

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "SMC", MUMBAI**

BEFORE SHRI SAKTIJIT DEY (JM)

**ITA No. 2131/MUM/2019
Assessment Year: 2008-09**

Ketwal Gems, 5/67, , Adarsh Nagar Hsg. Society, Opp. Century Bazar, Mumbai - 400025 PAN: AAAFK1724D	Vs.	ITO - 21(2)(1), 110, Piramal Chambers, Lalbaug, parel, Mumbai - 400012
(Appellant)		(Respondent)

Assessee by : Shri Drashti Shah (AR)

Revenue by : Shri Shiddramappa (DR)

Date of Hearing : 27/05/2021

Date of Pronouncement: 09/07/2021

ORDER

This is an appeal by the assessee against order dated 20.02.2019 of learned Commissioner of Income Tax (Appeals)-33, Mumbai. In the impugned order, learned Commissioner (Appeals), though, has disposed of the appeals for the assessment years i.e. assessment years 2007-08 to 2008-09 and assessment years 2010-11 to 2013-14, however, presently I am concerned with the appeal for the assessment year 2008-09 only.

2. The dispute in the present appeal is confined to disallowance/addition of Rs. 4,23,491/- on account of alleged non-genuine purchases.

3. Briefly the facts are, the assessee, a partnership firm, is engaged in manufacturing, processing and export of diamonds. For the assessment year under dispute, assessee filed his return of income on 16.09.2008 declaring total income of Rs. 6,26,060/-. Subsequently, the assessing officer (AO) received information from DGIT (Inv.) that the assessee is a beneficiary of accommodation entries provided by Bhanwarlal Jain Group by way of bogus purchase bills. Based on such information, AO reopened the assessment under

section 147 of the Act. In course of assessment proceedings, though, the assessee disputed the allegations of alleged non-purchases, however, the AO rejecting the claim of the assessee concluded that the purchases are non-genuine. However, considering the fact that the assessee might have purchased the diamonds from unverified sources, the AO disallowed the profit element embedded in the alleged non-genuine purchases by estimating at 6%. Thus, he worked out the disallowance at Rs. 6,40,937/-. Assessee contested the aforesaid disallowance before first appellate authority. After considering the submissions of the assessee, learned Commissioner (Appeals) directing the AO to restrict the disallowance to the gross profit rate shown by the assessee at 3.97%. Thus, he reduced the disallowance to Rs. 4,23,491/-.

4. I have heard the learned Counsels appearing for the parties and perused the material on record. At the outset, learned Counsel for the assessee submitted that the issue is squarely covered by the decision of the Tribunal in assessee's own case for assessment year 2010-11 to 2013-14, wherein, the Tribunal has deleted the disallowance sustained by learned Commissioner (Appeals) by applying the gross profit rate. In this context, he drew my attention to the relevant observations of the Tribunal. Learned Departmental Representative, though, fairly agreed that the issue is covered by the decision of the Tribunal, however, he relied upon the observations of learned Commissioner (Appeals).

5. Having considered rival submissions, I find that in assessment year 2007-08 and 2008-09 the AO had made disallowance of similar nature by estimating the rate of profit at 6%. Whereas, in assessment years 2010-11 to 2013-14, he has made identical disallowance applying respective gross profit rates. In the impugned order, learned Commissioner (Appeals) has sustained the disallowance made by the AO in assessment years 2010-11 to 2013-14, whereas, in assessment years 2007-08 and 2008-09, he has restricted the disallowance to the gross profit rate shown by the assessee. Pertinently while deciding assessee's appeals for assessment years 2010-11 to 2013-14 the Co-ordinate Bench in ITA No. 1999/Mum/2019 and others dated 08.10.2020 has

deleted the disallowance sustained by learned Commissioner (Appeals) applying the gross profit rate shown by the assessee. Facts being identical, following the aforesaid decision of Co-ordinate Bench in assessee's own case, I delete the disallowance of Rs. 4,23,491/-. Ground No. 1 is allowed. Ground No. 2 having not been pressed is dismissed.

5. In the result appeal is partly allowed.

Order pronounced in the open court on 9th July, 2021.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 09/07/2021

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.
सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai