

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI RAJESH KUMAR (ACCOUNTANT MEMBER) AND  
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.4130/MUM/2017  
(Assessment Year: 2011-12)**

DCIT, CC 7(3)  
Room No. 655  
Aayakar Bhavan,  
Mumbai – 400 020

Shri Sourabh Navalkishore  
Vs. Garg, G-31, Flox Chambers,  
Tata Road No.1, Opera House  
Mumbai - 400004

**PAN No. ALNPG6600J**

**(Revenue)**

**(Assessee)**

Assessee by : Shri Dharmesh Shah, A.R  
Revenue by : Shri T.S. Khalsa, D.R

Date of Hearing : 15/07/2021  
Date of pronouncement : 30/07/2021

**ORDER**

**PER RAVISH SOOD, J.M:**

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-49, Mumbai, dated 03.03.2017, which in turn arises from the assessment order passed by the A.O u/s 143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 14.02.2014 for A.Y. 2011-12. The revenue has assailed the impugned order on the following grounds before us:

- "1.(a) On the facts and in the circumstances of the case, the Ld. CIT(A) erred in directing the AO to accept the book results and re-compute the total income from the business and other heads as in the return of income.
- 1.(b) On the facts and in the circumstances of the case and in law, the Id. CIT(A) failed to appreciate that even after the statement of the assesses was recorded in the

previous, year relevant to the AY. 2009-10 accepting that he was in the business of providing entries on commission, the assessee has not contested the assessment order for the A.Y. 2010-11 wherein it was held that the assessee was carrying on the business of providing accommodation entries as in the earlier assessment years and the assessee has not contested the said order in first appeal .

- 1(c). On the facts and in the circumstances of the case, the Ld. CIT(A) ought to have upheld the order of the Assessing officer.
- 2(a). On the facts and in the circumstances of the case, the Id. CIT(A) ought to have upheld the assessment of interest receipt of Rs.1,63,56,600/- and other income of Rs.992/- and exchange difference of Rs.13,23,565/- under the head "Income from other sources".

The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.

The appellant craves leave to amend or alter any ground and /or add new grounds which may be necessary."

2. Briefly stated, the assessee who is a proprietor of M/s Sangam Exports is engaged in the business of manufacturing and trading of precious and semi-precious stones and jewellery. Also, the assessee is a director in M/s Shine Star Impex Pvt. Ltd. and M/s Sunshine Imports & Exports Pvt. Ltd. The assessee had filed his return of income for A.Y 2011-12 on 30.09.2011, declaring a total income of Rs.28,81,310/-.

3. Search and seizure proceedings u/s 132 of the Act were conducted in the case of M/s Rajat Pharma on 12.12.2008. In the course of the search proceedings, it was gathered by the department that the assessee had issued bogus sale bills to the aforementioned searched entity, viz. M/s Rajat Pharma i.e without there being any actual transactions. On the basis of the aforesaid information Survey u/s 133A of the Act was conducted at the business premises of the assessee on 12.12.2008. As is discernible from the records, the statement of the assessee was recorded in the course of the post-survey proceedings i.e on 15.01.2009, 23.01.2009 and 04.03.2009. In the statement recorded on 23.01.2009 the assessee is stated to have confessed of having provided only the bill entries and not entered into any actual transactions of purchase and sale of

diamonds in all the aforementioned three concerns, viz. (i) M/s Sangam Exports; (ii) M/s Sunshine Imports and Exports Pvt. Ltd.; and (iii) M/s Shine Star Impex Pvt. Ltd. The confession was further reconfirmed by the assessee in his statement that was recorded on 04.03.2009. Further, the assessee is stated to have confirmed the aforesaid facts again in his statement that was recorded by the A.O while framing his assessment for A.Y 2008-09. Backed by the aforesaid facts, the A.O while framing the reassessment in the case of the assessee for A.Y 2008-09 and A.Y 2009-10, vide his order passed under Sec. 143(3) r.w.s 147 held the assessee as a dummy who in lieu of commission income had acted as a facilitator for carrying out imports for third parties and was engaged in the business of providing accommodation entries in the garb of the business of manufacturing and trading of diamonds, precious/semi-precious stones and jewellery. On the basis of his aforesaid observations, the A.O while framing the assessment for A.Y 2008-09 and A.Y 2009-10 rejected the books of accounts of the assessee and estimated his commission income qua the nefarious services that were allegedly provided by him as a facilitator and/or an accommodation entry provider with respect to the different streams of his activities, viz. (i). commission on imports for third parties which were routed through his books of accounts as a facilitator i.e @ 2%; (ii). commission on local sales i.e @ 0.75%; and (iii) commission on other purchases i.e @ 0.75%. Also, on a similar footing the income of the aforementioned 'sister concerns' of the assessee, viz. M/s Sunshine Imports and Exports Pvt. Ltd and M/s Shine Star Impex Pvt. Ltd. were also estimated by the A.O while framing their respective reassessments under Sec. 143(3) r.w.s 147 for A.Y 2008-09 and A.Y 2009-10.

