

IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, Hon'ble JUDICIAL MEMBER
AND SHRI ARJUN LAL SAINI, Hon'ble ACCOUNTANT MEMBER
आ.अ.सं./I.T.A Nos.1239 to 1241/Ahd/2017
& ITA Nos.1523, 1524 & 1525/Ahd/2017
निर्धारणवर्ष/Assessment Years: 2007-08, 2008-09 & 2013-14
(Virtual Court Hearing)

Shrik Ravjibhai B Dhameliya Prop. M/s. Amrut Exports, Vrajshila, Nr. Gajjar Petrol Pump, Kapodara Char Rasta, Varachha Road, Surat. [PAN: ACCPD5423C] Dy. Commissioner of Income Tax Circle-3(3), Surat	Vs. Vs.	Dy. Commissioner of Income Tax Circle-3(3), Surat Shrik Ravjibhai B Dhameliya Prop. M/s. Amrut Exports, Vrajshila, Nr. Gajjar Petrol Pump, Kapodara Char Rasta, Varachha Road, Surat [PAN: ACCPD5423C]
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Shri Sapnesh Sheth, C.A.
राजस्वकीओरसे /Revenue by	Shri H.P. Meena, CIT/ DR & Ms. Anupama Singla, Sr. DR.

सुनवाई की तारीख/ Date of hearing:	21.10.2021
उद्घोषणा की तारीख/Pronouncement on:	06.01.2022

आदेश / ORDER

PER BENCH:

Captioned six appeals filed by the Assessee and Revenue pertaining to assessment years 2007-08, 2008-09 and 2013-14, are directed against the order passed by the Learned Commissioner of Income Tax (Appeals) [in short "ld.CIT(A)"], which in turn arise out of separate assessment orders 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').

2. Since, the issues involved in all the appeals of Assessee and Revenue are common and identical; 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. 1239/Ahd/2017 for assessment Year 2007-08, have been taken into consideration for deciding the above appeals *en masse*.

3. The grounds of appeal raised by the assessee in lead case in ITA No. 1239/Ahd/2017 for AY.2007-08 are as follows:

“1. On the facts and in the circumstances of the case as well as on the subject, the ld. Commissioner of income Tax (Appeals) has erred in confirming the action of assessing officer in reopening assessment by issuing notice u/s 148 of the I.T. Act,1961.

2. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of income Tax (Appeals) has erred in partly confirming the action of assessing officer in disallowing purchases by sustaining addition to the extent of 5% of unverifiable purchases.

3. It is therefore prayed that above additions made by assessing officer and confirmed by Commissioner of Income-tax (Appeals) may please be deleted.”

4. The grounds of appeal raised by the Revenue for AY.2007-08 are as follows:

“1. On the facts and circumstances of the case and in law, the CIT(A) has erred in restricting the addition made by the AO on account of disallowance of non-genuine purchases from Rs.8,47,62,961/- to Rs.10,59,540/-.

2. On the facts and circumstances of the case and in law, the CIT(A) has erred in directing to make an addition of 5% of unverified purchases which is not as per law. Once purchases are not genuine then either entire such purchases are to be disallowed or books of accounts ought to have been rejected and G.P. estimated.

3. On the facts and circumstances of the case and in law, the CIT(A) has not considered the fact that even in the case of M/s. Mayank Diamonds Pvt. Ltd referred by him, the Hon'ble Guj. High Court has directed to estimate G.P. @ 5% of total turnover not of only unverified purchases.

4. Whether, on facts and in law the Ld. CIT(A) was justified in adopting the figure of unverified purchase of Rs.2,11,90,740/- instead of actual bogus purchase of Rs.8,47,62,961/-. The figure of Rs.2,11,90,740 taken as unverifiable purchase was actually disallowance of 25% of bogus purchases made by the AO.

