

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH
MUMBAI**

BEFORE: HON'BLE JUSTICE P.P. BHATT, PRESIDENT

&

SHRI M.BALAGANESH, AM

**ITA No.135/Mum/2019
(Assessment Year :2008-09)**

**ITA No.136/Mum/2019
(Assessment Year :2014-15)**

&

**ITA No.137/Mum/2019
(Assessment Year :2011-12)**

M/s. Maxell Diamond Private Limited 320-A, Pancharatna Building Charni Road Mumbai – 400 004	Vs.	ITO-5(2)(3) 566, Aayakar Bhawan M.K.Road Churchgate Mumbai – 400 020
PAN/GIR No. AAECM8362J		
(Appellant)	..	(Respondent)

Assessee by	Shri Prakash Jhunjunwala
Revenue by	Shri Bharat Andhle
Date of Hearing	22/02/2021
Date of Pronouncement	23/02/2021

आदेश / O R D E R

PER M. BALAGANESH (A.M.):

These appeals in ITA Nos.135/Mum/2019, 136/Mum/2019 & 137/Mum/2019 for A.Y.2008-09, 2014-15 & 2011-12 respectively arise out of the order by the Id. Commissioner of Income Tax (Appeals)-10,

Mumbai in appeal No.CIT(A)-10/ITO-5(2)(3)/87/2006-07, CIT(A)-10/ITO-5(2)(3)/88/2016-17 & CIT(A)-10, Mumbai/11191/2016-17 respectively dated 28/09/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 08/03/2016, 29/12/2016 & 14/03/2016 respectively by the Id. ITO-5(2)(3), Mumbai (hereinafter referred to as Id. AO).

Since identical issues are involved in all these appeals, these appeals are taken up together and disposed off by this common order for the sake of convenience.

2. The ground No.2 raised by the assessee challenging the validity of re-assessment was stated to be not pressed by the Id. AR at the time of hearing for A.Yrs.2008-09 and 2011-12.

3. The only effective identical issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in upholding the estimated profit addition made @8% on value of ingenuine purchases in the facts and circumstances of the instant case.

3.1. We have heard rival submissions and perused the materials available on record. We find that assessee is engaged in the business of trading in cut and polished diamonds. It is not in dispute that assessee had indeed made purchase of diamonds from certain parties for various assessment years whose name appear to be tainted dealers in the website of Government of Maharashtra, Sales Tax department. The details of purchases for various assessment years are as under:-

A.Y.	Value of Purchases
2008-09	Rs. 7,22,63,416/-
2011-12	Rs.15,94,71,611/-
2014-15	Rs. 9,24,76,019/-

3.2. It is not in dispute that the corresponding sales made out of the aforesaid tainted purchases have been duly reflected by the assessee in the books of accounts and offered to tax thereon and accordingly, the same had not been disputed by the revenue before us. We find that the assessee had furnished the following documents before the Id. AO and the Id. CIT(A) to prove the purchases :-

- a) PAN/AO details of the suppliers;
- b) Ledger Account/ Confirmation of Account;
- c) Purchase bills;
- d) Corresponding sale bills;
- e) Bank statement;
- f) I.T. ack receipt of the supplier;
- g) Balance sheet of the supplier
- h) Stock Reconciliation;
- i) Stock Register;
- j) Statement of GP ratio.

3.3. Ignoring the aforesaid documents, the Id. AO proceeded to make estimated profit addition @8% on value of purchases for each of the aforesaid assessment years which was upheld by the Id. CIT(A). We find that since the revenue has not disputed the corresponding sales made out of such tainted purchases, it could be safely presumed that assessee could have made purchases from the grey market in order to have saving in indirect taxes and hence, their profit estimation should be made in a reasonable manner in tune with the industry standards and the profitability ratios disclosed by the assessee in the earlier years. It is not in dispute that the assessee is engaged in the business of trading in cut and polished diamonds. The report of the task group for diamond sector submitted to Department of Commerce suggested that the net profit that could be derived in the diamond manufacturing ranges from 1.5% to 4.5% and in trading activity thereof, the profitability range is 1% to 3%. We find that the assessee had furnished the gross profit percentage from A.Y.2007-08 to A.Y.2014-15 as under:-

Comparative chart of Gross-Profit :-

Particulars	AY 2007-08	AY 2008-09	AY 2009-10	AY2010-11	AY2011-12	AY 2012-13	AY 2013-14	AY 2014-15
Sales	83,51,64,330	1,83,04,14,260	2,22,23,50,350	3,39,95,77,410	4,40,95,89,225	3,36,39,14,804	3,52,70,15,928	3,06,38,42,432
Gross Profit	30,78,110	1,13,02,570	1,16,45,510	1,75,69,760	2,50,42,871	3,43,57,384	3,20,15,644	1,68,74,343
G P %	0.37%	0.62%	0.52%	0.52%	0.57%	1.02%	0.91%	0.55%

3.4. From the aforesaid chart, it could be seen that the average of gross profit for each of the years works out to only 0.6% for the assessee. But it is pertinent to note that assessee had made purchases in the instant case from grey market thereby having saving in VAT as well as incidental profit element thereof. Considering the totality of these facts and

circumstances and also considering the report of the task force submitted to Department of Commerce, we deem it fit and appropriate to estimate the profit percentage at 1% of value of purchases in the peculiar facts and circumstances of the instant case. The Id. AO is accordingly directed to make addition only to the extent of 1% of value of tainted purchases for each of the assessment years under consideration. Accordingly, the ground raised by the assessee in this regard is partly allowed.

4. In the result, appeals of the assessee are partly allowed.

Order pronounced on 23/02/2021 by way of proper mentioning in the notice board.

Sd/-
(JUSTICE P P BHATT)
PRESIDENT

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 23/02/2021
KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai