

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No. 287/SRT/2019 (AY 2013-14)
(Hearing in Virtual Court)

Income Tax Officer Ward-2(3)(8) Room No.407, 4 th Floor, Anavil Business Centre, Adajan – Hajira Road, Adajan, Surat-395009	Vs	Shri Vikas Choradia Prop. of Priya Gems, 103, Devsagar Apartment Near HDC Building, Daliya Street, Mahinderpura, Surat-395003 PAN : ANJPS 9745 G
Appellant / Revenue		Respondent / assessee

Assessee by	ShriPrakash G. Jhunjhunwala, CA
Revenue by	Ms. Anupama Singla – Sr-DR
Date of hearing	14.09.2021
Date of pronouncement	09.11.2021

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by Revenue is directed against the order of Id. Commissioner of Income tax (Appeals)-1, Surat dated 14.03.2019 for assessment year (AY) 2013-14. The Revenue has raised the following grounds of appeal:-

“(i) On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in restricted the addition made by the AO of Rs.2,46,84,165/- on account of bogus purchases to 5%.

“(ii) On the facts and circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate the fact that the entire purchase from alleged concerns were bogus and was only to suppress the profit of the beneficiaries which is substantiated by the statement on oath given by the entry provider.”

2. Brief facts of the case are that assessee is proprietor of M/s Priya Gems, engaged in business of import, export trading in all kinds of diamonds. The assessee filed his return of income for assessment year (AY) 2013-14 on 07.10.2013 declaring total income at Rs.9,57,770/-. The case was selected for scrutiny and assessment was completed assessment under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') on 23.03.2016 by making addition of Rs.2,46,84,165/- on account of disallowance of certain purchases by treating them as bogus. The facts leading to make addition of bogus purchases are during the assessment, the Assessing Officer (A.O.) noted that assessee has shown transaction from the entities managed by Rajindra Jain and Gautam Jain group. The A.O. was having information that a search action was carried out by Investigation Wing, Mumbai on Rajindra Jain Group, wherein during search and post search investigation, it was proved that for the Rajindra Jain and Gautam Jain group were providing accommodation entry without delivery of goods. On the basis of such information, the Assessing Officer was found that assessee has shown purchases of diamonds of

Rs.2.26 Crores from Kangan Jewels Pvt. Ltd. and Rs.20.07 lakh from Karishma Diamond. Thus, total of Rs.2.46 Crore from the entities managed by Rajendra Jain and Gautam Jain group. The Assessing Officer issued details show cause notice vide notice dated 10.03.2016. The contents of show cause notice is extracted in para-7 of the assessment order. In the show cause notice, assessee was asked as to why books of account should not be rejected and the purchases of Rs.2.46 Crores should not be treated as bogus purchases. The assessee filed his reply dated 18.03.2016. The contents of the reply filed by assessee are extracted in para-7.1 of the assessment order. The assessee in sum and substance in his reply stated that he has made genuine purchase from both the parties and sold the same to various buyers. The assessee furnished his stock register and bank statement. The assessee also stated that the purchases are duly recorded in books of account. The purchases have been shown in trading activities of the assessee. No suspicion is made on the sale by assessee. The sale is not possible in absence of purchases. The show cause notice is issued on the basis of third party statement, which

has already been retracted. The statement Shri Rajendra Jain and Gautam Jain cannot be used against the assessee without bringing cogent, clinching or material items on record. No evidence on record is brought so far as knowledge of assessee's concern. No defect is point out in the books of assessee. The assessee also relied on certain case law and reiterated that purchases are genuine and no addition is called from both the parties. The reply of assessee was not accepted by the Assessing Officer. The assessing officer held that proceeding under the Income Tax Act are not judicial proceedings and he is not bound by technical rules as contained in the Evidence Act. The assessment can be made on the basis of inference of evidence. The Assessing Officer on the basis of report of Investigation Wing held that the purchases made from hawala dealers are not genuine. Accordingly, the books of assessee were rejected. made 100% disallowance purchases from Kangan Jewells Pvt. Ltd., and Karishma Diamond.

3. On appeal before Ld. CIT(A) the assessee made similar submission as made before the Assessing Officer. The submission of assessee is duly recorded in para-7 of order of

Ld. CIT(A). Before Ld. CIT(A), the assessee also filed documents PAN card, ledger account, confirmation of account, purchase bill, his bank statement, IT acknowledgement receipt, bank statement of the supplier and also relied on the decisions of Hon'ble jurisdictional High Court in *CIT vs. Simit P Sheth* 38 Taxmann.com 385 (Guj) and *CIT vs. Bholanath Poly Fab Pvt. Ltd.* 335 ITR 290 (Guj). The assessee in other alternative submission submitted that if the entire disputed quantity is reduced from the stock, their stock will be negative and furnished such working as recorded in para-7.2 at page-11 of the order of Ld. CIT(A). The assessee in his alternative submissions stated that only profit element embedded in such disputed purchases could be brought to tax and not the entire transaction.

4. The Ld. CIT(A) after considering the facts of the case, submission of assessee and decisions of co-ordinate Benches of Ahmedabad Tribunal in case of Bholanath Polyfab Pvt. Ltd. ITA No.137/AHD./2009 dated 26.07.2011 and restricted the addition to 5% of the disputed / impugned purchases. The Ld. CIT(A) also held that he has also adjudicated the appeal of

other assessee who are beneficiary from same hawala dealers in restricting either 5% or 12.5% based on gross profit (GP) and net profit (NP) disclosed by respective assessee. Keeping in view that only percentage of purchase representing element of profit may be taxed. Aggrieved by the order of Id CIT(A), the Revenue has filed present appeal before the Tribunal.