5. Whether, on facts and in law the Ld. CIT(A) was justified in partly allowing the appeal of the assessee and estimating disallowance @5% of Rs.2,11,90,740/- despite of the fact that the AO has made addition of Rs.2,11,90,740/- being 25% of bogus purchase of Rs.8,47,62,961/- as per decision of Hon'ble Supreme Court of India in case TK Proteins Pvt. Ltd.

6. On the facts and circumstances of the case and in law, It is therefore, prayed that the order of the Ld. CIT(A) Surat may be set aside and either the ratio of M/s Mayak Diamond may be applied or the addition made by the AO be upheld.

5. The facts of the case which can be stated quite shortly are as follows: The assessee-firm had filed its return of income for assessment year 2007-08 on 27.10.2007, declaring total income to the tune of Rs.3,56,16,407/-. The case of assessee-firm was not scrutinized earlier years. Therefore, assessing officer reopened the assessment under section 147 of the Act. After recording reasons for initiating proceeding under section 147 of the Act, a notice under section 148 of the Act has been issued on 28.03.2014 and served upon the assessee. Further notices under section 143(2) was issued on 12.06.2014 and duly served upon the assessee. The reasons so recorded were communicated to the assessee, vide assessing officer letter no.F. No. SRT/ACIT/CIR-0/AE/2014-15 dated 02.06.2014.

6. In response to the notices issued under sections 148/143(2)/142(1), the assessee, vide his letter dated 08.04.2014, stated that the return of income filed under section 139(1) of the Act, by the assessee-firm, may be treated as return of income filed in response to notice under section 148 of the Act for assessment year 2007-08. In this case, a letter bearing No. DGIT(Inv)-II/Information/Diamond/2013-14 dated 14.03.2014, alongwith enclosures was received by assessing officer from the Director of Income Tax (Investigation)-II, Mumbai, through the Commissioner of income Tax-III, Surat and the Addl. Commissioner of Income Tax, Range-9, Surat. The said letter contained details of accommodation entries of bogus purchase, sales, unsecured loan, share capital etc., given by Shri Rajendra Jain Group, Shri Sanjay Choudhari Group and Shri Dharmichand Jain Group of Mumbai, a leading entry provider. A search and seizure action was carried out by the Investigation Wing, Mumbai in the Shri Rajendra Jain group cases on 03.10.2013, which resulted in collection of evidences and other findings, which conclusively proved that the said Shri

Rajendra Jain Group, Shri Sanjay Choudhary Group, had, through web of benami concerns, run and operated by them in providing accommodation entries to various parties in respect of bogus unsecured loans, bogus purchases. Various evidences were found and seized from the premises as well as the statements recorded u/s 132(4) of respective key persons proved the above facts. This group has indulged in giving such accommodation entries. They have admitted the entire nature of bogus transactions in their respective statements recorded u/s 132(4) of the Income Tax Act, 1961. It was also stated by the dummy partners / Directors /proprietors of the entities of this group that they are closely known and associated with the above group persons and that they were made partners/directors/proprietors of the entities of this Group at the direction of Shri Rajendra Jain / Shri Sanjay Jain / Shri Dharmichand and his family but the entities were managed and controlled by the latter. It was further admitted by the dummy partners/ Directors/ proprietors of the entities of this group that they were merely employees of the above group and their family and that they were looking after miscellaneous office work like depositing cheques in banks, handing over parcels to clients, making data entry, etc. On being asked about various aspects of the business of this group, the dummy partners/ Directors/ proprietors of the entities of this group, they expressed their ignorance and stated that they are engaged in the business of bill shopping through all the concerns and they do not maintain any physical stock of diamonds and that they are paid lump sum salary in cash. During the course of search, blank cheque books signed by the dummy partners/ Directors/ proprietors of the entities of this group were also found, which were seized. Similarly, books of account in the name of the dummy partners/ Directors/ proprietors of the entities of this group were also found, which were also seized.

