course of the search proceedings conducted under Sec. 132(1) on certain entities engaged in the business of providing accommodation entries/bills, the name of the assessee had surfaced as a beneficiary that had obtained accommodation purchase bill. In the backdrop of the aforesaid facts, we are of the considered view that a very heavy onus was cast upon the assessee to dispel all doubts as regards the genuineness and veracity of the purchases which it had claimed to have made from M/s Moulimani Impex Pvt. Ltd, as the latter's name had figured in the list of the tainted concerns which were engaged in the business of providing accommodation entries. However, on a perusal of the orders of the lower authorities, we find, that the assessee except for producing the purchase bill and harping on the fact that the payment to the aforementioned party was made through banking channel, had however, failed to place on record any other supporting documentary evidence viz. delivery challan etc, which would have conclusively proved the genuineness of the transaction under consideration. In fact, non compliance of the summon issued by the A.O under Sec. 131 of the Act to the aforesaid party further supplemented the doubts as regards the genuineness of the transaction in question. In the backdrop of the aforesaid facts, we would not hesitate to state that no infirmity does emerge from the orders of the lower authorities, to the extent, they had concluded that the assessee had not made any genuine purchases from the aforementioned party. At the same time, we also cannot remain oblivious of the fact that though the assessee had not been able to substantiate to the hilt the authenticity of the impugned purchases claimed to have been made from the aforesaid tainted parties, however, there is no justifiable reason for addition of the entire amount of the impugned purchases to the returned income of the assessee under Sec. 69C of the Act. As observed by us hereinabove, the trading results of the assessee for the year under consideration is

substantially better as in comparison to those of the immediately last two preceding years, which for the sake of clarity are culled out as under:

A.Y	Sale	GP rate
2005-06	2,07,11,307.10	14.14%
2006-07	3,59,16,520.34	11.22%
<b>2007-08</b>	<b>4,08,06.951.31</b>	<b>23.25%</b>

On the basis of the aforesaid facts, considering the substantially progressive G.P. rate of the assessee for the year under consideration i.e 23.25% as against that of the immediately preceding two years i.e A.Y. 2005-06 (14.14%) and A.Y. 2006-07 (11.22%), it can safely be concluded that the impugned purchases under consideration duly formed part of the sales and/or closing stock of the assessee for the year in question. In case, the impugned purchases are held to be bogus, and thus, consequently disallowed in toto, then, the same would result to an unrealistic G.P. rate for the year under consideration. On the basis of our aforesaid observations, we are of a strong conviction that the impugned purchases claimed by the assessee to have been made from the aforementioned party were duly accounted for by it in the correlating sales and/or closing stock for the year under consideration. Our aforesaid view is further fortified by the fact that the assessee had substantiated the same on the basis of the stock ledger entry that was produced in the course of the assessment proceedings.

7. In the backdrop of our aforesaid deliberations, we are of the considered view that it can safely be concluded that the assessee had purchased the goods under consideration, though not from the aforementioned party viz. M/s Moulimani Impex Pvt. Ltd, but from the open/grey market. We are of a strong conviction that in the totality of the facts of the case before us the addition in the hands of the assessee is liable to be restricted only to the extent of the profit which it would have made by procuring the goods at a discounted value from the open/grey market. Insofar the quantification of the profit from making of the impugned purchases is concerned, we find that the **Hon'ble High**

**Court of Bombay** in its recent judgement in the case of **Pr. Commissioner of Income Tax-17 Vs. M/s Mohhomad Haji Adam & Company (ITA No. 1004 of 2016, dated 11.02.2019)** while upholding the order of the Tribunal, had observed, that the addition in the hands of the assessee as regards the bogus/unproved purchases was to be made to the extent of bringing the G.P rate of such purchases at the same rate as that of the other genuine purchases. The Hon'ble High Court while concluding as hereinabove, had observed as under:

“8. In the present case, as noted above, the assessee was a trader of fabrics. The AO found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sale declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trade. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of N.K. Industries Ltd. (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under-

“So far as the question regarding addition of Rs.3,70,78,125/- as gross profit on sales of Rs.37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6 % gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66% Therefore, considering 5.66 % of Rs.3,70,78,125/- which comes to Rs.20,98,621.88 we think it fit to direct the revenue to add Rs.20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said question is answered partially in favour of the assessee and partially in favour of the revenue.”

9. In these circumstances, no question of law, therefore, arises. All Income Tax Appeals are dismissed, accordingly. No order at costs.”

As such, the Hon'ble jurisdictional High Court had observed that the addition in respect of purchases which were found to be bogus in the case of the assessee before them, a trader, was to be worked out by bringing the G.P. rate of such bogus purchases at the same rate as that of the other genuine purchases. We, thus, respectfully following the aforesaid judgment of the

Hon'ble High Court direct the A.O to restrict the addition insofar the bogus/unproved purchases of Rs.7,51,450/- in the case before us is concerned, by bringing the G.P rate on the amount of such bogus purchases at the same rate as that of the other genuine purchases. Needless to say, the assessee in the course of the 'set aside' proceedings shall furnish the requisite details before the A.O, who shall after making necessary verifications restrict the additions in terms of our aforesaid observations. The order passed by the CIT(A) is set aside and the matter is restored to the file of the A.O for the limited purpose of giving effect to our aforesaid directions.

8. Resultantly, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 04.02.2021

Sd/-  
S. Rifaur Rahman  
(ACCOUNTANT MEMBER)

Mumbai, Date: 04.02.2021  
PS: Rohit

Sd/-  
Ravish Sood  
(JUDICIAL MEMBER)

**Copy of the Order forwarded to :**

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "B" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar  
ITAT, Mumbai