

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.263 and 264/SRT/2019
(निर्धारणवर्ष / Assessment Years: (2014-15&2008-09)
(Virtual Court Hearing)

The Income Tax Officer, Ward-2(3)(7), Rom No.414, 4 th Floor, Anvil Business Centre, Adajan-Hajira Road, Adajan, Surat-395009		Bhagchand Jain (HUF) 507, Millennium Trade Centre, Thoba Sheri, Mahidharpura, Surat-395003 स्थायीलेखासं./जीआइआरसं. /PAN/GIR No.: AAGHB 1271 G
The Income Tax Officer, Ward-2(3)(7), Rom No.414, 4 th Floor, Anvil Business Centre, Adajan-Hajira Road, Adajan, Surat-395009	V S.	Bhagchand Jain (Indl.) 507, Millennium Trade Centre, Thoba Sheri, Mahidharpura, Surat-395003 स्थायीलेखासं./जीआइआरसं./PAN/G IR No.: ABBPJ 5197 P
Appellant /Revenue		Respondent /Assessee

Assessee by :Shri Himangshu Gandhi - CA
Revenue by : Shri H.P. Meena, CIT-DR

सुनवाईकीतारीख/ **Date of Hearing** : 26/10/2021
घोषणाकीतारीख/**Date of Pronouncement**: 09/11/2021

आदेश / O R D E R

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned two appeals filed by the Revenue pertaining to assessment year(s) 2014-15 and 2008-09, are directed against the separate orders passed by the Learned Commissioner of Income Tax(Appeals)-1 [Ld.CIT(A)], Surat, all dated 07.02.2019, which in turn arise out of separate assessment order(s) passed by the Assessing Officer under section 143(3) r.w.s 147 of the Income Tax Act, 1961 (*hereinafter referred to as 'the Act'*),dated 23.12.2016and 21.03.2016 respectively.

2.Since, the issues involved in all the appeals are common and identical except variance of amount; therefore, these appeals have been heard together and are

being disposed of by this consolidated order. For the sake of convenience, the grounds as well as the facts narrated in ITA No.263/SRT/2018, for assessment year 2014-15, have been taken into consideration for deciding the above appeals *en masse*.

3. Ground of appeal raised by the Revenue in 'lead' case ITA No.263/SRT/2019 for A.Y. 2014-15 are as follows:-

“(i) On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition made by the AO of Rs.4,19,00,541/- 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.

“(iii) On the facts and circumstances of the case and in law, the Ld. CIT(A) Surat ought to have upheld the order of the Assessing Officer. It is, therefore, prayed that the order of the Ld. CIT(A)-1 Surat may be set-aside and that of the Assessing Officer's order may be restored.”

4. Brief facts of the issue in dispute are stated as under. The assessee is engaged in trading of diamond in the name and style of M/s Mona Gems “proprietor Bhagchand Jain-HUF”. The assessee filed his return of income for the year under consideration on 01.02.2014, showing total income of Rs.4,85,240/-. The Assessing Officer issued notice u/s 143(2) of the Act on 01.09.2015 along with detailed questionnaire. In response to the above notices, assessee attended the office of the assessing officer and furnished the details called for. During the course of assessment proceedings, assessee filed other relevant documents along with return of income. **The assessing officer noted that assessee has shown gross profit (GP) of Rs.3,97,82,762/- @ 1.91% and net profit of Rs.5,67,166/- @ 0.03% on total turnover of Rs.207,93,27,931/-.** During the year under consideration, assessee has furnished details of party-wise from whom diamonds have been purchased. On verification of the same, it was noticed by the assessing officer that following concerns are belongs to Shri Gautam Jain group and assessee Bhagchand Jain HUF and received accommodation entries, which are reproduced below:-

Sr.No	Name of the entity of Shri Gautam Jain	Amount (in Rs)
1	M/s Kishna Diam	2,12,60,256/-
2	M/s Parshwanath Gems Pvt. Ltd.	2,06,40,285/-
Total		4,19,00,541/-

