

आयकर अपीलिय अधिकरण
मुंबई पीठ "एस एम सी" , मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 4998/मुं/2019 (नि.व 2014-15)
ITA NO.4998/MUM/2019(A.Y 2014-15)

R.K.Color Diamonds Pvt. Ltd.,
1303, Panchratna,Mama Parmanand Marg,
Opera House, Mumbai 400 004

PAN: AAACL-8489-K

..... अपीलार्थी /Appellant

बनाम Vs.

Income Tax Officer-5(3)(1)
Room NO.526, 5th Floor,
Aaykar Bhavan, M.K.Road,
Mumbai 400 020

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : None

प्रतिवादी द्वारा/Respondent by : Ms. Smita Verma

सुनवाई की तिथि/ Date of hearing : 07/04/2021

घोषणा की तिथि/ Date of pronouncement : 02/07/2021

आदेश/ ORDER

This appeal by the assessee is directed against order of Commissioner of Income Tax(Appeals)-10, Mumbai [in short 'the CIT(A)'] dated 10/05/2019 for the assessment year 2014-15.

2. The assessee in appeal has assailed addition of Rs.1,90,247/- confirmed by the CIT(A) in respect of purchases made from M/s. Prime Star by estimating G.P rate at 8% on such purchases.

3. The brief facts of the case as emanating from records are: The assessee is a trader in diamonds. During the course of scrutiny proceedings the Assessing Officer observed that the assessee has taken accommodation entries

from M/s. Prime Star a firm belong to Bhanwarlal Jain & Group. The Assessing Officer estimated profit margin of 8% on bogus purchases and made addition of Rs.1,90,247/-. Against the assessment order dated 28/07/2016 the assessee filed appeal before the CIT(A). The CIT(A) rejected the contentions of assessee and confirmed the addition made by Assessing Officer. Hence, the present appeal by assessee.

4. Ms. Smita Verma representing the Department submitted that the assessee is one of the beneficiaries of accommodation entries provided by Bhanwarlal Jain and his associated concerns floated for the sole purpose of providing accommodation entries. During search action under section 132 of Income Tax Act, 1961 (in short 'the Act') in the case of Bhanwarlal Jain Group, Bhanwarlal Jain admitted that through various concerns floated they are providing accommodation entries against commission and there is no actual sale. The Assessing Officer made estimated addition of 8% of the alleged bogus purchases. The estimate made by Assessing Officer is fair and reasonable, therefore, the same has been upheld by the CIT(A). The Id. Departmental Representative vehemently supported the impugned order and prayed for dismissing the appeal of assessee.

5. Submissions made by Id. Departmental Representative heard, orders of authorities below examined. The assessee has allegedly obtained bogus purchase bills from M/s. Prime Star a firm belonging to Bhanwarlal Jain Group. Undisputedly, the assessee failed to discharge its onus in conclusively proving genuineness of alleged bogus purchases. However, at the same time the Assessing Officer has accepted the sales turnover declared by the assessee. The Assessing Officer estimated profit margin on such purchases at 8% and the CIT(A) has upheld the same. Taking into consideration the nature of

assessee's business, I am of the view that profit margin estimated by the authorities below are on higher side. I deem it appropriate to restore this issue back to the file of Assessing Officer to decided the same afresh in line with the decision of Hon'ble Bombay High Court in the case of PCIT vs. Mohommad Haji Adam & Co. in Income Tax Appeal No.1004 of 2016 decided on 11/02/2019. Needless to say that the Assessing Officer shall grant reasonable opportunity of hearing to the assessee before re-adjudicating the issue in accordance with law.

6. In the result, appeal by the assessee is partly allowed for statistical purpose.

Order pronounced in the open Court on Friday, the 2nd day of July, 2021.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 02/07/2021

Vm, Sr. PS (O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai