

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

**BEFORE: SHRI VIKAS AWASTHY, JUDICIAL MEMBER
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.7149/Mum/2019 & 7150/Mum/2019
(Assessment Year :2013-14 & 2014-15)**

M/s. Bhakti Enterprises 303/304, Vaikunth Building Upper Govind Nagar Malad (E) Mumbai – 400 097	Vs.	ACIT- 30(1)(1) C-13, 5 th Floor Pratyakshakar Bhavan Bandra Kurla Complex Bandra (E) Mumbai
PAN/GIR No. AADFB7625B		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Shri Pankaj Kumar
Date of Hearing	15/07/2021
Date of Pronouncement	19/07/2021

आदेश / O R D E R

PER M. BALAGANESH (A.M.):

These appeals in ITA No.7150/Mum/2019 & 7149/Mum/2019 for A.Yrs.2013-14 & 2014-15 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-41, Mumbai in appeal Nos.CIT(A)-41/IT/122/16-17, CIT(A)-41/IT/123/16-17 CIT(A)-41/IT/522/16-17 dated 31/08/2019 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 31/08/2016 by the Id. Asst. Commissioner of Income Tax-30(1), Mumbai (hereinafter referred to as Id. AO).

2. At the outset, the notice sent by the Registry to the address mentioned by the assessee in Form No.36 was returned unserved with the remark "left" by the postal authorities. The assessee had not intimated its revised address to this Tribunal. These appeals have been listed for hearing on 26/04/2021, 03/06/2021 and 15/07/2021. On all these dates, no presence was made on behalf of the assessee. Since, the notice of hearing had been returned unserved by the postal authorities with the remark "left" and no efforts have been taken by the assessee to furnish the fresh address before us, we proceed to dispose of these appeals on hearing the Id. DR and on perusing the materials available on record.

3. As identical grounds are raised by the assessee in both the years, they are taken up together and disposed of by this common order for the sake of convenience.

4. The first ground raised by the assessee is challenging the reopening of assessment.

4.1. We have heard Id. DR and perused the materials available on record. We find that assessee is a partnership firm engaged in the business of trading in rough and polished diamonds. The return of income for the A.Y.2013-14 had been filed by the assessee on 20/09/2013 declaring total income of Rs.32,35,610/- which was duly processed u/s.143(1) of the Act. Subsequently, based on information received from DGIT (Investigation) Mumbai that assessee firm was involved in bogus transactions amounting to Rs.5,16,21,489/- which constituted tangible material on record to suggest that the assessee had not disclosed true and correct particulars of income, the assessment for the A.Y.2013-14

was sought to be reopened by the Id. AO by issuance of notice u/s.148 of the Act on 16/03/2015. In response thereto, the assessee vide letter dated 06/04/2015, submitted that the return filed for A.Y.2013-14 already may be treated as a return filed in response to notice u/s.148 of the Act. The reasons recorded for reopening the assessment were also provided to the assessee. The Id. AO observed that assessee is one of the beneficiaries operated and controlled by Shri Sanjay Choudhary group. Based on the information gathered from DGIT (Investigation) Mumbai that Sanjay Choudhary group persons had floated various companies which are engaged in the business of providing accommodation entries in the form of bogus unsecured loans, bogus purchases, bogus capital gains and since assessee also was one of the beneficiaries by obtaining bogus purchases to the tune of Rs.5,16,21,489/-, the assessment was validly reopened in the case of the assessee. Admittedly this information was obtained by the Id AO based on search and seizure action carried out in the case of Shri Sanjay Choudhary group wherein it was found that the said group was engaged in providing accommodation entries without actual supply of goods, which had ultimately triggered the reopening of assessment in the case of the assessee. We find that the Id. CIT(A) had observed in para 4.1.1 of his order that from the information so received, the assessee's name appeared in the list of beneficiaries who had taken accommodation entries. Obviously this would result in formation of belief in the mind of the Assessing Officer that income of the assessee had escaped the assessment as the said information constituted tangible material. We find that the Id. CIT(A) had also placed reliance on the decision of the Hon'ble Gujarat High Court in the case of Peass Industrial Engineers Pvt. Ltd., vs. DCIT reported in 72 Taxmann.com 302 in support of its contentions, while upholding the validity of reopening. Hence, we do not find any infirmity in the order of the Id. CIT(A) upholding the

validity of reopening of the assessment in the instant case. Accordingly, the ground No.1 raised by the assessee for both the years is hereby dismissed.

5. The ground No.2 raised by the assessee is challenging addition made on account of bogus purchases.

5.1. We have heard Id. DR and perused the material available on record as stated earlier. The Id. AO observed that assessee has made purchases from three parties amounting to Rs.5,16,21,489/- as under:-

AADI	-	Rs.2,18,77,866/-
KALASH	-	Rs.2,46,99,937/-
SPARSH	-	Rs.50,43,686/-
		=====
TOTAL		Rs.5,16,21,489/-
		=====

5.2. During the course of assessment proceedings, assessee was asked to prove the genuineness of the purchases made from aforesaid parties. The assessee merely replied that purchases made from aforesaid parties have been duly accounted for its books of accounts and the payments for the same have been made by account payee cheques. The Id. AO issued summons u/s. 131 of the Act on 29/02/2016 to all the parties which remained unresponded by the parties. However, the parties had sent the ledger extracts, bank statement, copy of confirmation etc., which they had already stated as bogus while giving statements u/s.132(4) of the Act during the course of search proceedings in the case of Shri Sanjay Choudhary group. The assessee had also furnished stock register, custom appraisal report in respect of export together with bank statement

evidencing the payments made to suppliers by account payee cheques. The Id. AO however, observed that delivery challans were not furnished by the assessee and since the stock statement furnished by the assessee contain the purchases made from aforesaid parties together with the details of corresponding sales made thereof, the Id. AO concluded that assessee could have made purchases from grey market in order to have savings in indirect taxes and accordingly, estimated the profit percentage embedded in the value of such disputed purchases at 4% and proceeded to make an addition of Rs.20,64,860/- (Rs.5,16,21,489 x 4%) in the assessment. This action of the Id. AO was upheld by the Id. CIT(A).

5.3. We find that in the instant case, the sales made by the assessee within the disputed purchases had not been doubted by the Revenue. Hence, it could be safely concluded that assessee could have made purchases from grey market in order to have some savings in indirect taxes and incidental profit element thereon by making cash purchases. Hence, it would be just and fair to bring to tax only profit element embedded in the value of such disputed purchases. We find based on the report of the task group for diamond sector published by the Government of India, Ministry of Commerce and Industry, in this regard, wherein the benign / presumptive taxation threshold was set at 2.5%. We hold that profit percentage embedded in the value of disputed purchases estimated at 2.5% thereon, would meet the ends of justice. The Id. AO is directed accordingly.

6. The decision rendered for A.Y.2013-14 would apply with equal force for A.Y.2014-15 also, in view of identical facts except with variance in figures.

7. Accordingly, the ground No.2 raised by the assessee for both the years is partly allowed.

8. In the result, both the appeals of the assessee are partly allowed.

Order pronounced on 19/07/2021 by way of proper mentioning in the notice board.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Mumbai; Dated 19/07/2021
KARUNA, *sr.ps*

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

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