

आयकर अपीलिय अधिकरण  
मुंबई पीठ "एस एम सी", मुंबई  
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आअसं. 7049 से 7051/मुं/2019 (नि.व.2010-11 से 2012-13)  
ITA NO.7049 to 7051/MUM/2019 (A.Y.2010-11 to 2012-13)

ITO-22(2)(3), 311, 3 <sup>rd</sup> Floor, Piramal Chambers, Lal Baug, Parel, Mumbai-400012.	बनाम /Vs.	M/s Loyal Gems, 1040, CC Bharat Diamond Bourse, Bandra Kurla Complex, Bandra (E), Mumbai-400051
(अपीलार्थी /Appellant)		(प्रतिवादी /Respondent)
PAN No. AADFL 3293R		

आअसं.7743 से 7745/मुं/2019 (नि.व.2010-11 से 2012-13)  
ITA NO.7743 to 7745/MUM/2019 (A.Y.2010-11 to 2012-13)

M/s Loyal Gems, 1040, CC Bharat Diamond Bourse, Bandra Kurla Complex, Bandra (E), Mumbai-400051	बनाम /Vs.	ITO-22(2)(3), 311, 3 <sup>rd</sup> Floor, Piramal Chambers, Lal Baug, Parel, Mumbai-400012.
(अपीलार्थी /Appellant)		(प्रतिवादी /Respondent)
PAN No. AADFL 3293R		

राजस्व द्वारा/Revenue by : Sh. Sanjay J. Sethi  
निर्धारिती द्वारा/Assessee by : Ms. Dinkle Hariya, Advocate  
सुनवाई की तिथि/ Date of hearing : 03/06/2021  
घोषणा की तिथि/ Date of pronouncement : 27/08/2021

## आदेश/ ORDER

### **PER VIKAS AWASTHY, J.M:**

These three appeals by the Revenue and three cross Appeals by the assessee are directed against the order of Commissioner of Income Tax (Appeals)-34, Mumbai [hereinafter referred to as 'the CIT(A)'] dated 01.08.2019 common for the Assessment Years (AYs) 2010-11, 2011-12 & 2012-13. Since, the grounds raised in all these appeals germinates from same set of facts, therefore, these appeals are taken up together for adjudication and are disposed of by this common order. For the sake of convenience, these appeals are taken up in seriatim of assessment years.

### **ITA No. 7049/Mum/2019, AY- 2010-11 (Department's Appeal)**

### **ITA No. 7743/Mum/2019, AY-2010-11 (Assessee's Appeal)**

2. Ms. Dinkle Hariya appearing on behalf of the assessee submitted that the assessee is engaged in trading and export of polished diamonds and diamond jewellery. The assessment for AY 2010-11 in the case of assessee was re-opened on the ground that the assessee has indulged in obtaining accommodation entries from concern belonging to Bhanwarlal Jain group. The Assessing Officer (AO) held that the assessee has obtained bogus purchase bills amounting to Rs. 14,10,671/- from M/s Minal Gems, a Bhanwarlal Jain group concern. During assessment proceedings, the AO issued notice under section 133(6) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] to the aforesaid dealer. M/s Minal Gems responded to the said notice and filed an affidavit admitting sales transactions with the assessee. The Id. Counsel for the assessee pointed that the assessee furnished evidences in the form of purchase bills, bank statements, ledger accounts, stock register, etc. to substantiate

genuineness of the transactions. The assessee discharged its onus in proving authenticity of the dealer and the purchases made from said dealer. The AO accepted the sales turnover declared by the assessee and still disbelieved purchases made from M/s Minal Gems holding it to be bogus transaction and made addition of Rs. 3,52,667/- by estimating suppressed profit margin at 25% .

Aggrieved by the assessment order dated 07.03.2016 passed under section 143(3) read with section 147 of the Act, the assessee filed appeal before the CIT(A) *inter alia* challenging validity of reopening and addition on merits. The CIT(A) upheld reopening of assessment and on merits, restricted the addition to 12.5% of bogus purchases.

3. The Id. Counsel submitted that although the assessee had furnished all the relevant documents to prove genuineness of the purchases, yet the authorities below have erred in holding assessee's involvement in obtaining accommodation entries. The Counsel prayed for deleting entire addition on account of bogus purchases. Without prejudice to primary prayer, the Id. Counsel submitted that the assessee has declared Gross Profit of 6.57% in the impugned AY, estimation of GP margin by CIT(A) at 12.5% on alleged bogus purchases is very much on the higher side. The Task Group formed by the Government of India for Diamond sector has estimated net profit ranging between 1 % to 3% on trading of Diamonds and 1.5% to 4.5% on manufacturing of diamond jewellery. The Id. Counsel prayed for restricting addition to 2% of the alleged bogus purchases. To support her arguments the Counsel placed reliance on following decisions:

- i. *Choron Diamond India Pvt. Ltd. vs. ACIT in ITA No. 4379/Mum/2016 AY 2007-08 decided on 30.10.2017; and*

*ii. Sejal Gems Pvt. Ltd. vs. DCIT in 3872/Mum/2017, AY 2010-11 decided  
on 22/3/2019*

4. On the other hand, Shri Sanjay J. Sethi representing the Department vehemently defended the assessment order. The DR submitted that the assessee had made bogus purchases from a concern belonging to Bhanwarlal Jain group. During the course of search and seizure action on Bhanwarlal Jain group, the statement of Bhanwarlal Jain was recorded on oath under section 132(4) of the Act wherein he admitted that various concerns were floated by him for providing accommodation entries. The DR submitted that the assessee has failed to discharge his burden in proving authenticity of the dealers and purchases made from said dealer. The AO after having accepted sales turnover estimated suppressed profit margin @ 25%. The CIT(A) has erred in restricting the addition to 12.5%. The DR prayed for restoring the findings of AO.