7. According to the regular books of accounts and the returns of income filed by different entities of the group, the business of these entities are disclosed to be trading of rough and finished diamonds and manufacturing of diamond jewellery. However, no stock of diamond was found from any of the premises searched or surveyed. The statements of all the persons recorded during the course of search revealed that this group was engaged in giving accommodation entries and this

fact has also been admitted by the employees, the dummy partners/dummy directors/dummy proprietors of the entities of this group as also by Shri. Rajendra Jain Group, Shri Sanjay Choudhari Group and Dharmichand Jain Group of Mumbai. The investigations made by the investigation wing revealed that actual importers of rough diamonds import part of their diamond requirement through benami entities operated by Shri Rajendra Jain Group, Shri Sanjay Choudhary Group and Dharmichand Jain Group of Mumbai and their benami concerns Group, which ensures benefit of suppression of turnover, profits and capital requirement of the former. The consignments are sent on credit by the suppliers in the names of these benami entities at the instance of the actual importers and on receipt of the imported consignments from Customs, through CHA, the consignment is handed over to the actual importer and the bogus stock is entered in the books of the benami entities and the same is not recorded in the books of the actual importer. These benami entities of Shri Rajendra Jain Group. Shri Sanjay Choudhary Group and Dharmichand Jain Group of Mumbai thereafter issue bogus sale bills.

8. During the assessment proceedings, the assessee submitted written submissions. However, the assessing officer rejected the contention of the assessee and disallowed 25% of the purchases of Rs.8,47,62,961/-, which comes to Rs.2,11,90,740/-. The year-wise disallowance made by the assessing officer are as follows:

A.Y	Unverifiable purchases	Addition made	remarks % of purchases
2007-08	8,47,62,961/-	2,11,90,741/-	@ 25%
2008-09	25,24,67,233/-	25,24,67,233/-	@100%
2013-14	7,80,47,828/-	7,80,47,828/-	@100%

9. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the Ld. CIT(A) who has partly allowed the appeal of the assessee. The ld CIT(A) by following the decision of Hon'ble Gujarat High Court in the case of M/s Mayank Diamond Pvt. Ltd. reported in 2014 (11) TMI 812 (Guj) in Tax Appeal No. 200 of 2003 dated 07.11.2014 has restricted the addition at the rate of 5% of Unverifiable Purchases. The year-wise additions sustained by the ld CIT(A) are as follows:

Assessment Year	Unverifiable purchases	Disallowance confirmed
2007-08	2,11,90,740/-	10,59,540/-
2008-09	17,99,86,565/-	89,99,328/-
2013-14	7,80,47,828/-	39,02,390/-

10. Learned DR for the Revenue pointed out that there is a typographical error in the order of the Ld. CIT(A) in the A.Y. 2007-08. The ld CIT(A) has upheld the addition @ 5% of Rs. 2,11,90,740/- which is wrong, and it should be 5% of Rs. 8,47,62,961/-. Besides, for assessment year 2008-09, the ld CIT(A) corrected the figure of unverifiable purchases from Rs.25,24,67,233/- to Rs.17,99,86,565/-. The findings of ld CIT(A) are as follows:

“10.9 Another matter of dispute is the quantum of purchases from the suspicious parties in the A 2008-09. The ld. AO has given the figure at Rs.25,24,67,233/- whereas the assessee pointed out before the ld. AO that the purchases from the parties is Rs.17,99,86,565/-. The assessee filed account confirmations alongwith copies of bills and affidavits of parties. The ld. AO has not examined this issue. Without any finding and without any discussion, the ld. AO adopted the purchases figure of Rs.25,24,67,233/-. I have examined the details and I find the purchase amount to Rs.17,99,86,565/- as per ledger accounts confirmations. Hence unverifiable purchases for a 2008-09 is to be adopted Rs.17,99,86,565/-. The disallowance is restricted to 5% of the impugned purchases for the assessment years in appeal as per table below:

Assessment Year	Unverifiable purchases	Disallowance confirmed
2007-08	2,11,90,740/-	10,59,540/-
2008-09	17,99,86,565/-	89,99,328/-
2013-14	7,80,47,828/-	39,02,390/-

11. After correcting these typographical errors, the disallowance confirmed by ld CIT(A) should be read as follows:

Assessment Year	Unverifiable purchases	Disallowance confirmed
2007-08	8,47,62,961/-	42,38,148/-
2008-09	17,99,86,565/-	89,99,328/-
2013-14	7,80,47,828/-	39,02,390/-

12. Aggrieved by these additions, both Assessee and Revenue, are in appeal before us. The Solitary grievance of the assessee in these appeals are that additions sustained by ld CIT(A) at the rate of 5% of unverifiable purchases should be deleted. However, the Solitary grievance of the Revenue is that additions made by the assessing officer should be upheld.

13. Shri Sapnesh Sheth, Learned Counsel for the assessee, argued a lot that reopening of assessment in case of assessee is invalid because so far as assessee is concerned the purchases made were very much genuine as the same are actually made in the normal course of business and there are subsequent local and export sales. There is no material on record that assessee has given any commission to any of the above person for obtaining bogus bills. The reasons recorded for reopening assessment are general in nature and hence, reopening of assessment is invalid.

14. On merits, Learned Counsel pleads that Shri Rajendra Jain and Sanjay Choudhary have subsequently retracted the statement on 30.10.2014 as their earlier statements were recorded in a forceful manner. Besides, during the assessment stage, purchase bills and sales bills were submitted and assessing officer did not doubt the sales therefore purchases made by the assessee should be accepted, and hence the addition sustained by the Id CIT(A) should be deleted.

15. On the other hand, Shri H.P. Meena, CIT- DR and Ms. Anupama Singla, Sr. DR for the Revenue, vehemently argued stating that order passed by the assessing officer is just and proper and the same should be upheld. They further argued that decision of Ld. CIT(A) is not acceptable because of the following reasons. Their arguments are summarised as follows:

- (a) Shri Rajendra Jain Group, Shri Sanjay Chaudhary Group and Shri Dharmichand Jain Group person during the course of search and seizure have accepted that they are indulged in providing bogus entry of loan/advances/purchase through paper entities actually having no business activity.
- (b) The facts of the case law mentioned by the CIT(A) i.e.M/s Mayank Diamonds Pvt.Ltd., is different from the facts of the assessee as the issue involved in the case of the assessee is of disallowance whereas in the case of M/s Mayank Diamonds Pvt.Ltd., the issue is estimation of G.P. on the basis of bogus purchases after rejection of books of account.

- (c) AO has rightly disallowed 25% of non-genuine purchases keeping in view the decision in the case of M/s Vijay Proteins Ltd., reported in 55 TTJ 76.
- (d) The CIT(A) has erred in directing to make an addition of 5% of unverified purchases which is not as per law. Once purchases are not genuine then either entire such purchases are to be disallowed or books of account ought to have been rejected and GP estimated.

16. They also submitted before the Bench that assessing officer has recorded the reasons as per the provisions of section 147 of the Act therefore, order passed by the assessing officer should be upheld.

17. We have heard both the parties and perused the material available on record. We note that assessee has challenged the validity of reopening of assessment u/s 147/148 of the Act. Therefore, first of all, let us examine the reasons recorded by the Assessing Officer which is placed at page no. 91 of the assessee's paper book, which is reproduced below:

*"Name of the assessee: M/S. AMRUT EXPORTS
A.Y.: 2007-08*

Reason recorded under section 148(2) of the Income –Tax Act

Search action was carried out by the investigation wing, Mumbai on various groups which are involved in providing accommodation entries by way of issuing non-genuine bills/loans. On examination of the above information, I have reason to believe that my above named assessee is a beneficiary of non-genuine transaction of Rs.84262961/- from following parties during the year under consideration:

<i>Sr. No.</i>	<i>Name of the party</i>	<i>Total transaction</i>
<i>1.</i>	<i>Avi Exports</i>	<i>Rs.13639864/-</i>
<i>2.</i>	<i>Moulimani Impex Pvt. Ltd.</i>	<i>Rs.40190387/-</i>
<i>3.</i>	<i>Sun Diam</i>	<i>Rs.14073400/-</i>
<i>4.</i>	<i>Mayank Impex</i>	<i>Rs.16859310/-</i>

In view of the above, I have reason to believe that the assessee has earned income Rs.8,42,62,961/- on the above non-genuine transactions, which is not shown in the ROI filed for AY.2007-08. So, I am of the considered view that the income of the assessee exceeding Rs.1,00,000/- has escaped assessment within the meaning of section 147 of the income-tax act, due to the failure on the part of the assessee to disclosed truly all material facts necessary for his assessment."

