

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

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI RAVISH SOOD, JUDICIAL MEMBER**

**ITA No.6669/M/2019
Assessment Year: 2010-11**

M/s. G.S. Jewellers & Co., 62/68, Rajabahadur Bansilal Building, Girgaum Road, Opera House, Mumbai – 400 004 PAN: AAAFG0872C	Vs.	ITO Ward 19(1)(3), Matru Mandir, Tardeo, Mumbai – 400 007
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Fenil Bhat, A.R.
Revenue by : Shri T.S. Khalsa, D.R.

Date of Hearing : 15.07.2021
Date of Pronouncement : 05.10.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 30.08.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2010-11.

2. The only issue raised by the assessee is against the order of Ld. CIT(A) the addition of Rs.1,17,20,649/- towards the bogus purchases as made by the AO.

3. The facts in brief are that the assessee filed the return of income on 29.11.2017 declaring total income of Rs.4,94,394/-.

The case of the assessee was thereafter reopened by the AO under section 147 of the Act after recording reason under section 148(2) and accordingly notice under section 148 of the Act dated 30.03.2017 was issued and served upon the assessee. The case was reopened after receipt of information from DGIT (Inv.), Mumbai that assessee is beneficiary of hawala purchase entries to the extent of Rs.1,17,20,649/- from M/s. Kangan. The AO called for various details and information from the assessee from time to time during the course of assessment proceedings which were duly filed before the AO comprising bills, vouchers, bank statements evidencing the payment and also the stock register showing receipt and issue of stocks upon purchase and sale thereof. The assessee also filed the affidavit of the suppliers stating on oath that goods were in fact supplied to the assessee. The AO finally rejected the contentions of the assessee and treated the purchases as non genuine thereby making an addition of being 100% of the purchases of Rs.1,17,20,649/- to the income of the assessee by framing assessment under section 143(3) read with section 147 of the Act dated 29.12.2017 by observing that in the purchase bills no description of diamond purchased whereas in the sale bills the quantities and carats were duly mentioned.

4. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee by upholding the order of AO. While dismissing the appeal of the assessee, the Ld. CIT(A) noted that M/s. Kangan was in the list of bogus companies which was stated by Shri Dharmichand Jain during the course of search on him. According to the Ld. CIT(A) since the supplier was bogus therefore entire purchases of Rs.1,17,20,649/- were used to

reduce the profits thereby rejecting the contention of the assessee that assessee has made correspondence sales out of so called bogus purchases. The Ld. CIT(A) also reproduced the purchase and sale invoices on page No.15 to 20 and observed that sale bills show the specific details of size, shape and quality of diamond whereas no such details appeared in the purchase invoice issued by M/s. Kangan and thus dismissed the appeal of the assessee.

5. We have heard the rival parties and perused the material on record. We note that undisputedly the assessee is beneficiary of hawala purchase entries to the tune of Rs.1,17,20,649/- as brought out during the course of search on Shri Dharmichand Jain & others. It is also undisputed that assessee has filed before the AO the copies of purchase bills, bank statements, stock tally showing purchase and sale of diamond etc. along with the affidavit from the supplier to the effect that the diamonds were in fact supplied. However, the AO rejected the contention of the assessee and added the entire amount of purchases as bogus purchases. The Ld. CIT(A) upheld the order of AO for the reasons as stated hereinabove, which primarily includes the lack of description size, shape and quality of diamond whereas in the corresponding sales bills such details were duly reflected. We note that both the authorities below have not disputed the evidences filed by the assessee in the form of purchase bills, sale bills, bank statement and stock tally etc. Under these circumstances, we are not in concurrence with the finding of the Ld. CIT(A) that entire purchases were used to reduce the net profit of the assessee in view of the fact that there were corresponding sale out of the said bogus purchases. In our

opinion, it is the only profit element embedded in the purchases which can be brought to tax and not the entire purchases. During the course of hearing the Ld. Counsel of the assessee relied on certain decisions namely; (i) Popatlal N Shah Vs. ACIT (ITA No. 5939/Mum/2016), (ii) Popatlal Nathalal Shah Vs. ACIT (ITA No. 6029/Mum/2018), (iii) Polar Star Vs. ACIT (ITA No. 5877/Mum/2016) and (iv) Diagold Design Ltd Vs. DCIT (ITA No. 3519/Mum/2018). We note that these decisions were rendered by the co-ordinate benches in the context of bogus purchases by diamond traders and the co-ordinate benches have sustained the addition equal to 3% of the bogus purchases keeping in view the nature of item and the margin thereon. Accordingly, we set aside the order of Ld. CIT(A) and direct the AO to apply a rate of 3% on the bogus purchases.

6. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 05.10.2021.

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 05.10.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.