5. Submissions made by rival sides heard, orders of authorities below examined. The Revenue in appeal has assailed the findings of CIT(A) in restricting disallowance to 12.5% as against 25% disallowance made by the AO. The assessee in appeal has raised multiple grounds, without prejudice to each other challenging re-assessment proceedings and also addition on the merits. The assessee in first place is seeking entire deletion of the disallowance made on account of bogus purchases and in alternate, the assessee is seeking restricting of disallowance to 2% of alleged bogus purchases. During assessment proceedings the assessee furnished various documents to prove genuineness of the purchases. However, the AO and the CIT(A) after examining the documents furnished by the assessee have concluded that the assessee has obtained bogus purchase bills from suspicious dealer. It is observed that although the dealer from whom the assessee has made alleged bogus

purchases has confirmed the sale transactions but no document in the form of stock inward register, delivery receipt, etc. has been furnished by the assessee to prove trail of goods. The assessee has failed to discharge its onus in proving authenticity of purchase transactions. Therefore, the primary contention of the assessee to delete entire addition is rejected.

6. In the case of *Choron Diamond India Pvt. Ltd. vs. ACIT (supra)*, wherein similar facts were drawn, the Tribunal after placing reliance on the decision of *Amy Diam Vega Jewellery P. Ltd. vs. DCIT* in ITA No. 5799 to 5801/Mum/2016 decided on 28/9/2017 concluded as under:

*“10. As could be seen from the above that the Coordinate Bench while sustaining the order of the Ld.CIT(A) also considered the report of Task Group for Diamond Sector submitted to Department of Commerce, wherein it was submitted that net profit in diamond manufacturing is in the range of 1.5% to 4.5% and in trading it is in the range of 1% to 3%. The assessee before us submitted that he is into 100% exports of trading of cut and polish diamonds. The Task Group for Diamond Sector submitted to Department of Commerce also suggests that the profit margin in trading of goods is in the range of 1% to 3%. In the circumstance we direct the Assessing Officer to estimate the profit element from the purchases treated as non-genuine at the rate of 2% uniformly for all the Assessment Years 2007-08, 2008-09, 2010-11, 2011-12 and 2013-14.”*

The Tribunal in the case of assessee engaged in trading of diamonds restricted the addition to 2% of unproved purchases. Considering the fact that the nature of assessee’s business and the nature and manner of addition is similar to the one referred in the aforesaid case, the addition on account of unproved transactions in the instant appeal is restricted to 2%. In the result, ground no. 3.1 & 3.2 of appeal are partly allowed.

7. The assessee in ground no.1 of the appeal has assailed the order of CIT(A) on violation of principles of natural justice and in ground no.2, the assessee has assailed re-opening of assessment. No submissions were made by Id. Counsel

for the assessee on ground no.1 & 2. Without commenting on the issues raised in the said grounds at this stage, these grounds are left open for adjudication, if required at later stage.

8. The appeal of the assessee is thus, partly allowed.

9. The Revenue in appeal has raised solitary issue assailing the findings of CIT(A) in reducing addition on account of bogus purchases from 25% to 12.5%. Since, in appeal by the assessee part relief has been allowed by further reducing the addition on account of bogus purchases, appeal by the Revenue is liable to be dismissed and the same is dismissed.

**ITA No. 7050/Mum/2019, AY- 2011-12 (Department's Appeal)**

**ITA No. 7744/Mum/2019, AY-2011-12 (Assessee's Appeal)**

10. Both sides are unanimous in stating that the grounds raised in cross appeals, the facts leading to addition and the manner of addition in AY 2011-12 are identical to AY 2010-11, except for the amount involved and the dealer from whom alleged bogus bills were obtained. During the period relevant to AY 2011-12, the assessee made alleged bogus purchases of Rs. 9,15,519/- from M/s Daksh Diamonds, a concern belonging to Bhanwarlal Jain group. The detailed reasons given while adjudicating the appeal of assessee for AY 2010-11 would mutatis mutandis apply to the present appeal by the assessee. Hence, the appeal of assessee is partly allowed for the similar reasons and appeal of the Revenue is dismissed.

**ITA No. 7751/Mum/2019, AY- 2012-13 (Department's Appeal)**

**ITA No. 7745/Mum/2019, AY-2012-13 (Assessee's Appeal)**

11. The Id. Counsel for the assessee submitted that the grounds of appeal and the facts germane to the addition in AY 2012-13 are identical to the facts in AY 2010-11, except for the amount of alleged bogus purchases and the dealers. In AY 2012-13, the addition account of alleged bogus purchases has been made on the ground that the assessee has obtained accommodation bills from following concerns belonging to Bhanwarlal Jain group:

1. Mouli Gems	Rs. 22,46,166/-
2. Meenakshi Exports	<u>Rs. 18,31,284/-</u>
Total	<u>Rs. 40,77,450/-</u>

The Id. DR admitted that the nature of transactions and the grounds of appeal in AY 2012-13 are similar to AY 2010-11 & 2011-12. For the detailed reasons given while adjudicating the Cross Appeals for AY 2010-11, the appeal of assessee is partly allowed in similar terms and appeal of the Revenue is dismissed.

**12. To sum up, appeals by the assessee for all the three impugned AYs are partly allowed and appeals by the Revenue for impugned AYs are dismissed.**

Order pronounced in the open court on Friday, the 27<sup>th</sup> day of August, 2021.

Sd./-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated: 27/08/2021

SK, PS

**प्रतिलिपि अर्गेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
6. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**