

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

**BEFORE SHRI S.RIFAUR RAHMAN (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.4528/MUM/2019
(Assessment Year: 2013-14)**

M/s Creative International
301, Pancharatna, Opera
House,
Mumbai 400 004

ITO-19(1)(3)
Vs. Room No .220, 2nd Floor,
Matru Mandir, Tardeo Road,
Grant Road (W),
Mumbai 400 007

PAN No. AA AFC1212H

(Assessee)

(Revenue)

Assessee by : Shri Neelkanth Khandelwal, A.R
Revenue by : Shri Sanjay J.Sethi, D.R

Date of Hearing : 10/08/2021
Date of pronouncement : 12/08/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-21, Mumbai, dated 22.05.2019, which in turn arises from the order passed by the A.O u/s 143(3) of the Income Tax Act, 1961 (for short 'Act') dated 29.03.2016. The assessee has assailed the impugned order on the following grounds before us:

- “(1.a) On the facts and in the circumstances of the case and in law, the Id. CIT(A), having allowed certain relief, erred in confirming the addition to the extent of Rs.7,95,773/- made by the AO to the income of the Appellant on account of possible profit element to the extent of 3% embedded in purchases made from alleged non-genuine parties on the basis of information received from DGIT(Inv.) Wing, Mumbai.

- (b) The Id, CIT(A) failed to appreciate that :-
- (i) all the purchases are genuine beyond doubt and supported by sufficient materials;
 - (ii) every purchase is backed by corresponding sale;
 - (iii) the gross profit ratio shown by the Appellant is quite reasonable;
 - (iv) the payment of purchases are made by account payee cheques only; and
 - (v) nothing has been brought on record by the Id. AO that money has exchanged the hands in lieu of payment made for these purchases by account payee cheque.
 - (vi) the Id. AO did not provide copy of materials and statements relied upon by him nor allowed any opportunity to the Appellant to cross examine those parties who have been believed to have provided alleged entries of such purchases.
- (c) In reaching to the conclusion and confirming the addition partly, the Id. CIT(A) omitted to consider relevant factors, considerations, principles and evidences while he was overwhelmed, influenced and prejudiced by irrelevant considerations and factors as well as making certain assumptions contrary to the facts of the case.
- (d) Without prejudice, the addition made to the income of the Appellant on account of so called possible profit element embedded in such purchases is quite excessive and unreasonable.
2. The Id. CIT(A) erred in holding that levy of interest U/S.234B and 234C of the Income Tax Act, 1961 is mandatory. The Appellant denies its liability for such interest.
3. The Id. CIT(A) erred in holding that the ground raised disputing initiation of penalty proceedings u/s 271(1)(c) is premature. The appellant denies its liability for such penalty.

The appellant craves leave to add, alter, amend or delete any or all of the above grounds of appeal.”

2. Briefly stated, the assessee firm which is engaged in the business of trading in polished diamonds had filed its return of income for A.Y. 2013-14 on 21.09.2013, declaring an income of Rs.10,37,450/-. The return of income filed by the assessee firm was initially processed as such u/s 143(1) of the Act. Subsequently, the case of the assessee firm was selected for scrutiny assessment u/s 143(2) of the Act.
3. During the course of the assessment proceeding, the A.O was in receipt of information from the DGIT(Inv.), Mumbai, wherein it was conveyed that search and seizure proceedings conducted on Shri Bhanwarlal Jain and his group

concerns had revealed that the assessee as a beneficiary had obtained accommodation entries of bogus purchase of Rs.2,65,25,767/-, as under:

Name of the hawala parties	Amounts(in Rs.)
Prime Star	2,15,16,029/-
Mohit Enterprises	50,09,738/-
Total	2,65,25,767/-