4. Backed by the facts and reasoning that was adopted by his predecessor while framing the reassessment under Sec. 143(3) r.w.s 147 in the case of the assessee for A.Y 2008-09 and A.Y 2009-10, the A.O, on a similar footing assessed the income of the assessee for the year under consideration i.e A.Y

2011-12, vide his order passed u/s 143(3), dated 14.02.2014. Accordingly, treating the assessee as a facilitator and/or an accommodation entry provider, the A.O rejected the books of accounts of the assessee and estimated his income for the year under consideration i.e A.Y.2011-12, viz. (i) commission income from imports alleged to have been routed through his books of accounts as a facilitator/dummy for third parties i.e @ 2% (of total imports of Rs. 27,18,01,028/-) : Rs.46,36,020/-; (ii) commission income on the alleged bogus sales bills issued i.e @ 0.75% (of the total sales of Rs.183,73,71,853/-) : Rs.1,37,80,280/-; and (iii) commission income on the alleged accommodation purchase bills issued i.e @ 0.75% (of the total purchases of Rs.187,54,89,142/-) : Rs.1,40,66,168/-. Apart from that, the income credited by the assessee in his profit and loss account viz. (i) interest income : Rs.1,63,56,600/-; (ii) other income: Rs.992/-; and (iii) income from foreign exchange difference: Rs.13,23,565/- was assessed by the A.O as the assessee's income from 'Other sources'. On the basis of his aforesaid observations, the A.O vide his order passed u/s 143(3), dated 14.02.2014 assessed the income of the assessee at an amount of Rs.5,01,63, 634/-.

5. Aggrieved, the assessee carried the matter in appeal before the CIT(A). After deliberating at length, it was observed by the CIT(A) that similar additions that were made by the A.O in the case of the assessee's 'sister concerns', viz. (ii) M/s Sunshine Imports and Exports Pvt. Ltd.; and (iii) M/s Shine Star Impex Pvt. Ltd. for A.Y. 2008-09 and A.Y. 2009-10 had been knocked down by the ITAT, 'B' bench, Mumbai, vide its order consolidated order passed in ITA No. 4347 and 4348/Mum/2015, dated 09.09.2016. It was observed by the CIT(A) that the Tribunal in its aforesaid order had directed the A.O to delete the income that was estimated by him for both the years under consideration and accept the 'book results' declared by the assessee. On merits, it was observed by the CIT(A) that survey u/s 133A was conducted in the case of the assessee on 12.12.2008 and

the assessee's statement during the post-survey proceedings was recorded on 15.01.2009, 23.01.2009 and 04.03.2009. It was observed by the CIT(A) that the A.O had rejected the books of accounts of the assessee for the year under consideration i.e A.Y. 2011-12 and had estimated his income on account of commission on the accommodation entries/services that were allegedly stated to have been provided by him as a facilitator viz. facilitating imports through his books of accounts for third parties, providing accommodation purchase bills, and providing accommodation sale bills; by solely relying on the assessment that was framed in his case for A.Y. 2008-09 and A.Y.2009-10 and his statement that was recorded on 23.01.2009 in the course of the then post-survey proceedings. Not inclined to accept the aforesaid view taken by the A.O, it was noticed by the CIT(A) that the assessee had during the year under consideration maintained regular books of accounts that were duly audited by a Chartered account. It was further observed by him that the fact that assessee was carrying on the business of manufacturing and trading in precious and semi-precious stones and jewellery could safely be gathered from a perusal of his bank books, cash book, sales register, purchase register, stock register, journal and ledger and qualitative details of goods traded and manufactured; in respect of his trading accounts at Surat and Mumbai which had duly been examined and audited by his auditors. It was further noticed by the CIT(A) that the assessee in order to drive home his claim that he was carrying on the business of manufacturing and trading in precious and semi-precious stones and jewellery had submitted the complete details of the import bills and related documents, bills of exports etc., along with a copy of the audit report and certification under the MVAT Act, 2002 for the year under consideration alongwith the details and challans of VAT paid to the Sales tax authority. It was observed by the CIT(A) that though the A.O had accepted that the goods were being imported by the assessee in real through the customs, but then, considering the statement that was given by him during the course of the post-survey proceedings i.e way back on 23.01.2009, wherein he is stated to

have admitted that his concerns viz. M/s Sangam Exports, M/s Sunshine Import & Export Pvt. Ltd. and M/s Shine Star Impex Pvt. Ltd. had provided accommodation entries and not entered into any actual purchase and sale of diamonds, precious and semi-precious stones till date, had thus, for the said standalone reason rejected the books of account of the assessee for the year under consideration i.e A.Y 2011-12 and estimated his income on an ad hoc basis in the same manner as it was done in A.Y 2008-09 and A.Y 2009-10. Observing, that as the A.O had failed to place on record any such material which would reveal that the accounts of the assessee for the year under consideration were not correct or were not complete, the CIT(A) was of the view that the rejection of his books of accounts by the A.O could by no means be held to be justified. On the contrary, the CIT(A) was of view that the details furnished and submissions made by the assessee revealed beyond any scope of doubt that he was during the year under consideration i.e A.Y 2010-11 carrying on the business of purchase and sale of diamonds, precious/semi-precious stones and jewellery. Also, it was observed by him that the purchase/sales and imports/exports carried out by the assessee were duly supported by irrefutable documentary evidence that were furnished by the assessee in the course of the assessment proceedings and had been subjected to scrutiny and vetting by the other wings of the government, viz. Customs and the Sales tax authorities etc. Backed by his aforesaid observations, it was further noticed by the CIT(A) that the ITAT, Mumbai had while disposing off the appeals in the case of other two 'sister concerns' of the assessee, viz, M/s Sunshine Imports and Exports Pvt. Ltd. and M/s Shine Star Impex Pvt. Ltd. for A.Y. 2008-09 and A.Y. 2009-10, wherein identical facts were involved, had held, that rejection of the books of accounts duly audited by a Chartered accountant on the basis of an unsubstantiated statement of the assessee recorded during the course of the survey proceedings i.e without there being any corroborative material was bad in law. It was observed by the CIT(A) that the Tribunal while disposing off the

aforesaid appeals had held that a statement recorded u/s 133A of the Act does not carry any evidentiary value unless the same was supported by corroborative evidence. It was further observed by the Tribunal that in the absence of any incriminating material found in the course of the survey action no adverse inferences could have validly been drawn as regards the genuineness of the business transactions of the concerns before it by merely acting upon the standalone statement of the assessee that was recorded during the course of the said proceedings. Apart from that, it was observed by the CIT(A) that the A.O while framing the assessment in the case of the assessee for the subsequent years viz. A.Y. 2012-13, A.Y 2013-14 and A.Y. 2014-15 had accepted that the assessee was engaged in the business of manufacturing and trading of diamonds, precious and semi-precious stones and jewellery. In the backdrop of his aforesaid observations, the CIT(A) was of the view that the A.O was not justified in rejecting the books of accounts of the assessee for the year under consideration i.e A.Y. 2011-12 and estimating the commission income by treating the imports, purchases and sales carried out by the assessee during the year as accommodation entries. Accordingly, backed by his aforesaid conviction the CIT(A) vacated the estimated additions that were made by the A.O, viz. (i) commission on imports: Rs.46,36,020/-; (ii) commission on sale bills: Rs.1,37,80,289/-; and (ii) commission on accommodation purchase bills: Rs.1,40,66,168/-, and directed him to accept the 'book results' of the assessee and recompute his total income from the business as was declared by him in the return of income. On the premise that the A.O had been directed to accept the 'book results' of the assessee, the separate additions made by the A.O under the head "Other sources" of Rs.1,76,81,157/-, viz. (i) interest income: Rs.1,63,56,600/-; (ii) other income: Rs.992/-; and (iii) foreign exchange difference (gain): Rs.13,23,565/- were accordingly deleted by the CIT(A).

6. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. We have heard the Id. authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. Admittedly, as observed by us hereinabove, the very genesis for treating the assessee as a dummy/facilitator qua the import transactions and an accommodation entry provider for the local purchases and sales finds its roots in his statement that was recorded in the course of post-survey proceedings on 23.01.2009, wherein he is stated to have admitted that no actual transactions of purchase and sale of diamonds, precious and semi-precious stones etc. had taken place in all the three concerns, viz. (i) M/s Sangam Exports (proprietary concern of the assessee); (ii). M/s Sunshine Imports and Exports Pvt. Ltd. ; and (iii) M/s Shine Star Impex Pvt. Ltd. As is discernible from the records, the A.O on the basis of the aforesaid admission by the assessee in his statement recorded u/s 133A of the Act, dated 23.01.2009, had while framing the reassessment u/s 143(3) r.w.s 147 for A.Y 2008-09 and A.Y 2009-10 estimated his income by allegedly treating him as a dummy/facilitator and/or an accommodation entry provider and therein worked out his commission income qua his various streams of nefarious activities, viz. (i). @ 2% of imports; (ii) @ 0.75% of the alleged bogus local purchases; and (iii). 0.75% of the alleged bogus local sales during the said respective years. Also, on the same footing the A.O had made similar additions vide his respective assessment orders passed u/s 143(3) r.w.s 147 for A.Y 2008-09 and A.Y 2009-10 in the case of the assessee's 'sister concerns', viz. M/s Shine Star Impex Pvt. Ltd. and M/s Sunshine Imports and Exports Pvt. Ltd. However, the Tribunal while disposing off the appeals in the case of the aforesaid 'sister concerns' of the assessee, viz. M/s Shine Star Impex Pvt. Ltd. and M/s Sunshine Imports and Exports Pvt. Ltd., wherein on the basis of the statement of the assessee before us, the A.O, had in the like manner dubbed both the

aforesaid concerns too as facilitator/dummy concerns and/or accommodation entry providers and estimated their commission income, had vacated the adverse inferences and the consequential addition made by him. As observed by us hereinabove, the Tribunal while deleting the addition that was made by the A.O by estimating the commission income on the alleged bogus imports, purchases and sales in the case of the aforementioned 'sister concerns', viz. M/s Shine Star Impex Pvt. Ltd. and M/s Sunshine Imports and Exports Pvt. Ltd, had observed, that a statement recorded in the course of the survey proceedings which is not supported by any corroborative evidence has no evidentiary value. It was observed by the Tribunal that a statement recorded in the course of the survey proceedings u/s 133A carries no evidentiary value for the reason that an officer therein is not authorized to administer oath and to take any sworn statement which alone has evidentiary value as contemplated in law. Further, it was observed by the Tribunal that no addition in the absence of any incriminating material found in the course of the survey proceeding could validly be made merely on the basis of a standalone statement recorded under Sec. 133A of the Act. Also, as observed by us hereinabove, the Tribunal had observed that the books of accounts could not have been rejected by the A.O merely on the basis of the statement of the assessee recorded in the course of the survey proceedings. It was further observed by the Tribunal that as the said concerns had got their accounts audited by a Chartered accountant therefore, the same authenticates the reliability of the documents concerned.

7. In the totality of the aforesaid facts, we find that the assessee in the course of the proceedings before the lower authorities had placed on record substantial documentary evidence which proved to the hilt the genuineness of the imports, purchases and sales that were made by him during the year under consideration i.e A.Y. 2011-12. As stated by the CIT(A), and rightly so, now when the imports of the assessee had been physically cleared under the supervision of the

