

आयकर अपीलीय अधिकरण “एच” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“H” BENCH, MUMBAI

माननीय श्री अमरजीत सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI AMARJIT SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

1. आयकरअपील सं./ I.T.A. No.7509/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2007-08)
&
2. आयकरअपील सं./ I.T.A. No.7510/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2008-09)
&
3. आयकरअपील सं./ I.T.A. No.7511/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2009-10)
&
4. आयकरअपील सं./ I.T.A. No.7512/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2010-11)

M/s K’s Jewellery & Co. 221-A, Adarsh Industrial Estate Sahar Road, Chakala, Andheri, Mumbai-400 099.	बनाम/ Vs.	ACIT - 24(2), 6 th floor, Piramal Chambers, Parel, Mumbai-400 012
स्थायीलेखासं./जी आइ आर सं./PAN/GIR No. AADFK-2394-Q		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Suchek Anchaliya & Shri Deepak Parekh– Ld. ARs
Revenue by	:	Shri Gurbinder Singh– Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	07/07/2021
घोषणा की तारीख / Date of Pronouncement	:	07/07/2021

आदेश / ORDER

Per Bench

1.1 Aforesaid appeals by assessee for Assessment Years (AY) 2007-08 to 2010-11 contest common order dated 30/10/2019 passed by

learned Commissioner of Income-Tax (Appeals)-36, Mumbai [CIT(A)] in the matter of assessment framed by Ld. Assessing Officer (AO) u/s 143(3) r.w.s. 147 of the Act. The facts as well as issues are identical and it is admitted position that adjudication in any one year shall apply with full force to other years also.

1.2 The ground raised by the assessee in AY 2007-08 read as under: -

1. On the facts and circumstances of the case and in law, the learned CIT(A) erred in not considering that the assumption of jurisdiction by the Learned Assessing Officer as bad in law as the conditions laid down under the Act for initiating reassessment proceeding u/s 147 of the Act were not fulfilled.
2. On the facts and circumstances of the case and in law, the learned CIT(A) erred in not holding that the Learned Assessing Officer erred in not providing an opportunity to cross examine to the appellant while relying on a third party statement as the same was also in violation of the principles of natural justice.
3. On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the addition made by Ld. A.O. of Rs.4,17,27,832/-, by treating genuine local purchases/ deemed imports as accommodation entry.
4. On the facts and circumstances of the case and in law the learned CIT(A) erred in not acknowledging the fact that the appellant firm is a 100% Export Oriented Unit (EOU) and any purchases/ deemed imports made from local suppliers are considered to be deemed exports for such supplier and is subject to mandatorily follow a strict procedure for procurement of consignment in accordance with the procedure laid down by the Customs/SEZ Authorities.

1.3 The Ld. AR advanced argument assailing the additions made / confirmed by lower authorities whereas Ld. DR pleaded for dismissal of the appeals. We have carefully heard the rival submissions and perused relevant material on record including documents as placed in the paper book. Our adjudication to the appeal would be as given in succeeding paragraphs.

Assessment Proceedings

2.1 The material facts are that the assessee being resident firm is stated to be engaged in manufacturing & export of jewellery. An assessment was framed for the year u/s 143(3) r.w.s. 147 of the Act on 11/02/2015. The original return of income filed by the assessee was

scrutinized u/s 143(3) on 18/12/2009 accepting the returned income of Rs.26.62 Lacs. However, pursuant to search operations by DGIT(Inv), Mumbai in the case of Shri Rajendra Jain Group, Shri Sanjay Choudhary Group and Shri Dharminchand Group on 03/10/2013, it was alleged that the assessee obtained bogus purchase bills from an entity namely M/s Sun Diam. Accordingly, the case was reopened as per due process of law vide notice u/s 148 dated 25/03/2014 and the assessee was directed to substantiate the purchase transactions. In support of purchases, the assessee filed computation of income, audit report, ledger extracts of M/s Sun Diam and copy of purchase bills. The assessee also filed notarized affidavit of Shri Rajendra Jain (partner of M/s Sun Diam) confirming the purchase transactions with the assessee.

2.2 However, going by the statements made by the parties before investigation wing during search operations, the explanation furnished by the assessee was not to be accepted in terms of decision of Hon'ble Delhi High Court in **CIT V/s Independent Media (P) Ltd. (210 Taxman 14)**. Finally, these purchases were disallowed and added back to the income of the assessee.

Appellate proceedings

3.1 During appellate proceedings, the assessee assailed the action of Ld. AO by way of elaborate written submissions. The assessee also challenged the validity of reassessment proceedings. It was submitted that the assessee was 100% Export Oriented Unit (EOU) registered with the Development Commissioner, SEEPZ - SEZ, Mumbai since April 2004. Since its inception, the assessee firm was engaged as manufacturer exporter of gold jewellery studded with diamonds & precious stones. The licenses / permissions granted by appropriate

authorities were also furnished in support of the same. As per the terms of license, the assessee was mandatorily obliged to follow strict norms, rules and compliances as set out by the Government of India - Ministry of Commerce during conduct of its business.

3.2 It was submitted that assessee being an 100% EOU, all purchases of cut & polished diamonds made from local parties have to be in the nature of deemed imports only for which strict procedures was required to be followed viz.

- a) The proposed required quantity of cut & polished diamond was to be intimated to Superintendent of Customs along with the proforma invoice of the supplier party showing therein the complete details of quality, quantity and value. Against this intimation, the Superintendent of Customs would issue, under his stamp and seal, a "Certificate of procurement" only on the basis of which the purchases / procurement could be made by the assessee.
- b) Having complied with and completed the above formality, the supplier would take the consignment of diamonds along with its invoice to the Deputy Commissioner of Customs at DPCC (Diamond Plaza Clearing Centre) at Dr. D. B. Marg, Mumbai - 400 004 for complete verification and appraisal of quality, quantity and value of the consignment.
- c) The sale made by supplier locally to assessee was not to be considered as local sale but a deemed export for which it was obligatory for supplier to get itself registered with JCCI & E (Joint Chief Controller of Imports and Exports) who would allot all such parties the Importer - Exporter Code Number (IEC).

d) After the customs authorities have inspected, verified and appraised the consignment, they would take delivery / possession of the goods from the suppliers and seal the consignment and retain it with them. Simultaneously, the invoice would also be stamped and endorsed by the custom authorities, the entry of which would also be made in the customs register.

e) One copy of this customs stamped and endorsed invoice is then handed over to the assessee by the supplier which is required to be given / handed over to the jurisdictional Preventive officer for the purpose of taking delivery of the goods.

f) Subsequently, one person from assessee's office would accompany the Preventive Officer to go to Deputy Commissioner of Customs at DPCC (Diamond Plaza Clearing Centre) to take the delivery of the sealed consignment of diamonds against the procurement certificate and the customs stamped-cum-endorsed invoice. Pertinently, the delivery of the goods / consignment is only and only given to the Preventive Officer in charge.

g) The Preventive Officer after having taken the delivery/possession of the consignment from the customs authorities, would then make an entry in his register and issue / hand over to assessee the possession of the goods in assessee's factory premises only.

h) All such deemed imports made by assessee has to be then fully and completely accounted for in terms of its consumption / end use in the manufacturing of jewellery which is exported. In other words, at the time of export of a particular consignment of jewellery, the quantity and the quality of the diamonds has to be co-related

and accounted for with the custom authorities as to from which deemed import the said diamonds have been used/consumed. The custom officer after satisfying himself fully would endorse under his seal and signature assessee's respective export invoice(s) and also on the end use certificate showing the complete details therein, only after which the goods would be eligible for export to overseas buyers.

It was thus submitted that the assessee purchased nine consignments of diamonds from M/s Sun Diam during the year by following the above strict norms, procedures and rules which were to be followed by any 100% EOU. The invoice-wise details showing quantity as well as value were also furnished. The copies of invoices along with respective certificate of procurement and movement of goods duly endorsed by custom authorities / preventive officer were filed during the course of assessment proceedings as well during appellate proceedings. Thus, the assessee claimed that all these documents completely establish and prove the description, quantity, quality and movement-cum-delivery of goods purchased from M/s Sun Diam. The details of payment made through banking channels were also furnished along with bank statements of the assessee. The copies of end-use certificates duly endorsed and certified by the custom authorities / preventive officer showing complete details of consumption of cut and polished diamonds in manufacture and export vis-à-vis purchases made from M/s Sun Diam was also enclosed. The confirmed account statement along with copy of Income Tax Return of M/s Sun Diam was also furnished. Lastly, the notarized affidavit executed by Shri Rajendra Jain as partner of M/s Sun Diam, confirming the aforesaid transactions with the assessee was also

placed on record. Finally, it was submitted that the allegation of Ld. AO doubting the purchase transactions stood completely negated. The assessee also submitted that it ought to have been granted an opportunity to cross-examine the party. Reliance was placed on several favorable decisions of Tribunal rendered under similar factual matrix. The same has already been elaborated in the impugned order.

4.1 The Ld. CIT(A) noted that the assessee was a manufacturer and not a trader and therefore one-to-one correlation of the purchases was not possible. The assessee did not elaborate the manufacturing process and did not mention anything about the sale of the finished product. The rejection of books was not mandatory since only the purchases were disallowed in view of the fact that the same were found to be made with a view to reduce the profits.