After deliberating at length on the information gathered in the course of the aforesaid search proceedings and the modus operandi that was adopted by accommodation entry providers in general, the A.O called upon the assessee to substantiate the authenticity of the purchases claimed to have been made from the aforementioned tainted parties. In reply, the assessee in order to substantiate the genuineness of the purchases claimed to have been made from the aforementioned concerns produced before the A.O its stock register alongwith the copies of the retail invoices in support thereof. Also, the copies of the bank account statements evidencing the factum of having made the payments to the aforesaid parties through account payee cheques were placed on the record of the A.O. However, the A.O was not persuaded to accept the claim of the assessee that it had made genuine purchases from the aforementioned parties. At the same time, the A.O was of the view that as the impugned purchases of diamonds that were claimed by the assessee to have been made from the aforementioned parties had entered into its stock register and the corresponding sales were duly accounted for, therefore, it could safely be concluded that the assessee had purchased the diamonds though not from the aforementioned parties but at a discounted value from the open/grey market. Accordingly, in the backdrop of his aforesaid deliberations, the A.O held a conviction that the addition qua the impugned purchases was liable to be restricted only to the extent of the profit which the assessee would had made by procuring the goods in question at a discounted value from the open/grey market. Quantifying the said

profit element @ 8% of the value of the impugned purchases of Rs.2,65,25,767/-, the A.O made an addition of Rs.21,22,061/- in the hands of the assessee.

4. On appeal, the CIT(A) observing that the net profit in diamond manufacturing was in the range of 1.5% to 4.5%, while for that in diamond trading was in the range of 1% to 3%, therefore, scaled down the addition to 3% of the value of impugned purchases. Accordingly, the CIT(A) restricted the addition to an amount of Rs.7,95,773/-.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Id. Authorized Representative (for short 'A.R') for the assessee at the very outset submitted, that as the assessee had on the basis of irrefutable documentary evidence substantiated the genuineness of the purchases made from the aforementioned parties, therefore, no part of the said purchases were liable to be disallowed. In order to buttress his aforesaid claim the Id. A.R took us through the relevant pages of the assessee's paper book (APB). Our attention was drawn to the various letters alongwith the supporting documents that were filed by the assessee with the A.O in order to fortify its claim of having made genuine purchases of diamonds from the aforementioned parties. The Id. A.R took us through the Page 131 of APB, wherein the assessee had furnished before the A.O documents in support of the authenticity of the purchases in question, viz. copies of the ledger account of the parties, copies of the invoices, copies of the bank accounts reflecting the payments made to the aforementioned parties for purchase of goods, copies of the bills (which served the purpose of delivery challans) and copy of the stock register reflecting the purchase/sale transactions in question. It was submitted by the Id. A.R that in order to dispel all doubts as regards the genuineness and veracity of the purchases that were made by the assessee from the aforementioned parties, the 'affidavits' of both of the aforesaid supplier parties were furnished with the A.O. Our attention was drawn by the Id. A.R to the 'affidavits' of the proprietor/partner

of the aforesaid parties, viz. (i). M/s Mohit Enterprises; and (ii) M/s Prime Star, at Page Nos. 137 -140 of the APB. It was submitted by the Id. A.R that now when the assessee had substantiated to the hilt the authenticity of the purchases made from the aforementioned parties, therefore, there was no justification on the part of the lower authorities to have made/sustained any part of the disallowance qua the purchases in question. In order to buttress his aforesaid claim reliance was placed by the Id. A.R on the order passed in the case of its sister concern, viz. M/s Sejal Exports (India) & Ors. Vs. DCIT, Central Circle-1(2), Mumbai, ITA No. 3854/Mum/2017, dated 04.07.2018. It was submitted by the Id. A.R that in the aforesaid case the part disallowance of the impugned purchases that was sustained by the CIT(A), on appeal, was vacated by the Tribunal. Also, reliance was placed by the Id. A.R on the order of the ITAT, Mumbai in the case of M/s Chandra Exports, Mumbai Vs. ITO, 19(1)(3), Mumbai in ITA No. 4444/Mum/2018, dated 28.02.2019. Accordingly, in the backdrop of his aforesaid contentions, it was submitted by the Id. A.R that the part disallowance of the impugned purchases upheld by the CIT(A) could not be sustained and did merit to be vacated.

6. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities.

7. 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 the Id. A.R to drive home his contentions. As is discernible from the orders of the lower authorities, the genesis of the controversy in hand lies in the information that was received by the A.O from the DGIT(Inv.), Mumbai, wherein it was intimated that the material unearthed in the course of the search proceedings conducted on Shri Bhanwarlal Jain and his associates concerns revealed, that the assessee as a beneficiary had obtained certain

accommodation/bogus purchase bills. On a perusal of the assessment order, we find that the A.O had dedicated his entire efforts towards demonstrating at length the modus operandi that was generally adopted by accommodation entry providers a/w the facts attending to their dummy businesses. As observed by us hereinabove, the assessee in the course of the assessment proceedings had furnished supporting documentary evidence to substantiate the authenticity of the purchases claimed to have been made from the aforementioned parties. Nowhere in the assessment order, the A.O had arrived at an observation that the assessee had failed to place on record any specific document that was called for by him in order to verify the authenticity of the purchase transactions in question. On the contrary, we find that the assessee had not only on the basis of supporting documentary evidence substantiated the genuineness and veracity of the purchases which were made from the aforementioned parties, but had also filed the 'affidavits' of both the parties, viz. (i) Shri Gautam, proprietor of M/s Mohit Enterprises, 407, Devratna Apartment, Ram Pura, Main Road, Surat, 795 063; and (ii) Shri Shreyansh, partner of M/s Prime Star, 204 Vaibhav Chambers, Rughnathpura Main Road, Surat – 395003. On a perusal of the aforesaid affidavits, we find, that both the said parties after duly identifying themselves along with their other credentials had categorically admitted the sales made by them during the year under consideration to the assessee firm, as under (relevant extract) :

(A) M/s Mohit Enterprises
(Shri Gautam, proprietor)

"6. That I hereby affirm and declare that my firm have sold 445.31 carats of cut and polished diamonds for Rs.50,59,835/- including VAT during the F.Y. 2012-13 to M/s Creative International, 301, Panchratna, Opera House, Mumbai 400004, details of which are as under: -

Sr. No.	Date	Bill No.	Carats	Amount
1.	08.05.2012	ME/PD/MAY/13/2012-13	445.31	50,59,835/-"

(B) **M/s Prime Star**
(Shri Shreyansh, partner)

“6. That I hereby affirm and declare that my firm have sold 1346.17 carats of cut and polished diamonds for Rs.2,17,31,189/- including VAT during the F.Y.2012-13 to M/s Creative International, 301, Panchratna, Opera House, Mumbai 400004, details of which are as under: -

Sr. No.	Date	Bill No.	Carats	Amount (Rs.)
1.	02.04.2012	PS/PD/APR/05/2012-13	305.56	51,60,071/-
2.	13.04.2012	PS/PD/APR/21/2012-13	295.68	32,62,607/-
3.	03.08.2012	PS/PD/AUG/05/2012-13	310.61	67,91,954/-
4.	08.11.2012	PS/PD/NOV/09/2012-13	318.76	48,53,360/-
5.	15.01.2013	PS/PD/JAN/12/2012-13	115.56	16,63,197/-”

On a perusal of the aforesaid, we find that complete details as regards the sales carried out by both the aforementioned parties, viz. invoice numbers, weight of diamond (carats) and sale consideration have been specifically mentioned. Also, we find that the assessee had in the course of the assessment proceedings filed the confirmations of both of the aforementioned parties. In the backdrop of the aforesaid facts, we are of a strong conviction that now when the assessee had not only substantiated the authenticity of the purchases claimed to have been made from the aforementioned parties on the basis of supporting documentary evidence which had not been dislodged by the lower authorities, but had also got the confirmations from the respective parties alongwith their ‘affidavits’, therefore, there could have been no justification in the absence of any material proving to the contrary to doubt the genuineness of the purchases claimed by the assessee to have been made from the aforementioned parties. Our aforesaid view is fortified by the order passed by the Tribunal in the case of M/s Sejal Export (India) Vs. DCIT, Central Circle-1(2), ITA No. 3854/Mum/2017, dated 04.07.2018. Involving identical facts, we find that in the said case too as the assessee was able to substantiate the authenticity of the purchases which were stamped as bogus by the lower authorities, therefore, the Tribunal adopting a holistic view had vacated the addition that was sustained by the CIT(A). Accordingly, in the backdrop of the aforesaid facts, we are of the considered view that as the assessee had substantiated to the hilt the authenticity of the purchases claimed

to have been made from the aforementioned parties, therefore, no disallowance qua any part of the impugned purchases was called for in its hands. We, thus, in the backdrop of our aforesaid deliberations set-aside the order of the CIT(A) and vacate the disallowance of 3% of the impugned purchases that had been sustained by him. The appeal of the assessee is allowed in terms of our aforesaid observations.

8. Resultantly, the appeal of the assessee is allowed.

Order pronounced in the open court on 12.08.2021

Sd/-
(S. Rifaur Rahman)
ACCOUNTANT MEMBER

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Mumbai;

Dated: 12.08.2021

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