Customs authority, therefore, there would be no justification in stamping the said transactions as bogus. Also, the fact that the majority sales of the assessee were to exporters of repute was a material fact that substantiated the genuineness of his business transactions which we find had been disregarded and brushed aside by the lower authorities. Apart from that, as rightly observed by the CIT(A), the fact that the assessee's books of accounts had been audited by a Chartered accountant further substantiates the genuineness and authenticity of his business transactions for the year in question. Also, the VAT paid by the assessee to the Maharashtra Sales Tax Authority qua the sales made to the various parties during the year under consideration instills confidence as regards the claim of the assessee of having carried out genuine business transactions during the year. On a perusal of the assessment order, we find that the standalone reason for treating the assessee as a dummy/facilitator and/or an accommodation entry provider is his statement that was recorded in the course of the post-survey proceedings i.e way back as on 23.01.2009, which had been acted upon by the A.O without placing on record any material that would otherwise support drawing of such adverse inferences in the hands of the assessee during the year under consideration before us. We are in fact unable to comprehend as to how the unsubstantiated statement of the assessee recorded way back in the preceding year could have formed a solitary basis for concluding that he had not carried out any genuine business during the year under consideration i.e A.Y. 2011-12, and was merely a dummy/facilitator and/or an accommodation entry provider, for the reason, that it was so inferred in the preceding years i.e A.Y 2008-09 and A.Y. 2009-10. On the contrary, the substantial material placed on record by the assessee clearly militates against the aforesaid observations of the A.O. In fact, the arbitrariness on the part of the A.O in treating the assessee as a dummy/facilitator and/or an accommodation entry provider during the year under consideration can safely be gathered from the fact that he had vide his respective orders passed u/s 143(3) for the

succeeding years i.e A.Y 2012-13, A.Y 2013-14 and A.Y 2014-15 not drawn any such adverse inferences and had accepted that the assessee was carrying on actual/genuine business of imports/exports/trading in diamonds in the ordinary course of his business activities during the said respective years.

8. We are deeply pained to see the manner in which the assessee despite absence of any material which would prove to the contrary, or in fact, even raise any doubts as regards the genuineness and veracity of his business activities had however been stamped as a dummy/facilitator and/or an accommodation entry provider by the A.O during the year under consideration. Neither is anything discernible from the records nor any material has been placed before us by the Id. D.R which could persuade us to subscribe to the view taken the A.O that the assessee during the year in question was involved in the nefarious activities as that of a dummy/facilitator and/or an accommodation entry provider. As a matter of fact, the only reasoning given by the A.O, for concluding as hereinabove, was the support that was drawn by him from the fact that in a like manner the A.O had framed the assessment in the case of the assessee for A.Y. 2010-11 and estimated his commission income qua the import/purchase/sale transactions, which had not been assailed by the assessee any further in appeal. Be that as it may, we are absolutely not at all inclined to accept the aforesaid reasoning given by the A.O for holding the assessee as a dummy/facilitator and/or an accommodation entry provider during the year under consideration. By no means, we can shut our eyes to the substantial material that had been placed on record by the assessee to substantiate the authenticity of his business activities, which as noticed by us hereinabove after necessary vetting and verification had not only been accepted by certain other wings of the Government i.e Customs department, Sales tax department etc., but had also not been rebutted or dislodged by the A.O. As a matter of fact, there is no whisper by the A.O in his order expressing any doubts as regards the authenticity of the business activities

of the assessee on the basis of rebuttal or dislodging of the substantial documentary evidence that was filed before him by the assessee in course of the assessment proceedings. Apart from that, the fact that a similar estimation of income made by the A.O in the case of the 'sister concerns' of the assessee, viz. M/s Sunshine Import and Export Pvt. Ltd. and M/s Shine Star Impex Pvt. Ltd. in A.Y. A.Y 2008-09 and A.Y 2009-10 had been knocked down by the Tribunal i.e ITAT 'B' bench in ITA No. 4347 & 4348/Mum/2015 and ITA No. 4349 & 4350/Mum/2015, dated 09.09.2016, with a direction to the A.O to accept the 'book results' of the aforesaid respective assessee's further fortifies our aforesaid observations as regards the genuineness of the business activities of the assessee. In fact, the aforesaid order of the Tribunal in the case of the aforementioned 'sister concerns' of the assessee had thereafter been upheld by the Hon'ble High Court of Bombay in Pr. CIT Vs. Sunshine Import and Export Pvt. Ltd. (2020) 424 ITR 195 (Bom), wherein the appeal filed by the revenue was dismissed. Accordingly, in the backdrop of our aforesaid observations, finding no infirmity in the very well reasoned and balanced view taken by the CIT(A), the present appeal filed by the revenue being absolutely bereft and devoid of any merit is dismissed. The **Grounds of appeal Nos. 1 and 2** raised by the revenue are dismissed.

9. Resultantly, the appeal of the revenue is dismissed.

Order pronounced in the open court on 30.07.2021

Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER

Sd/-  
(Ravish Sood)  
JUDICIAL MEMBER

Mumbai;  
Dated: 30.07.2021  
PS: Rohit

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,  
//True Copy//

(Sr. Private Secretary)  
**ITAT, Mumbai**