

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No. 475/SRT/2018 (AY 2010-11)
(Hearing in Virtual Court)

M/s Diam International, 202-B, Krishna Apartment, Kansara Sheri, Mahidharpura, Surat PAN : AAOFM 4432 A	Vs	Income Tax Officer Ward-2(3)(7), Room No. 414, Anavil Centre, Hazira Road, Adajan, Surat- 395001
Assessee / appellant		Revenue / respondent

Assessee by	Shri Suchck Ancheliya, C.A
Revenue by	Shri O.P. Vaishnav, CIT-DR
Date of hearing	29.06.2021
Date of pronouncement	24.09.2021

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of Id. Commissioner of Income tax (Appeals)-1, Surat dated 11.05.2018 for assessment year (AY) 2010-11. The assessee has raised the following grounds:-

“1. On the facts and circumstances of the case and in law the learned CIT(A) erred in not holding the assumption of jurisdiction by the learned Assessing Officer as bad in law as the conditions laid down under the Act for initiating reassessment proceedings u/s 147 of the Act were not fulfilled.

2. On the facts and circumstances of the case and in law the learned CIT(A) erred in confirming the addition made by the Ld. AO of Rs.7,68,67,753/- on account of alleged bogus purchasers, by treating genuine purchases as accommodation entry.

3. On the facts and circumstances of the case and in law the learned CIT(A) erred in confirming the addition of genuine purchasers solely on the basis of the statement of the third party i.e. Mr. Bhanwarlal Jain with whom the appellant had no transaction whatsoever.

4. On the facts and circumstances of the case and in law the learned CIT(A) erred in not giving the opportunity⁹ of cross examination of parties to the appellant.”

2. Brief facts of the case are that assessee is a proprietor concern and engaged in the business of import, export and trading of cutting & polishing of rough diamond. The assessee filed its return of income for assessment year 2010-11 on 01.09.2010 declaring total income of Rs.1,34,910/-. Subsequently, case was re-opened on the basis of information that a search and seizure action under section 132 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) by the Investigation Wing, Mumbai was carried out on 03.10.2013 on Shri Bhanwarlal Jain group. During the search action a lot of incriminating material pertaining of providing in accommodation entry of bogus purchases, was unearth. The assessee is one of the beneficiary, who has also received accommodation entry from M/s Rare Diamonds Pvt. Ltd., for Rs.7,68,67,753/-. The Rare Diamonds Pvt. Ltd., is controlled by Shri Bhanwarlal Jain group. On the basis of such information, assessee’s case was re-opened under section 147 of the Act. Notice u/s 148 of the Act was issued to the assessee on 22.03.2016. In response to notice under section 148 of the Act, the assessee filed letter dated 25.04.2016 stating that original return filed on 01.09.2010 may be treated as return of income in response to notice under section 148 of the Act. The assessee also filed its objection against the reopening, which was disposed off by separate order by Assessing Officer. During the assessment the assessing officer issued

show cause notice dated 11.11.2016 as to why the purchases of Rs.7,68,67,753/- shown from M/s Rare Diamonds, which is managed by Bhanwarlal Jain should not be disallowed. The assessing officer also mentioned the modus operandi of hawala transaction followed by Bhanwarlal Jain group. The assessee filed its reply dated 25.11.2016. In the reply the stated that they have made normal purchase from the said party. The assessee has no concern with Bhanwarlal Jain and its group. The assessee furnished the details of subsequent sale of the goods purchased from the said Bhanwarlal Jain and its group. The assessee also furnished copy of purchase bill, details of the purchase and proof of subsequent sale, account confirmation and audited report of the purchase party. The reply of the assessee was not accepted by the assessing officer. The assessing officer held that the assessee failed to show the bank account despite providing opportunity. The assessing officer made disallowance of the entire purchases shown from Rare Diamonds which is managed by Bhanwarlal Jain and its group.

