

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND  
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA No.5611/M/2018  
Assessment Year: 2014-15**

ACIT Circle – 5(3)(2), Room No.573, 5 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. Supergems (India) Pvt. Ltd., FC/5041/42/43, Bharat Diamond Course, G-Block, BKC Bandra (E), Mumbai – 400 051 <b>PAN: AAACF4627R</b>
(Appellant)		(Respondent)

**CO No.210/M/2019  
(Arising out of ITA No.5611/M/2018)  
Assessment Year: 2014-15**

M/s. Supergems (India) Pvt. Ltd., FC/5041/42/43, Bharat Diamond Course, G-Block, BKC Bandra (E), Mumbai – 400 051 <b>PAN: AAACF4627R</b>	Vs.	ACIT Circle – 5(3)(2), Room No.573, 5 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Shri Shivaram, A.R. &  
Ms. Neelam C. Jadhav  
Revenue by : Shri T.S. Khalsa, D.R.

Date of Hearing : 10.12.2020  
Date of Pronouncement : 08.01.2021

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the Revenue against the order dated 30.03.2015 of the Commissioner of

Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

**ITA No.5611/M/2018**

2. The grounds raised by the Revenue are as under:

“(1). Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in accepting entity level capital employed of the comparable (M/s Asian Star Company Ltd) when the comparable had segments other than the segment of the assessee.

(2). Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not holding loss on revaluation of outstanding foreign exchange forward contracts as on 31.03.2009 as notional loss.

(3) The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.”

3. The only issue raised by the Revenue in the various grounds of appeal is against the deletion of addition by accepting the remand report which according to the Revenue was technically and factually perverse as it was made by the AO without the comments of the range heads and deleting the addition based on the remand report of the AO for A.Y. 2011-12 is wrong.

4. The facts in brief are that the assessee filed the return of income declaring a loss of Rs.5,45,11,772/- on 29.11.2014. The case of the assessee was selected for scrutiny and statutory notices were duly issued and served upon the assessee. The assessee is engaged in the business of manufacturing, cutting and polishing of diamonds from its manufacturing unit in Surat, Gujarat. Pertinent to state that a search and seizure action under section 132 of the Act and a survey action under section 133A of the Act was conducted by the investigation wing on

Asian Star Group on 29.09.2010. Following the said search the AO called upon the assessee by its order sheet entry 25.11.2016 to file the necessary document to justify its purchases from Asian Star Company Ltd. which was submitted vide letter dated 08.12.2016 filing ledger cum confirmation accounts, copies of bills and entries, inward and outward movement register, copies of bank advices evidencing the payment and relevant page of diamond Doller account. The AO, after considering the documents furnished by the assessee and contentions made during the course of assessment proceedings, came to conclusion that purchases made from Asian Star Company Ltd. during the year amounting to Rs.3,15,57,991/- were not genuine on the basis of stand taken by the Revenue in A.Y. 2010-11 to A.Y. 2013-14 and added the same as bogus purchases to the total income of the assessee under section 69C by framing assessment under section 143(3) of the Act vide order dated 15.12.2016.

5. In the appellate proceedings, the Ld. CIT(A) after taking into account the submission of the assessee deleted the addition by observing and holding as under:

“5.1 I have considered the submission of the assessee, perused the material placed on record and carefully gone through the order of the AO. The contentions raised by the appellant have been carefully examined with reference the factual matrix of the case as also the relevant provisions of the Act and the legal position as applicable to year under reference. All the grounds of appeal and ground of appeal no. 2 for AY 2011-12, are considered together as the only issue involved in these appeals is addition made on account Unexplained Expenditure u/s.69C of the Act. The AO has treated the purchases effected by the appellant company from M/s. Asian Star Co. Ltd. as bogus purchases.

5.2 The additions made by the AO for AYs 2011-12, 2012-13, 2013-14 & 2014-15 are identical and based on the addition made in AY 2010-11. Hence the case for AY 2010-11 is taken as and case for deciding the issue.