4.2 So far as the elaborate procedure stated to be followed by the assessee for purchase as well as for consumption of material was concerned, it was observed by Ld. CIT(A) that the assessee had submitted Invoices along with certificate for procurement and movement of goods duly endorsed by the Custom Authorities and the Preventive Officer which indicate that these were certificates for procurement and movement of imported goods / excisable goods without payment of duty. The certificate mentions various points including details of goods together with their description which may be cleared at Nil rate of duty. However, an important fact was that in all the certificates, the bond was for Rs.46.01 Lacs irrespective of the quality and total value of purchase amount. Thus, it was only a certificate which together with the bills was to ensure that the purchases by the assessee could be made from a particular party as regards the items mentioned in the invoice and the

Superintendent of Customs gives a certificate to that effect but it nowhere says that the goods have ultimately been purchased by the assessee. It is with the help of the further process and the papers and documents to that effect that the assessee would have been in a position to show that the purchases have actually been made. Having not done so, the assessee did not satisfactorily substantiate the purchases. Further, in case of trader, one-to-one correlation would be evident but in case of a manufacturer, the chain of events after purchases for manufacturing leading to the final product which is ultimately sold needs to be explained and the appellant has grossly erred in not doing so in the present case. Thus, this was not a case of having made the purchases from grey market and regularizing the same by obtaining bills of purchases rather it was a case where the purchases were made only to reduce the profits.

4.3 In the background of all these observations, the action of Ld. AO was upheld against which the assessee is in further appeal before us.

Our findings and Adjudication

5. We find that the assessee firm is engaged as manufacturer exporter of diamond / stone studded jewellery. The assessee is a 100% Export Oriented Unit (EOU) situated in a SEZ. As per the extant rules / regulations, all the local purchases made by the assessee would be deemed imports. All such purchases to be made by the assessee have to follow strict procedure as laid down in SEZ rules and regulations. This procedure has elaborately been given by the assessee in its submissions during appellate proceedings. The same has also been noted by us in preceding para 3.2. Upon perusal of the same, it could be seen that the assessee could not purchase the material directly from the

local vendor rather the purchases had to following specific procedure as per the rules. We find that the assessee has purchased loose diamonds from M/s Sun Diam which has been used in making the jewellery. The proposed quantity of cut & polished diamonds as required by the assessee would first be intimated to Superintendent of Customs along with the proforma invoice of the supplier party showing therein the complete details of quality, quantity and value. Against this intimation, the Superintendent of Customs would issue a certificate of procurement and movement of imported goods / excisable good without payment of duty. A copy of the same is on record. Upon perusal of the same (page 85 of the paper-book), it could be gathered that this certificate is issued for particular invoice number detailing therein the description of goods as well as quantity of the goods proposed to be purchased by the assessee. For the said purpose, the assessee has executed prescribed bond of Rs.46.01 Lacs as surety which is mentioned on all such certificates. A copy of this certificate is forwarded to Deputy Commissioner of Customs. Thereafter, the supplier would take the consignment along with related invoice to the said authority for complete verification and appraisal of quality, quantity and value of the consignment. The sample copy of invoice as raised by the supplier (placed on page no.86 of the paper-book) would reveal that that the invoice contains complete description of various varieties of diamond along with their respective rates etc. The invoice also contains IEC number of the supplier, VAT / CST registration as well as Income Tax Permanent Account number of the supplier. The invoice also bears the requisite declarations as required as per extant rules and regulations. Thereafter, the consignment is delivered by the supplier to the custom authorities who would inspect, verify and appraise

the consignment and would stamp and seal the consignment. Simultaneously, the invoice would also be stamped and endorsed by the custom authorities, the entry of which would also be made in the customs register. One copy of this stamped invoice would be handed over by supplier to the assessee, on the basis of which the delivery of goods would be given to assessee by the preventive officer in the office of Deputy Commissioner of Customs at DPCC (Diamond Plaza Clearing Centre). The delivery of sealed consignment would be taken against the procurement certificate as well as stamped-cum-endorsed invoice. Pertinently, the delivery of the goods / consignment is only and only given to the Preventive Officer in charge who would make an entry in his register and deliver the possession of the goods in assessee's factory premises only. All such deemed imports made by assessee has to be then fully and completely accounted for in terms of its consumption / end-use in the manufacturing of jewellery which is exported by the assessee. In other words, at the time of export of a particular consignment of jewellery, the quantity and the quality of the diamonds has to be co-related and accounted for with the custom authorities as to from which lot of deemed import the said diamonds have been used/consumed. The custom officer after satisfying himself fully would endorse under his seal and signature assessee's respective export invoice(s) and also on the end-use certificate showing the complete details therein, only after which the goods would be eligible for export to overseas buyers. The perusal of sample copy of end-use certificate (page 84 of paper-book) would reveal that this would contain import quantity of cut & polished diamonds, export invoice number & date, shipping bill number & date and would certify that the goods have been

fully utilized in the manufacture of studded jewellery and also the fact that said manufactured goods have ultimately been exported by the assessee. Similar documents have been placed on record for all the consignment procured by the assessee from M/s Sun Diam.