5. We have heard the submissions of learned Senior Departmental Representative (DR) for the Revenue and the learned Authorized Representative (AR) for the assessee and have gone through the orders of authorities below. We have also deliberated on various case law referred and relied by Ld. CIT(A). The Id. Sr DR for the revenue submits that assessee is a beneficiary of bogus purchases shown from hawala operators. The Investigation Wing of Income Tax Department made full-fledged inquiry in the search operation on 03.10.2013 as well as post inquiries of Rajendra Jain and Gautam Jain group. The search resulted into collection of evidence about benami entity run and operated by them. They were providing accommodation entry to the various persons in respect of bogus unsecured loan, bogus purchase and sale. The assessee

is one of the beneficiaries who has availed the accommodation entry only to inflate the expenses and to reduce the profit. The Ld. Sr-DR of the Revenue submits that documentary evidence in case of bogus entries is created in such manner so that it may be given a colour of real and genuine transaction. The Ld. Sr. DR of the Revenue submits that the a number appeals of Shri Rajendra Jain and Gautam Jain group is pending adjudication before this Tribunal, and the Bench may take judicial notice that in Rajendra Jain and its group the income is assessee as commissions for providing entry. And during making submissions their learned Counsel made alternative plea that the commission income taxed by the revenue is on higher side and to treat the commission at reasonable rate and to allow expenses against such commission income. The Ld. Sr. DR for the revenue prayed that order of Ld. CIT(A) may be reversed by upholding the addition @100% of the impugned purchases.

6. In alternative submission, Ld. Sr. DR for the revenue submits that disallowance restricted by ld CIT(A) is on lower side. The assessee has shown huge transaction. The purchases from the

hawala dealers are made only to inflate the expenses and would pray that disallowance may be increased to 25%.

7. On the other hand, Ld. AR of the assessee supported the order of Ld. CIT(A). The ld. AR of the assessee submits that during the assessment, the assessee furnished complete details of purchase made from two parties. The assessee furnished the complete details of purchase invoice, addresses of the parties confirm of parties, bank statement and acknowledgement of return of the seller parties. The assessee is maintaining complete records of the day-to-day stock the material purchased by assessee was sole business purpose. The statement of accounts was not rejected by the Assessing Officer. The sales of goods / material are not possible in absence of purchases. The Ld. AR of the assessee submits that Ld. CIT(A) has took a very reasonable approach by restricting the disallowance@ 5% though the entire disallowance was liable to be deleted. The ld AR for the assessee submits that he has filed complete record of purchases and other allied evidence to prove genuineness of purchases. The ld AR for the assessee finally prayed to dismiss the appeal of the revenue.

8. We have considered the rival submission of both the parties and have gone through the order of authorities below. We find that during the assessment, the Assessing Officer disallowed the entire purchases from Kangan Jewels Pvt. Ltd. and Karishma Diamond. Though the assessee filed various documents to substantiate the genuineness of purchases. No comments on such documentary evidence were made by the Assessing Officer. No independent investigation was carried out by the Assessing Officer. The Assessing Officer solely relied upon the statement of Shri Rajendra Jain recorded by the Investigation Wing. The sale of assessee was not disputed; it is a matter of fact that without purchase, sale is not possible in any business. It is also settled law that in the income tax proceedings that the entire transaction cannot be brought to the tax rather income component in such transaction can only be brought to tax to avoid of possibility of revenue leakage has been held by various Higher Courts including of Hon'ble jurisdictional High Court in the case of *CIT Vs Simit P Sheth* 38 Taxmann.com 385 (Guj) and *CIT vs Bholanath Poly Fab Pvt. Ltd.* 335 ITR 290 (Guj).

9. We have seen that during the financial year under consideration the assessee has shown total turnover of Rs. 88,64,38,882/-. The assessee has shown Gross Profit (GP) @ (-)1.17% and net Profit (NP) (-) @ .04% (page 122 of paper Book). We are conscious of the facts that dispute before us is only with regard of the disputed purchases of Rs.2.46 Crore, which was shown to have purchased from the entity managed by Rajinder Jain and Company. During the search action on Rajinder Jain no stock of goods/ material was found to the investigation party. The appeal of Rajinder Jain is also pending adjudication before this Tribunal, wherein his ld Counsel submitted that the commission income assessed by his AO is on higher side and it may be reduced. Before us the Ld. Sr. DR of the Revenue submits that the a number appeals of Shri Rajendra Jain and Gautam Jain group is pending adjudication before this Tribunal, and the Bench may take judicial notice that in Rajendra Jain and its group the income is assessee as commissions for providing entry and also stated that during making submissions their learned Counsel made alternative plea that the commission income taxed by the revenue is on

higher side and to treat the commission at reasonable rate and to allow expenses against such commission income.

10. As noted above it is settled law that under Income-tax, the tax authorities are not entitled to tax the entire transaction, but only the income component of the disputed transaction, to prevent the possibility of revenue leakage. Therefore, considering overall facts and circumstances of the present case, we are of the view that disallowances @ 6% of impugned purchases / disputed purchases would be sufficient to meet the possibility of revenue leakage. Similar view was taken by this combination in various other appeals wherein the assessee's have shown meagre GP and NP. In the result the appeal of the revenue is partly allowed.

11. In the result, the appeal of the Revenue is partly allowed.

Order pronounced in open court on 09/11/2021 by placing result on notice Board.

Sd/-
(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER
Surat, Dated: /11/2021
Dkp. Out Sourcing P.S

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

By order

// True Copy//

Assistant Registrar, ITAT, Surat