

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "C" MUMBAI**

**BEFORE MS. SUCHITRA RAGHUNATH KAMBLE (JUDICIAL MEMBER) AND  
SHRI PRASHANT MAHARISHI (ACCOUNTANT MEMBER)**

**ITA No.6845/MUM/2019  
(Assessment Year: 2012-13)**

M/s Polar Jewellery  
DW-5040, Bharat Diamond Bourse, Vs. The Income Tax Officer-23(2)(5)  
Bandra Kurla Complex, Room No. 115, Matru Mandir,  
Bandra East, Mumbai – 400 051 Tardeo Road,  
Mumbai – 400 007

**PAN No. AAGFP9757M**

**(Assessee)**

**(Revenue)**

Assessee by : Shri Rahul Sarda, A.R  
Revenue by : Shri Ashish Kumar, D.R

Date of Hearing : 16/12/2021  
Date of pronouncement : 16/12/2021

**ORDER**

**PER SUCHITRA RAGHUNATH KAMBLE, J.M:**

This appeal is filed by the assessee against the order dated 27.09.2019 passed by the CIT(A)-33, Mumbai, for A.Y. 2012-13. The assessee has raised the following grounds before us:

- “1. The CIT(Appeals) has erred in law by making an addition of Rs.41,09,338/- which constitutes 25% of the alleged bogus purchases of Rs.1,64,37,350/-.
2. The appellant craves leave to add, amend, delete or alter any grounds of appeal on or before the hearing of this appeal.”

2. The assessee is a partnership firm engaged in the business of import, export resale manufacturing of diamonds. During the year, the assessee booked a total turnover of Rs.336.19 lacs and declared a gross profit of Rs.39.11 lacs. The assessee filed return of income on 31.08.2012 declaring total income at Rs.6,55,370/-. The return was processed u/s 143(1) of the Income Tax Act. The

case was reopened u/s 147 of the Income Tax Act vide notice u/s 148 dated 17.11.2014 on the receipt of information in respect of search and seizure action carried out by the DIT(Inv.)-II, Mumbai, in the case of Shri Bhanwerlal Jain Group on 03.10.2013 wherein findings based on evidences collected show that the assessee had received accommodation bills to the extent of Rs.1,64,37,350/- from M/s Prime Star and M/s Mayur Exports which were termed as benami concerns controlled by Shri Jain. The Assessing Officer observed that the list of 70 such concerns admitted by Shri Jain. The assessee never denied transactions with the hawala parties nor asked for cross-examination as per the observations of the Assessing Officer. Notice u/s 133(6), 131(1) were issued to the said parties. They have filed confirmations followed by an affidavit from the directors/owners of Bhanwerlal Jain Group. The assessing officer made an addition of Rs.1,64,37,350/- treating the entire purchases as non-genuine purchases.

3. Being aggrieved by the assessment order the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

4. The Id. A.R submitted that the issue is identical to the earlier assessment year i.e. assessment year 2011-12, the Tribunal being ITA 5002/Mum/2019 has partly allowed the appeal of the assessee. The Id. A.R further submitted that purely on the basis of information obtained in the search and seizure action the assessing officer treated the purchases as non-genuine but at the same time the Assessing Officer has accepted the sale of the assessee. The Id. A.R submitted that the disallowance should be restricted to 3% as regards to non-genuine purchases as held in various coordinate benches decision as well as in assessee's case for A.Y. 2011-12.

5. The Id. D.R relied upon the assessment order and the order of the CIT(A). The Id. D.R further submitted the disallowance made at 5% is a proper disallowance.

6. We have heard both the parties and perused all the material available on record. It is pertinent to note for A.Y. 2011-12 in assessee's own case the Tribunal has taken disallowance at 3% for the non-genuine purchases thereby taking cognizance of the report of task group in diamond sector under the aegis of Ministry of Commerce & Industry, Department of Commerce, Government of India, New Delhi in the year 2013, and observed that the rate of 6% so fixed is known whether reflective of the reality of the manufacturing and trading industry which operates on profit margin in the range of 1% to 3% only. No distinguishing facts were pointed out either by the Id. A.R or by the D.R in the present assessment year to that of earlier assessment year. Thus, following the decision of the Tribunal in assessee's own case for earlier assessment year, we are also restricting the disallowance @ 3%. The appeal of the assessee is partly allowed.

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

Order pronounced in the open court on 16.12.2021

Sd/-  
(Prashant Maharishi)  
Accountant Member

Sd/-  
(Suchitra Raghunath Kamble)  
Judicial Member

Place: Mumbai

Date 16.12.2021  
PS. Rohit

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.