6. Upon perusal of all these facts as well documents, it could very well be said that the purchases made by the assessee was to undergo strict rules & regulations as well as verification by customs authorities. Not only this, the utilization of the same while exporting the goods was also to be demonstrated by the assessee. There is complete one-to-one correlation of the purchases vis-à-vis diamonds utilized in exports made by the assessee. The documentary evidences as furnished by the assessee as elaborated by us in para-5 duly support the said propositions.

7. Proceeding further, we find that the assessee has also placed in record Income Tax Return copy of M/s Sun Diam along with account confirmation. The payment to the suppliers is through banking channels which is evidenced from assessee's bank statements on record. All the purchase made from M/s Sun Diam are supported by the purchase invoices and the purchases made from the said supplier have undergone verification / inspection by custom authorities. The assessee has also placed on record affidavit of Shri Rajendra Jain as partner of M/s Sun Diam confirming the supply of material to the assessee as well as receipt of payment through banking channels. The transactions have been affirmed to be genuine transactions. Further, the assessee's books of accounts have duly been audited as per Income Tax Rules and there are no adverse remarks by the Tax Auditor with respect to purchases, utilization of raw material, sale or closing stock. Upon perusal of the Tax Audit Report, it could be gathered that the assessee has maintained

complete quantitative details of raw materials, work-in-progress as well as finished goods sold by it. Upon perusal of financial statements, it could be observed that the assessee has reflected Net profit Rate of around 6% in this year as against net Profit Rate of 5.85% in immediately preceding year.

8. In the light of above facts and circumstances, we are of the considered opinion that the onus casted upon assessee to substantiate the purchases was duly discharged and the onus was on revenue to dislodge the assessee's submissions as well as documentary evidences. However, the whole basis of addition is statement made by the tainted group during search operations. The opportunity to cross-examine the same has never been provided to the assessee. It could be concluded that the additions are made merely on the basis of allegations without there being any cogent material in the armory of the revenue. Therefore, considering the facts of the case, we are inclined to **delete** the impugned additions as made by Ld.AO and as confirmed by Ld. CIT(A) in the impugned order. We order so. The Ld. AO is directed to re-compute assessee's income, in terms of this order. Ground Nos. 2 to 4 stands allowed.

9. The Ld. AR has assailed the reassessment proceedings on the ground that original return was scrutinized u/s 143(3) and the case was reopened beyond four years. However, there is no allegation by Ld. AO in the recorded reasons to the fact that there was any failure on the part of the assessee during scrutiny assessment. We do not concur with the same since assessment was framed u/s 143(3) on 18/12/2009 whereas search action on tainted group took place on 03/10/2013 which is a subsequent event. The Ld. AO was clinched with tangible material

arising out of a subsequent event. This material established possible escapement of income in the hands of the assessee. Therefore, nothing more was required at this stage to reopen the case of the assessee. Ground No.1 stands dismissed.

10. In the result, the appeal stands partly allowed.

ITA No.7510/Mum/2019, AY 2008-09

11. The assessee has similarly been assessed in AY 2008-09 u/s 143(3) r.w.s. 147 on 19/01/2016 wherein purchases made from two suppliers have been disallowed. The appellate order is common order for all the years against which the assessee is in further appeal before us with identical grounds of appeal. Facts being pari-materia the same, our findings as well as adjudication as for AY 2007-08 shall, *mutatis-mutandis*, apply to this year as well. In other words, the appeal stands partly allowed in similar fashion.

ITA No.7511/Mum/2019, AY 2009-10

12. The assessee has similarly been assessed in AY 2009-10 u/s 143(3) r.w.s. 147 on 21/12/2016 wherein purchases made from two suppliers have been disallowed. The appellate order is common order for all the years against which the assessee is in further appeal before us with identical grounds of appeal. Facts being pari-materia the same, our findings as well as adjudication as for AY 2007-08 shall, *mutatis-mutandis*, apply to this year as well. In other words, the appeal stands partly allowed in similar fashion.

ITA No.7512/Mum/2019, AY 2010-11

13. The assessee has similarly been assessed in AY 2010-11 u/s 143(3) r.w.s. 147 on 23/03/2015 wherein purchases made from two suppliers have been disallowed. The appellate order is common order for

all the years against which the assessee is in further appeal before us with identical grounds of appeal. Facts being pari-materia the same, our findings as well as adjudication as for AY 2007-08 shall, *mutatis-mutandis*, apply to this year as well. In other words, the appeal stands partly allowed in similar fashion.

Conclusion

14. All the appeals stand partly allowed in terms of our above order.

Order pronounced on 07th July, 2021.

Sd/-

(Amarjit Singh)

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 07/07/2021

Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
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