

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

**BEFORE SHRI M.BALAGANESH, AM  
&  
SHRI RAVISH SOOD, JM**

**ITA No.2649/Mum/2017  
(Assessment Year :2012-13)**

M/s. Maxell Diamond Pvt. Ltd., 320-A, Panchratna Opera House Mumbai-400004	Vs.	ITO 5(2)(3) Mumbai
<b>PAN/GIR No.AAECM8362J</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Prakash Jhunjunwala
Revenue by	Shri Bharat Andhale
<b>Date of Hearing</b>	<b>26/04/2021</b>
<b>Date of Pronouncement</b>	<b>24/05/2021</b>

**आदेश / ORDER**

**PER M. BALAGANESH (A.M.):**

This appeal in ITA No.2649/Mum/2017 for A.Y.2012-13 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-10, Mumbai in appeal No.CIT(A)-10/ITO-5(2)(3)/140/2015-16 dated 20/01/2017 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 31/03/2015 by the Id. ITO 5(2)(3), Mumbai (hereinafter referred to as Id. AO).

2. The first issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in restricting the profit element embedded in respect of alleged bogus purchases at 3% as against 9% made by the Id. AO in the facts and circumstances of the instant case.

3. We have heard rival submissions and perused the materials available on record. We find that assessee is a company engaged in the business of trading in diamonds. The return of income for the A.Y.2012-13 has been filed on 29/09/2012 declaring total income of Rs.6,97,570/-. We find that the Id AO had observed that assessee had made purchases from Mahalaxmi Gems Pvt. Ltd., to the tune of Rs.2,34,83,754/- and from Lucky Exports to the tune of Rs.2,59,51,893/- totalling to Rs.4,94,35,647/-, whose names appear to be hawala dealers and belonging to Bhanwarlal Jain Group. We find that the Id. AO had stated that during the course of search proceedings in Bhanwarlal Jain group, a statement was recorded u/s.132(4) of the Act wherein it was submitted that the group had indeed given accommodation entries in the form of bogus invoices, among others, to various parties. The Id. AO sought to verify the genuineness of the purchases of the aforesaid two parties by issuing notice u/s.133(6) of the Act. The Id AO observed that both the parties did not respond to the notice issued u/s 133(6) of the Act. We find that the Id. AO had not doubted the sales made by the assessee company out of the aforesaid purchases. We find that assessee also furnished the quantity details of stock which was tallying with the stock register, the details of purchases made from the aforesaid two parties and corresponding sales made thereon were duly reflected in the stock register. The Id. AO however, having agreed to the corresponding sales made out of the aforesaid purchases, proceeded to estimate the profit element embedded thereon at the rate of 9% of value of Rs.4,94,35,647/- and made an addition of Rs.44,29,209/- as unexplained expenditure u/s. 69C of the Act. We find that the Id. AO primarily relied on the modus operandi adopted by the Bhanwarlal Jain Group to justify this addition. We find that the Id. AO had also observed that the gross profit rate disclosed by the assessee is only 0.01%. In the backdrop of these observations, the Id AO proceeded to estimate the profit element embedded in the alleged bogus purchase transaction at 9% and made addition thereon.

3.1. We find that before the Id. CIT(A), the assessee brought evidences on record to prove that one party had indeed responded to the notice issued u/s.133(6) of the Act before the Id. AO. It was also pointed out that the Bhanwarlal Jain Group had not mentioned the name of the assessee to be a beneficiary of accommodation entry in its statements recorded u/s.132(4) of the Act. It was also pointed out that the statement of key person given in Bhanwarlal Jain Group u/s.132(4) of the Act had been subsequently retracted by him. It was also pointed out that the statement recorded from Bhanwarlal Jain Group which was heavily relied upon by the Id. AO for making the addition was never supplied to the assessee for its rebuttal. We find that the Id. CIT(A) by placing reliance on the decision of the Hon'ble Gujarat High Court in the case of Simit P. Sheth reported in 356 ITR 451, had held that in respect of these type of ingenuine purchases, the assessee would have maximum saved only the VAT portion. Accordingly, the Id. CIT(A) restricted the addition to 3% as against 9% made by the Id. AO.

4. Aggrieved by this action, we find that only assessee is in appeal before us and Revenue has not preferred any appeal before us.

5. We find that this Tribunal going by the gross profit ratio of the assessee in earlier years had decided in assessee's own case in ITA Nos.135-137 of 2019 dated 23/02/2021 in similar facts and circumstances by adopting the profit element at 1% of value of ingenuine purchases. Respectfully following the said decision, we hold that 1% profit element on the value of ingenuine purchases would meet the ends of justice.

6. The last issue to be decided in this appeal is as to whether the Id. CITA was justified in confirming the disallowance made on an estimated basis at 10% on conveyance, telephone and travelling expenses in the facts and circumstances of the instant case.

6.1. We have heard the rival submissions and perused the materials available on record. We find that assessee had debited total conveyance expenses of Rs.1,23,662/-, telephone expenses of Rs.2,16,834/- and travelling expenses of Rs.1,37,030/-. We find that the Id. AO in the assessment proceedings had observed that most of the expenses claimed are not verifiable and that the personal element of expenses cannot be ruled out. Accordingly, he proceeded to estimate 10% of the expenses towards personal element and unverifiable nature and made disallowance thereon in the assessment, which was confirmed by the Id. CIT(A) in the first appeal. We find that the Id. CIT(A) had observed that assessee could not prove with any concrete evidence that there was no personal element involved. Even before us, the assessee was not able to justify the same and infact, no arguments were even advanced by the Id. AR before us with regard to said disallowance. In view of this, the ground No.3 raised by the assessee is hereby dismissed.

7. The ground No.4 raised by the assessee is general in nature and does not require any specific adjudication.

**8. In the result, appeal of the assessee is partly allowed.**

Order pronounced on 24/05/2021 by way of proper mentioning in the notice board.

**Sd/-**  
**(RAVISH SOOD)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(M.BALAGANESH)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 24/05/2021  
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**