During the search proceedings statement on oath were recorded of dummy directors / partners / proprietors of concerns of Shri Gautam Jain group in which Shri Gautam Bhanwarlal Jain director of M/s Parshwanath Gems Pvt. Ltd and M/s Karishma Diamond Pvt Ltd,during the search proceedings in his statement, he stated that *“I would like to state that factually there is no actual business of trading in diamond that is being carried out by me in the above stated three concerns namely M/s Karishma Diamond Pvt. Ltd., M/s Krishna Diam, M/s Mihir Diamond and that is why during the course of search and seizure action u/s 132 of the Act on 03.10.2013, business premises were found vacant and not being in use. Those addresses have been kept only for the purpose of registration of company address, receiving any mails including income tax notices if any, bank verification etc., Sir, I would also like to add that not only the above three concerns, but I also control the concerns in the name of M/s Parshwanath Gems Pvt. Ltd, and M/s Shree Ganesh Gems which also claim to be trading in diamonds but in which no actual business takes place., I hereby on my own declare that I am running three paper based companies with no real business activities at all.”*

5.Considering these facts, assessing officer has rejected the books of accounts of assessee under section 145(2) of the Act and made additions in respect of bogus purchases to the tune of Rs.4,19,00,541/-, under section 69C of the Act

6.Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before Ld. CIT(A) who has partly allowed the appeal of the assessee. The Id. CIT(A) following his own decision in case of Gangani Impex for A.Y. 2013-14 in appeal No. CAS-3/512/2C15-16 dated 24.11.2016 which was further followed by decision of ITAT in case of Mayank Diamond Pvt, Ltd reported in 2014(11) TMI 812 (Guj) in Tax Appeal No. 200 of 2003 dated 07.11.2004and confirmed the disallowance of 5% ofthe impugned purchases. The Ld. CIT(A) has

discussed the various decision of ITAT, High Court and Supreme Court in his decision and restricted the disallowance of bogus purchases @5% of such purchases and granted relief to the assessee to the tune of Rs. 3,98,05,514/-.

7. Aggrieved by the order of Id CIT(A), the Revenue is in appeal before us.

8. We have heard both the parties and perused the materials available on record. The Ld DR for the Revenue states that issue under dispute in both the appeals are squarely covered by the judgment of the Co-Ordinate Bench of this Tribunal, in the case of Pankaj K. Choudhary, in ITA No.1152/AHD/2017 (AY 2007-08), order dated 27.09.2021 wherein 6% of total purchases have been held as an addition to be made in the hands of assessee. The relevant findings of the Coordinate Bench is reproduced below:

“21 We have seen that during the financial year under consideration the assessee has shown total turnover of Rs.66,09,62,458/-. The assessee has shown Gross Profit @ 0.78% and net Profit @ .02% (page 11 of paper Book). The assessee while filing the return of income has declared taxable income of Rs.1,81,840/- only. We are conscious of the facts that dispute before us is only with regard of the disputed purchases of Rs.4.34 Crore, which was shown to have purchased from the entity managed by Bhanwarlal Jain Group. During the search action on Bhanwarlal Jain no stock of goods/ material was found to the investigation party. Bhanwarlal Jain while filing return of income has offered commission income (entry provider). Before us, the Id CIT-DR for the revenue vehemently submitted that the ratio of decision of Hon'ble Gujarat High Court in Mayank Diamond Private Limited (supra) is directly applicable on the facts of the present case. We find that in Mayank Diamonds the Hon'ble High Court restricted the additions to 5% of GP. We have seen that in Mayank Diamonds Pvt. Ltd (supra), the assessee had declared GP @ 1.03% on turnover of Rs.1.86 Crore. The disputed transaction in the said case was Rs.1.68 Crore. However, in the present case the assessee has declared the GP @ 0.78%. 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. In the result the ground No. 2 of appeal raised by the assessee is partly allowed and the grounds of appeal raised by revenue are dismissed.”

9. Since the issue is squarely covered by the order of Co-ordinate Bench of this Tribunal in the case of Pankaj K. Choudhary,(supra). Hence,respectfully

following the above binding precedent we disallow 6% of the impugned purchases.

10. In the result, both appeals filed by Revenue (in ITA No.263 and 264/SRT/2019) are allowed to the extent, indicated above.

A copy of the instant common order be placed in the respective case file(s).

Order pronounced on 09/11/2021 by placing the result on the Notice Board as per Rule 34(5) of the income Tax (Appellate Tribunal) Rule, 1963.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

Surat/दिनांक/ Date: 09/11/2021
Dkp Outsourcing Sr.P.S.

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat