

IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER)

I.T.A. No.5002/Mum/2019
(Assessment year 2011-12)

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| M/s Polar Jewellery DW-5040, Bharat Diamond Bourse Bandra Kurla Complex Bandra (E), Mumbai-400 051 PAN : AAGFP9757M | vs | Income-tax Officer-23(2)(5), Mumbai |
| APPELLANT | | RESPONDENT |

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| Appellant by | Shri Rahul Sarda, (AR) |
| Respondent by | Ms. Smita Verma, (DR) |

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| Date of hearing | 04-02-2021 |
| Date of pronouncement | 03-03-2021 |

ORDER

This is an appeal by the revenue against order dated 07-06-2019 of learned Commissioner of Income-tax (Appeals)-33, Mumbai for the assessment year 2011-12.

2. The dispute in the present appeal is confined to disallowance made on alleged non genuine purchases of diamond.

3. Briefly the facts are, the assessee, a partnership firm. As stated by the assessing officer, the assessee is engaged in the business of gold, cut and polished diamond, manufacture of diamond studded jewellery and export and local sales of such jewellery. For the assessment year under dispute, assessee filed its return

of income on 10-09-2011 declaring total income of Rs.11,50,130/-. The return of income so filed was initially processed under section 143(1) of the Act. Subsequently, the assessing officer received information from the investigation wing that in course of search and seizure operations conducted in case of Shri Bhanwarlal Jain and his group concerns on 03-10-2013, it was found that they were providing accommodation entries in the form of unsecured loans, bogus purchase bills, etc through number of entities within the group. It was further found that during the year under consideration, the assessee has shown purchases worth Rs.2,93,22,880/- from M/s Mohit Enterprises and M/s Mayur Exports, who are part of Shri Bhanwarlal Jain group. On the basis of such information, the assessing officer reopened the assessment under section 147 of the Act. In course of assessment proceedings, the assessing officer called upon the assessee to prove the genuineness of purchases made from the aforesaid two parties. As noted by the assessing officer, in response to the query raised, assessee furnished copies of purchase invoices and corresponding sale invoices, copies of bank statements showing payments made to the two parties towards purchases etc. The Assessing Officer, however, was not convinced with the evidences produced. Relying upon the information received during the search and seizure operation conducted in case of Shri Bhanwarlal Jain and group entities, the assessing officer ultimately concluded that the purchases shown against M/s Mohit Enterprises and M/s Mayur Exports are nothing but accommodation entries. However, he accepted that the goods representing such purchases have entered the stock register of the assessee and corresponding sales have also been shown. From the aforesaid facts, he concluded that the assessee must have purchased diamond from grey market and to regularize them, has obtained

accommodation bills from the concerned parties. Stating that only the genuineness of the source of purchase is doubted but the genuineness of purchase is not doubted, the assessing officer observed that in such cases only the profit element embedded in the transaction would be brought to tax. Thus, ultimately, he estimated the profit element at 5% of the alleged non genuine purchases and added back an amount of Rs.14,66,144/- to the total income of the assessee. Though, the assessee contested the aforesaid disallowance/addition, however, learned Commissioner (Appeals) upheld it.

4. Learned Authorised Representative submitted, purely on the basis of information obtained in case of a third party the assessing officer has treated the purchases as non genuine. He submitted, to prove the genuineness of purchases, the assessee had furnished cogent evidences which were rejected without proper reasoning. He submitted, the assessing officer has also accepted that diamond representing such purchases has entered assessee's stock and corresponding sales have been effected. Finally, learned Counsel submitted, disallowance made at 5% is high and unreasonable; hence, should be restricted to 3% of the alleged non genuine purchases. In this context, he drew our attention to the report of the Task Group for Diamond Sector under the Ministry of Commerce and Industry, Department of Commerce, Government of India, New Delhi. Further, he relied upon the decision of the co-ordinate bench in case of ITO vs Dhaval Exim P Ltd ITA No.6711/Mum/2016 & 6159/Mum/2016 to emphasise that disallowance at 3% would be reasonable.

5. The learned Departmental Representative strongly relying upon the observations of the assessing officer and learned Commissioner (Appeals)

submitted, disallowance at 5% is most reasonable as in some other cases the Tribunal has upheld disallowance at 8% of the non genuine purchases.

6. I have considered rival submissions and perused materials on record. A careful reading of the impugned assessment order would clearly reveal that what the assessing officer has doubted is the source of purchase, but, not the purchase itself. At paragraph 8.3 of the assessment order, the assessing officer has very clearly observed that the genuineness of purchases as a whole cannot be doubted. He has also observed that the assessee has demonstrated the corresponding sales against the disputed purchases. Therefore, the assessing officer has ultimately disallowed 5% of the alleged non genuine purchases. Now, the issue before me is only confined to the reasonableness of the disallowance made at 5% of the non genuine purchases. On a perusal of the report of the Task Group for Diamond Sector under the aegis of Ministry of Commerce and Industry, Department of Commerce, Government of India, New Delhi in the year 2013, it is noticed that as per the benign assessment procedure (BAP) introduced in the budget presented in 2007-08, the threshold net profit rate was fixed at 8% which was subsequently revised to 6% as per CBDT Instruction No.2/2008 dated 22-02-2008. Considering the aforesaid, the task group has stated that the rate of 6% so fixed is nowhere reflective of the reality in the diamond manufacturing and trading industry, which operates on profit margin in the range of 1% to 3% only. I have further noticed, in case of ITO vs Dhawal Exim P Ltd (supra) cited by learned Counsel for the assessee, the first appellate authority himself has sustained addition @3% of the non genuine purchases under more or less identical facts and circumstances. Keeping the aforesaid facts in view, I am of the opinion that disallowance at 3% of the alleged non genuine purchases would be fair and

reasonable. Accordingly, I direct the assessing officer to do so. Ground is partly allowed.

7. In the result, appeal is partly allowed.

Order pronounced on 03/03/2021.

Sd/-

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| SAKTIJIT DEY |
| JUDICIAL MEMBER |

Mumbai, Dt : 03/03/2021

Pavanan

Copy to :

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

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By Order

Asstt. Registrar, ITAT, Mumbai