

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

**BEFORE SHRI SAKTIJIT DEY (JM)**

**ITA No. 7047/MUM/2019  
Assessment Year: 2008-09**

ITO-22(2)(3), Mumbai	<b>Vs.</b>	M/s Living Gems, Shop No. F-35, The Grand Hyatt Plaza, Vakola, Santacruz (East), Mumbai - 400055 PAN: AABFL0252G
<b>(Appellant)</b>		<b>(Respondent)</b>

Revenue by : Shri Shiddaramappa K. (DR)

Assessee by : None

Date of Hearing : 25/05/2021

Date of Pronouncement: 09/07/2021

**ORDER**

This is an appeal by the revenue against the order dated 01.08.2019 of learned Commissioner of Income Tax (Appeals)-34, Mumbai for the assessment year 2008-09.

2. When the appeal was called for hearing, none appeared on behalf of the assessee. However, considering the nature of dispute, I proceed to dispose of the appeal ex-parte qua the assessee after hearing the learned Departmental Representative and based on materials on record.

3. The dispute in the present appeal is confined to partial relief granted by learned Commissioner (Appeals) in the matter of addition made because of alleged non-genuine purchases.

4. Briefly the facts are, the assessee is engaged in business of trading & manufacturing of jewellery and Indian handicrafts. For the assessment year under dispute, the assessee had filed return of income in regular course. Assessment in case of the assessee was originally completed under section 143(3) of the Income Tax Act, 1961. Subsequently, the assessing officer (AO)

received information from the DGIT (Inv.), Mumbai that the assessee is a beneficiary of accommodation entries provided by way of bogus purchases from one of the concerns related to Gautam Jain and others. Based on such information, the AO reopened the assessment for the impugned assessment year. In course of assessment proceedings, the AO called upon the assessee to produce supporting evidence to prove the purchases. In response, the assessee furnished purchase bills, ledger account copy, bank statement copy etc. to prove the purchases. The assessee also furnished the sales bills containing stamp of customs authorities in support of export of goods. The AO however, raised doubt with regard to the source of purchase. He was of the view that the assessee must have purchased the goods from grey market or unverified sources and to regularise such transaction has obtained accommodation bills from the concerned parties. Therefore, after rejecting the books of account, the AO proceeded to disallow 25%, being the profit element on the alleged non-genuine purchases in both the assessment years under dispute. The assessee contested the aforesaid disallowances before learned Commissioner (Appeals). Partly accepting the submissions of the assessee, learned Commissioner (Appeals) restricted the disallowance to 12.5% of the alleged non-genuine purchases in both the years.

5. I have considered the submissions of learned Departmental Representative and perused the material on record. As could be seen, the AO has accepted the fact that the assessee is a exporter of jewellery and in fact had purchased the goods which are subject matter of dispute. He has only doubted the source of such purchases. For this reason alone, instead of disallowing the entire purchases he has restricted the disallowance to 25%, being the profit element embedded in such purchases. Learned Commissioner (Appeals) has reduced such disallowance to 12.5%. Considering the nature of business carried on by the assessee and all other relevant factors, I am of the considered opinion that disallowance made at 12.5% on the alleged non-genuine purchases is fair and reasonable, hence, deserves to be upheld. Accordingly, I do so. Grounds are dismissed.

6. In the result, appeal is dismissed.

Order pronounced in the open court on 9<sup>th</sup> July, 2021.

(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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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