#### 6.1 **AO 's Findings & Conclusion:**

6.1.1 On the basis of the information that a search and seizure u/s.132 of the Act and the survey action u/s.133A of the Act were initiated in the case of Asian Star Group in the months of October and December, 2010 and in view of the assessment completed in the case of M/s. Asian Star Co. Ltd. for A.Y 2011- 12 wherein the concerned DCIT had made addition of Rs.3,55,81,981/- being % of the total purchases effected by M/s. Asian Star Co. Ltd., i.e., of Rs. 355,81,98,087/-, the AO has held that the purchases effected by the appellant company from M/s. Asian Star Co. Ltd. are to be treated as bogus purchases and made addition as Unexplained Expenditure u/s. 69C of the Act.

#### 6.2 **Appellant's Contentions and Submissions;**

6.2.1 The appellant has submitted that the AO had completed the assessment before calling for the information from the appellant and thus the appellant was not given an opportunity to put forward its case. The appellant claimed that the appellant was only asked to produce the confirmation of account and copies of invoices in respect of diamonds purchased by the appellant from M/s. Asian Star Co. Ltd. and the said requirement was complied with by the appellant vide letter dated 7<sup>th</sup> March, 2014. The appellant filed along with the appeal the affidavit of Mr. Bimal Desai, Chartered Accountant, who had represented the appellant before the AO and an application under Rule 46A of the I.T. Rules, 1962 on 01/08/2017 for admission of the additional evidence.

6.3.4 Keeping in view the submission of the appellant that the company was prevented by sufficient cause in not furnishing or producing the aforesaid evidence before the AO in the course of the assessment proceedings, and that the aforesaid additional evidence, which is necessary for disposal of the appeal of the appellant company, may kindly be admitted under Rule 46A of the I.T. Rules, 1962, these evidence were forwarded to the AO for his comments.

6.3.5 In response the AO has submitted his report vide letter No.DCIT.Rg.5 (3)(2)/Remand report/2017-18 dated 05.01.2018 as under:

As instructed the additional documents submitted by the assessee before your goodself are perused. The AO has no objection if those documents are accepted from your end.

The assessee is given an opportunity before the AO to produce the originals of the submitted documents and the assessee produced the following original documents before the undersigned on 12.12.2017:

- 1) Original copies of sales invoices supported by transport challans.
- 2) Invoice Nos. 83, 86 & 120.

- 3) Statement of purchases & corresponding sales'
- 4) Original covering letters of the assessee requesting the Bank Manager to remit the requisite amounts to M/s. Asian Star Co. Ltd and the customer Advice issued by the bank.
- 5) Downloaded copies of the Bank Statements (Diamond Dollar A/c) with Union Bank of India.
- 6) Stock Register of the assessee where incoming and outgoing of goods are sequentially recorded.

On verification of the above original documents it is stated that the documents support the purchase transactions of the assessee with M/s. Asian Star Co. Ltd for the F. Y. 2009- 10 totalling to \$35,078.81.

Your goodself may therefore kindly be requested to utilize the above information to dispose of the appeal respecting for the AY 2010-11.

6.3.6 Keeping in view of the contention of the appellant that the appellant was never asked to submit the details as observed by the AO his order and the report of the AO that he has no object on if those documents are accepted , these additional documents submitted by the appellant are admitted under Rule 46A of the I.T. Rules, 1962 for disposal of the appeal of the appellant company

6.3.7 It is observed that consequent to the search carried out u/s.132 of the Act and survey action carried out u/s.133A of the Act at the premises of the Asian Star Group on 29th October, 2010 and concluded on 27th December, 2010; the DCIT, Central Circle-13 passed an order on 28/03,2013 for A.Y. 2011-12 wherein the following facts were recorded:

"Shri Nitin V. Shah was further asked to substantiate the movement of polish diamonds purchased locally and sent to Mumbai for assortment. Shri Nitin V- shah has stated that he cannot prove the purchase of polish diamonds made locally from Surat apart from providing invoice copy. He also stated that there are no polish diamonds being actually sent from Surat to Mumbai for assortment. He stated that what is actually sent from Surat to Mumbai is nothing but pieces of paper on which stock position as on the date of dispatch of courier is mentioned. These details were shown in the angadia records in the form of different Jangad numbers but they didn't contain diamonds but only the details of stock position. He further stated that actually polish diamonds were received from Mumbai in well packed condition and the same was subsequently delivered to their sale parties. This goes to show that the assessee manages polished diamonds bills locally from Surat office whereas the actual polish diamonds purchased in cash are delivered directly to sale parties. This would mean that the bogus purchase bills are taken from one party and the actual polish diamonds are purchased in cash from another party.

The assessee has not been able to establish the genuineness of its purchase. Not a single party has been produced in respect of the purchases of polished

diamonds during the year before this office to prove the genuineness of its purchase. Hence an amount of Rs. 3,55,81,98,087/- being 1% of total purchases made in cash of Rs. 3,55,81, 96,037/- is to be added. As per the statement of Shri Nitin Shah the polished diamonds were purchased in cash and bill in respect of these polished diamonds were taken from other parties.

6.3.8 On the basis of the information, the A.O. made an addition of Rs. 16,43,685/- to the total income of the appellant for A.Y. 2010-11, u/s. 69C of the I T. Act. Though during the assessment proceedings the appellant has submitted the confirmation of accounts and copies of invoices in respect of diamonds purchased by the appellant company from M/s. Asian Star Co. Ltd. the AO found that the material purchased is not evidenced by stock register, purchase orders, VAJANKARTA receipt or transport's bill and further that corresponding sales are not reflected / supporter by any evidence. During the appellate proceedings, the appellate has challenged the finding of the AO and contended that the appellant was never asked to file the details as mentioned in the assessment order in para 6.2. The appellant has submitted further that it is maintaining Purchase Register and Sales Register and Stock Records (which includes Inward/Outward Register of diamonds purchased and sold for trading) which fact is recorded in the Tax Audit Report and further that, the diamonds which were purchased by the appellant from M/s. Asian Star Co. Ltd. were exported back to back to the group company, i.e., M/s. Supergems Jewellery Manufacturing Co. Pvt. Ltd.. The appellant has adduced additional evidence in order to prove the genuineness of the purchase of diamonds effected by the assessee company from M/s. Asian Star Co. Ltd. which were forwarded to AO for Comments and the AO after verification has reported that that the documents support the purchase transactions of the assessee with M/s. Asian Star Co. Ltd for the F.Y. 2009-10 totalling to \$35,078.81.

6.3.9 It is also noticed from the order of the DC1T in the case of M/s. Asian Star Co. Ltd. that he has not doubted the purchases of diamonds by M/s. Asian Star Co. Ltd., what he has disputed is that the diamonds were purchased from a source different from the one shown in the books of accounts, as would be apparent from the observation of the AO that:

"This goes to show that the assessee manages polished diamonds bills locally from Surat office whereas the actual polish diamonds purchased in cash are delivered directly to sale parties. This would mean that the bogus purchase bills are taken from one party and the actual polish diamonds are purchased in cash from another party".

6.3.10 The above finding of the AO gives credence to the claim of the appellant that the purchase of diamonds by the appellant from M/s. Asian Star Co. Ltd. are not bogus.

6.3.11 It is also observed that though in the case of M/s. Asian Star Co. Ltd., pursuant to the search, addition was made by the AO on the ground that the company was unable to prove the purchases effected by it, the said addition was

deleted by the CIT(A) and confirmed by the Hon'ble Appellate Tribunal in the case of ACIT vs. M/s. Asian Star Co. Ltd. in ITA Nos.4404 to 4410/Mum/2014 for the AYs. 2005-06 to 2011-12 dated 31st March, 2016 vide paragraph 15 of its order which reads as under:

15. We have considered rival contentions, gone through the orders of the authorities below and also deliberated on the judicial pronouncements referred by lower authorities in their respective orders as well as cited by Id DR and AR during the course of hearing before us. From the record we found that addition on account of purchase were made by the AO on the plea that suppliers were not appeared before the AO. During the appellate proceedings, the assessee filed confirmation from suppliers, their affidavits for supply of goods, copy of their IT return with computation of income, income and expenditure account, capital account, balance sheet etc. In some cases, stock register copy of enrollment certificate received from sales-tax department, copy of bank statement, copy of sale/purchase bill etc. were filed. The CIT(A) sent all these documents to the AO for his remand report. The AO called the supplier and the suppliers appeared before the AO, their statements were recorded and sent his remand report in respect of each and every suppliers. After considering the remand report and the rejoinder filed by the assessee, the CIT(A) recorded a categorical finding with respect to each and every supplier and observed that they were genuine supplier, having their sales tax No., PAN No. The statement recorded by the AO were also considered along with affidavits filed by the respective suppliers. The CIT(A) also recorded a finding to the effect that all these parties appeared during the remand proceedings, before the AO and submitted the details mentioned in his appellate order at para 10. on the basis of these documentary evidence the CIT(A) concluded that all the suppliers are genuine except M/s Priyanka Exports in respect of supply made in the assessment year 2007-08 amounting to Rs.3,37,854/- and Rs.46,27,477/- in the assessment year 2009-10. The detailed finding given by the CIT(A) are as per material on record. Accordingly, we do not find any reason to interfere in the findings recorded by CIT(A) for deleting major addition made on account of bogus purchases. Accordingly, we confirm the order of CIT(A) with regard to the addition deleted by him on account of such purchases, we also confirm.

6.3.12 It is apparent from the above that except M/s. Priyanka Exports, all the parties who had sold diamonds to M/s. Asian Star Co. Ltd. had attended before the AO and therefore, the addition was deleted. M/s. Priyanka Exports (Proprietorship) had sold diamonds to M/s. Asian Star Co. Ltd. in A.Y. 2007-08 of Rs.46,51,262/- and in A.Y. 2009-10 of Rs.6,37,06,821/-, M/s. Priyanka Exports (Firm) had sold diamonds to M/s. Asian Star Co. Ltd. in A.Y. 2006-07 of Rs.86,32,500/- and in A.Y 2008-09 of Rs.1,50,09,745/- and since the purchases from M/s. Priyanka Exports (Proprietorship and Firm were not made in the A.Ys. 2010-11 and onwards and therefore, the aforesaid decision of the Hon'ble Appellate Tribunal supports the contention of the appellant that the purchase of diamonds by the appellant from M/s. Asian Star Co. Ltd. are not bogus.

6.3.13 In view of the above, purchases made by the appellant from M/s. Asian Star Company Limited cannot be held as bogus, and hence addition of Rs.16,43,685/- to the total income of the appellant u/s 69C of the Act, is deleted.

6.3.14 The additions made by the AO for AYs 2011-12, 2012-13, 2013-14 & 2014-15 are identical and based on the addition made in AY 2010-11. Hence, for identical reasons, the addition of Rs.7,86,497/-for AY 2011-12, Rs. 13,63,814/-for AY2012-13, Rs. 1,20,51,620/- for AY2013-14 & Rs. 3,15,57,991/- for AY 2014-15 to the total income of the appellant u/s 69C of the Act, are also deleted.”

6. The Ld. D.R. submitted before the Bench that the Ld. CIT(A) has grossly erred in deleting the addition by relying on the remand report for 2010-11. The Ld. D.R. pointed out that there was no remand report called during the year. It was argued that the addition in the case of the assessee qua the bogus purchase was made after a search action on Asian Star Company Ltd. on 29.10.2010 and, accordingly, the assessee was asked by the AO during the course of assessment proceedings to produce the necessary evidences to prove the genuineness of the purchases made from Asian Star Company Ltd. The Ld. D.R. submitted that the purchases made by the assessee from Asian Star Company Ltd. were not genuine as has been proved during the search on the said company and therefore the same was rightly disallowed and added by the AO. Finally, the Ld. A.R. prayed before the Bench that the order of Ld. CIT(A) may be reversed and AO may be restored.

7. The Ld. A.R., on the other hand, referred to the documents filed by the assessee before the AO which comprised of ledger confirmations, affidavits signed and issued by MDG of Asian Star Company Ltd., purchase bills, copies of sales tax bills made against the said purchases, copy of stock ledger, bank

statements evidencing the payment and diamond doller account. The Ld. A.R. submitted that the addition made in the earlier year from 2010-11 to 2013-14 was made the basis to make the addition in the current year by the AO and a sum of Rs.3,15,57,991/- was disallowed on account of bogus purchases under section 69C. The Ld. A.R. also referred to the copy of assessment order passed in the case of Asian Star Company Ltd. for A.Y. 2014-15 under section 143(3) and submitted that the sales made by the Asian Star Company Ltd. were not doubted at all. The Ld. A.R. submitted that AO has primarily relied on the fact that the purchases from Asian Star Company Ltd. were disallowed in the earlier years and on the similar basis the current year purchase were also disallowed whereas it is not a case of bogus hawala purchase entries or a case of investigation by the Sales Tax Department, Government of Maharashtra or any information received from DDIT that assessee is engaged in bogus hawala purchases. The Ld. A.R. also mentioned that order of Ld. CIT(A) has been affirmed by the Tribunal from 2010-11 to 2014-15 in the case of the assessee where the purchases were not treated as bogus by AO and deleted by Ld. CIT(A) and filed the copy of the co-ordinate bench of the Tribunal's order before the Tribunal. The Ld. A.R. also submitted that director of Asian Star Company Ltd. sworn vide his affidavit during the F.Y. 2013-14 that company has sold and delivered cut and polished diamond to the assessee and same has been recorded in the regular course of accounts as well as that they have not accepted in the course of survey or search that they have not made any sales which were bogus and non genuine. The Ld. A.R. submitted that assessee was mainly making purchases on

regular basis from the Asian Star Company Ltd. in the earlier and subsequent years and therefore there is no question of doubting the genuineness of the purchases. In A.Y. 2015-16 the Ld. A.R. referred to the observations of the AO wherein the assessee submitted the details of purchases and cross verification was done from Asian Star Company Ltd. by calling information under section 133(6) and the information was duly submitted by the said company and hence the purchases were treated as genuine. The Ld. A.R. vehemently relied on the order of Ld. CIT(A) and submitted that same may kindly be affirmed. In defence of his arguments, the Ld. A.R. relied on a series of decisions:

1. Tejua Rohitkumar Kapadia (2018) 94 taxmann.com 324 (Gu) (HC)
2. PCIT v. Acquatic Remedies Pvt. Ltd. (2018) 171 DTR 426 (Bom.) (HC)
3. Pr. CIT vs. Vaman International P. Ltd. (2020) 422 (Bom) (HC)
4. Pr. CIT vs. Shapoorji Pallonji and Co. Ltd. (2020) 423 ITR 220 (Bom.) (HC)

8. The Ld. A.R. finally submitted that the order of Ld. CIT(A) being very reasoned and speaking and passed after taking into account the facts of the case and ratio laid down by the various judicial forums and therefore needs to be affirmed.

9. After hearing both the parties and perusing the material on record, we observe that in this case a search action was conducted on Asian Star Company Ltd. on 29.10.2010 during the case of which it is found that the Asian Star Company Ltd. is managing the local bills from Surat for the diamonds which were shown to be purchased locally. On this basis the AO made

addition in the current year the AO on the same basis as the earlier years from 2010-11 to 2013-14 and disallowed the entire purchases of Rs.3,15,57,991/- in the current year without giving any concrete findings despite assessee having filed all the evidences in the form of ledger confirmations, affidavit of the directors of Asian Star Company Ltd., purchase bills corresponding sale bills, stock register, bank advices, statement of current account of the bank and diamond dollar account. The AO has not pointed out any defect in the books of accounts. We find that this is not a case of hawala bogus purchases but the AO has doubted the genuineness on mere presumption and guess work that the similar addition was made from the A.Y. 2010-11 to 2013-14. We observe that the Ld. CIT(A) passed a very reasoned and speaking order deleting the addition. Therefore, we do not find any merit in the contentions of the Ld. D.R. that there was no remand report in the current year and addition has been deleted without calling for remand report. But we note that in the present case all the documents were filed before the Ld. CIT(A) and AO and therefore there was no need to call for any remand report. Under these facts and circumstances we are inclined to uphold the order passed Ld. CIT(A) by dismissing the appeal of the Revenue.

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10. The assessee has filed a cross objection in support of the order of Ld. CIT(A). Since we have dismissed the appeal of the Revenue the cross objection filed by the assessee becomes infructuous and is accordingly dismissed.

11. In the result, the appeal of the Revenue is dismissed and the cross objection of the assessee is also dismissed.

**Order pronounced in the open court on 08.01.2021.**

**Sd/-  
(Ram Lal Negi)  
JUDICIAL MEMBER**

**Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 08.01.2021.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.