3. Aggrieved by the additions in the assessment the assessee filed appeal before Id CIT(A). Before Id CIT(A) the assessee challenged the validity of reopening as well as the additions made on account of bogus purchases. The Id CIT(A) dismissed the appeal of assessee by taking view that despite granting a number

of opportunity the assessee failed to comply the notices. Further aggrieved, the assessee has filed present appeal before this Tribunal.

4. We have heard the submissions of the learned authorised representative (AR) of the assessee and the learned departmental representative (DR) for the revenue and have gone through the order of the lower authorities carefully. At the outset of hearing the ld AR of the assessee started making submissions on merit and submitted that the ld.CIT(A) confirmed the addition of 100% of the purchase indentified by revenue as bogus.
5. The ld DR for the revenue objected to the submissions of the ld AR for the assessee and would submits that the assessee has not appeared before ld CIT(A) and the ld CIT(A) dismissed the appeal of revenue for the want of prosecution. The assessee has not explained the fact nor availed the opportunity of hearing at the stage of first appellate authority. In case the assessee is allowed to raised legal and factual submissions directly before the Tribunal, which would be wrong precedent. The ld DR for the revenue submits that the assessee submits that the matter may be restored to the file of ld CIT(A) to adjudicate all the issue raised by assessee.
6. In the rejoinder submissions the ld. AR for the assessee insisted to consider all the grounds of appeal and to decide the appeal of assessee on merit. On confronting the fact that as to why the assessee has not made compliance of the

notice issued by Id CIT(A), the Id AR submits that the assessee was not served with the notices issued from the office of Id CIT(A).

7. We have considered the rival submissions of the parties. We find that the assessing officer made 100% disallowance of the purchases shown from Rare Diamonds Private Limited by making reliance on the report of investigation wing Mumbai. The Id CIT(A) confirmed the action of assessing officer under section 147 as well as on making addition of bogus purchases in ex-parte by taking view that despite granting a number of opportunity the assessee failed to comply the notices. We have also noted that the Id CIT(A) also cursorily touched the facts of the case and ultimately confirmed the additions made by assessing officer. We find that the assessee also challenged the validity of reopening under section 147, however, no finding on such issue was rendered by Id CIT(A). The Id CIT(A) confirmed the addition on similar lines as of assessing officer.
8. We find that substantial rights of the assessee are involved in the present appeal. The Id CIT(A) passed ex-parte order without recording his satisfaction, whether the notice sent to the assessee was duly served or not. Thus, in our view the assessee was not offered sufficient and reasonable opportunity of hearing at the stage of first appellate stage. Therefore, we restore the appeal back to the file of Id CIT(A) to decide all the issues afresh on merit and in accordance with law.

Needless to order that before passing the order the ld. CIT(A) shall grant fair opportunity of hearing to the assessee. The assessee is also directed to appear before the ld.CIT(A) as and when the date of hearing and to provide all necessary evidence and information without any further delay and not to seek the adjournment without any valid reasons. The assessee is further directed to provide his e-mail address and telephone number to make communication with him or his representative. The assessee shall file his latest address and e-mail address and his telephone number or of his representative, within fifteen days of receipt of this notice in the office of assessing officer as well as before jurisdictional CIT(A). Accordingly the grounds of appeal by assessee are allowed for statistical purpose.

9. In the result, appeal of the assessee is allowed for statistical purpose. No order as to cost.

Order pronounced on 24th September 2021 by placing the result on the Notice Board as per Rule 34(5) of the Income Tax (Appellate Tribunal), Rule 1963.

Sd/-

(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER
Surat, Dated: 24/09/2021
Dkp. Out Sourcing Sr.P.S

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

Copy to:

1. Appellant-M/s Diam International, 202-B, Krishna Apartment, Kansara Sheri, Mahidharpura, Surat
2. Respondent- ITO, Wd-2(3)(7), R.No.414, Anavil Centre, Hazira Road, Adajan, Surat
3. CIT(A)-1 Surat
4. CIT
5. DR
6. Guard File

By order

//True Copy//

Assistant Registrar, ITAT, Surat