Sd/-
(SWAPNIL S. PATIL)
Asst. Commissioner of Income-tax
Circle-9, Surat”

18. After going through the reasons recorded, we note that there is no infirmity in the reasons recorded by the assessing officer, the assessing officer after getting the information from the Investigation Wing, Mumbai has applied his mind and recorded the reasons. Section 147 of the Act authorizes and permits an Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that the said income for any assessment year has escaped assessment. The expression '*escaped assessment*' clearly connotes a very basic postulate that the income for a particular assessment year went unnoticed by the Assessing Officer and because of it not being noticed by him for any reason, it escaped assessment. The meaning of the expression '*escaped assessment*' is so simple and straight that it does not leave anyone in doubt that power under section 147 could be invoked by the Assessing Officer if it is a case of escape of assessment of income for a particular year. The provisions of section 147 require that the Assessing Officer should have '**reason to believe**' that any income chargeable to tax has escaped assessment. The word '*reason*' in the phrase '*reason to believe*' would mean cause or justification. If the Assessing Officer has a cause or justification to think or suppose that income had escaped assessment, he can be said to have a reason to believe that such income had escaped assessment. The words '**reason to believe**' **cannot mean that the Assessing Officer should have finally ascertained the facts by legal evidence. They only mean that he forms a belief from the examination he makes or from any information that he receives.** If he discovers or finds or satisfies himself that the taxable income has escaped assessment, it would amount to saying that he has reason to believe that such income had escaped assessment. The justification for his belief is not to be judged from the standards of proof required for coming to a final decision. A belief though justified for the purpose of initiation of the proceedings under section 147, may ultimately stand altered after the hearing and while reaching the conclusion on the basis of the intervening enquiry. At the stage where he finds a cause or

justification to believe that such income has escaped assessment, the Assessing Officer is not required to base his belief on any final adjudication of the matter. Therefore, we find merit in the submission of the Ld. D.R. that there is no any infirmity in the reasons recorded by the Assessing Officer.

Learned Counsel also submitted that in assessee's case, the reassessment proceedings under section 147 of the Act were initiated after four years from the end of the assessment year 2007-08; and the assessee has disclosed fully and truly all material facts during the original assessment proceedings, therefore reassessment proceedings should not be initiated against the assessee. The said argument of the Ld. Counsel cannot be accepted because the case of the assessee firm was not scrutinized in assessment year 2007-08, therefore Assessing Officer did not get opportunity to verify books of accounts, documents and evidences. For assessee year 2008-09, the assessee did not submit books of accounts and other documents. We have gone through the paper book submitted by Ld. Counsel and observed that assessee has submitted only confirmation, ITR and bank statement; however books of accounts were not submitted before Assessing Officer. Moreover, the reasons recorded by the Assessing Officer are in accordance with law. Therefore, assessee cannot take the benefit of first proviso to section 147 of the Act. Hence, we dismiss the grounds raised by the assessee challenging the reopening of assessment under section 147 of the Act for both assessment years, 2007-08 and 2008-09.

19. We note that so far merit is concerned, the issue is squarely covered by the judgment of the Coordinate Bench in the case of Pankaj K. Choudhary, in ITA No.1152/AHD/2017 (AY 2007-08), order dated 27.09.2021, wherein the Coordinate Bench held as follows:

“12. We have heard the submission of ld.CIT-DR for the Revenue and the ld. Authorised Representative (AR) of the assessee. We have also gone through the various documentary evidences furnished by assessee. The ld. CIT-DR for the Revenue supported the order of AO. The ld. CIT-DR submits that Investigation Wing, Mumbai made a search on Bhanwarlal Jain Group. During the search and after search, the Investigation Wing made a thorough investigation and concluded that Bhanwarlal Jain Group and his associates including his sons were indulging in managing about 70 benami concerns. The benami concerns were engaged in providing accommodation entries. The assessee is one of the beneficiaries of

such accommodation entries. In the transaction of accommodation entries, the documentary evidences are created in such a way, so that the bogus transaction is looks like genuine transaction. In bogus transaction, the fabricated evidences are always maintained perfectly. The assessee has obtained accommodation entry only to inflate the expenses and to reduce the ultimate profit. No stocks of diamonds were found at the time of search on Bhanwarlal Jain Group. The assessee has shown a very meagre gross profit (GP) @ 0.78% and not net profit (NP) at 0.02%. The ld. CIT(A) restricted the addition to the extent of 12.5% which is on the lower side. The ld. CIT-DR for the revenue prayed that disallowance made by the AO may be upheld or in alternative submitted that it may restricted at least @ 25%, keeping in view that the NP declared by the assessee is extremely on lower side.

13. On the validity of reopening, the ld. CIT-DR for the revenue submits that the AO received credible information about the accommodation entry provided by Bhanwarlal Jain Group. The assessee is one of the beneficiaries, who had availed accommodation entries from such hawala trader. At the time of recording reasons, the mere suspicious about the accommodation entry is sufficient as held by Hon'ble jurisdictional High Court in various cases. To support his submissions, the ld. CIT-DR relied upon the decision;

- *Pushpak Bullion (P) Ltd Vs DCIT [2017] 85 taxmann.com 84 (Gujarat High Court),*
- *Peass Industrial Engineers (P) Ltd Vs DCIT [2016] 73 taxmann.com 185 (Gujarat High Court),*
- *ITO Vs Purushttom Dass Bangur [1997] 90 Taxman 541 (SC) and*
- *Mayank Diamond Private Limited (2014) (11) TMI 812 (Gujarat High Court).*
- *AGR Investment Vs Additional Commissioner 197 Taxman 177 (Delhi) and*
- *Chuharmal Vs CIT [1998] 38 Taxman 190 (SC).*

14. On the other hand, the ld. AR of the assessee submits that he has challenged the validity of reopening as well as restricting the addition to the extent of 12.50% of the alleged bogus purchases. The ld. AR of the assessee submits during the assessment, the AO has not made any independent investigation. The AO reopened the case of the assessee on the basis of third party information without making any preliminary investigation. The AO received vague information about providing accommodation entry by Bhanwarlal Jain Group. No specific information about the accommodation entry obtained by assessee was received by AO. There is no live link between the reasons recorded qua the assessee. Therefore, the re-opening is invalid and all subsequent action is liable to be set aside.

15. On account of additions of bogus purchases, the ld. AR submits that in the original assessment, the assessee filed its complete details of purchases to prove the genuineness of expenses. The AO accepted the same in the assessment order passed under section 143(3) on 10.03.2009. During re-assessment, the assessee again furnished complete details about the genuineness of purchases. The assessee filed confirmation purchases invoices, accounts of the parties, bank statement of assessee showing transaction to the banking channel. The AO has

not made any comment on the documentary evidence furnished by assessee. The AO solely relied upon the statement of third party and the report of Investigation Wing. The report of wing and the statement of Bhanwarlal Jain were not provided to the assessee. The AO has not disputed the sales of assessee. No sale is possible in absence of purchase. The books of accounts were not rejected. The AO made the disallowance of entire purchases. The assessing officer not provided cross examination of the alleged hawala dealers. The disallowances sustained by the Ld. CIT(A) @ 12.5% of the impugned purchases, is on higher side and deserve to be deleted in total. The ld.AR of the assessee submits that entire purchases shown by assessee are genuine. In without prejudice and alternative submissions, the Ld. AR for the assessee submits that in alternative submission, the disallowance may be sustained on reasonable basis. To support his various submission, the ld.AR for the assessee is relied upon case laws:

1	<i>M/s Andaman Timber industries Vs Commissioner of Central Excise, CIVIL APPEAL NO. 4228 OF 2006 (Supreme Court)</i>
2	<i>CIT vs. Indrajit Singh Suri [2013] 33 taxmann.com 281 (Gujarat)</i>
3	<i>Albers Diamonds Pvt. Ltd. Vs ITO 1(1)(1), Surat I.T.A. No.776 &1180/AHD/2017</i>
4	<i>The PCIT-5 vs. M/s. Shodiman Investments Pvt. Ltd. TTANO. 1297 OF 2015 (Bombay High Court)</i>
5	<i>Shilpi Jewellers Pvt. Ltd. vs. Union of India & Ors. WRIT PETITION NO. 3540 OF 2018 (Bombay High Court)</i>
6	<i>CIT in Vs. Mohmed Juned Dadani 355 ITR 172 (Gujarat)</i>
7	<i>Micro Inks Pvt. Ltd. Vs. ACIT [2017] 79 taxmann.com 153 (Gujarat)</i>
8	<i>Shakti Karnawat Vs. ITO - 2(3)(8), Surat ITA 1504/Ahd/2017 and 1381 /Ahd/2017</i>
9	<i>Asian Paints Ltd. Vs. DCIT, [2008] 296 ITR 90 (Bombay)</i>
10	<i>PCIT, Surat 1 Vs. Tejua Rohit kumar Kapadia [2018] 94 taxmann.com 325 (SC)</i>
11	<i>The PCIT-17 vs. M/s Mohommad Haji Adam & Co. ITA NO. 1004 OF 2016 (Bombay High Court)</i>
12	<i>Pankaj Kanwarlal Jain HUF Vs. ITO 2(3)(8) Surat ITA.No.269/SRT/2017</i>

16. In the rejoinder submissions the ld. CIT-DR for the revenue submits that that rigour of the rules of evidence contained in the Evidence Act is not applicable before the tax authorities. It was submitted that the ratio of various case laws relied by the ld. AR for the assessee is not applicable on the facts of the present cases. 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.

17. We have considered the submissions of the parties and have gone through the order of the lower authorities. We have also deliberated on each and every case laws relied by both the parties. We have also examined the financial statement of all the assessee(s) consisting of computation of income and audit report. We have also gone through the documentary evidences furnished in all cases. Ground No.1 in assessee's appeal relates to the validity of reopening. The ld AR for the assessee vehemently argued that the AO reopened the case of the assessee on the

basis of third party information, and without making any preliminary investigation, which was vague about the alleged accommodation entry by Bhanwarlal Jain Group. And that there was no specific information about the accommodation entry availed by the assessee. There is no live link between the reasons recorded qua the assessee. We find that the assessee has raised objection against the validity of the reopening before the AO. The objections of the assessee was duly disposed by AO in his order dated 09.02.2015. The assessee raised ground of appeal before ld CIT(A) while assailing the order of AO on reopening. The ld CIT(A) while considering the ground of appeal against the reopening held that the AO has received report from investigation wing Mumbai, which indicate that the assessee is beneficiary of the accommodation entry operators. The accommodation entry provider admitted before investigation wing that he has given such entry to various persons; based on such report the AO has reason to believe that the income of the assessee has escaped assessment and thus the action of AO in reopening is justified.

18. We find that the Hon'ble Jurisdictional High Court in Peass Industrial Engineers (P) Ltd Vs DCIT (supra) while considering the validity of similar notice of reopening, which was also issued on the basis of information of investigation wing that they have searched a person who is engaged in providing accommodation entries, held that where after scrutiny assessment the assessing officer received information from the investigation wing that well known entry operators of the country provided bogus entries to various beneficiaries, and assessee was one of such beneficiary, assessing officer was justified in re-opening assessment. Further similar view was taken by Hon'ble Jurisdictional High Court in Pushpak Bullion (P) Ltd Vs DCIT (supra). Therefore, respectfully following the order of Hon'ble High Court, we find that the assessing officer validly assumed the jurisdiction for making re-opening under section 147 on the basis of information of investigation wing Mumbai. So far as other submissions of the ld AR for the assessee that there is no live link of the reasons recorded, we find that the Hon'ble Jurisdictional High Court in Peass Industrial Engineers (P) Ltd clearly held that when assessing officer received information from the investigation wing that two well known entry operators of the country provided bogus entries to various beneficiaries, and assessee was one of such beneficiary, assessing officer was justified. Hence, the ground No. 1 in assessee's appeal is dismissed.

19. Ground No. 2 in assessee's appeal and the grounds of appeal raised by the revenue are interconnected, which relates to restricting the disallowance of bogus purchases to the extent of 12.5%. The AO made of 100% of purchases shown from the hawala dealers/ entry provider namely Bhanwarlal Jain. We find that the AO while making additions of 100%, of disputed purchases solely relied on the report of the investigation wing Mumbai. No independent investigation was carried by the AO. The AO has not disputed the sale of the assessee. The AO made no comment on the evidences furnished by the assessee. We further find that ld CIT(A), while considering the submissions of the assessee accepted the lapses on the part of the AO and noted that no sale is possible in absence of purchases. The Books of the assessee was not rejected by the AO. The ld CIT(A) on further examination of the facts and various legal submissions find that Ahmedabad Tribunal in Bholanath Poly Fab Private Limited (supra) held that in the such cases the addition of bogus purchases was sustained to the extent of 12%, on the

observation that the assessee may have made purchases from elsewhere and obtained the bills from impugned supplier to inflate Gross Profit Rate. The ld CIT(A) by considering the overall facts, concluded that the 100% disallowance of purchase is not justified. We also find that the ld.CIT(A) also considered the decision of jurisdictional High Court in *Mayank Diamonds Pvt. Ltd. (supra)* and compared the fact of the present case with the facts in *Mayank Diamonds Pvt Ltd (supra)* and noted that assessee in that case was also engaged in the trading of polished diamonds. The ld CIT(A) noted that in that case the AO made disallowance of entire bogus purchase and on first appeal before CIT(A) the disallowances were maintained. However, the Tribunal gave partial relief to the assessee directing to sustain the addition @12% of such bogus purchases. And on further appeal, the Hon'ble High Court sustained Gross Profit Rate @ 5% being average rate of profit in industry.

20. Now adverting to the facts of the present case, the ld.CIT(A) held that in some other similar cases; though he had sustain 5% of Gross Profit Rate, considering the fact that where Gross Profit shown by those assessee's are more than 5%. However, in the present case, the assessee has merely shown Gross Profit Rate only at 0.78% of turnover, accordingly, the ld. CIT(A) was of the view that disallowance of 12.5% of impugned purchases/bogus purchases would be reasonable to meet the end of justice.

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 @ .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 ld 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 P 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.*

22. In the result the appeal of revenue is dismissed and the appeal of the assessee is partly allowed.”

20. We see no reasons to take any other view of the matter than the view so taken by the Coordinate Bench of this Tribunal in the case Pankaj K. Choudhary (supra), vide order dated 27.09.2021. As the issue is squarely covered by the decision of the coordinate bench, and there is no change in facts and law and the Ld. Counsel is unable to produce any material to controvert the aforesaid findings of the Coordinate Bench (supra). We find no reason to interfere in the said order of the Coordinate Bench, therefore, respectfully following the judgment of the Coordinate Bench, we dismiss all appeals of the assessee and we allow the appeal of the Revenue to the extent indicated above.

21. In the result, appeals of the Assessee are dismissed and appeals of Revenue are allowed to the extent indicated above.

Registry is directed to place one copy of this order in all appeals folder / case files.

The order announce on 06/01/2022 as per Rule 34(5) of Income tax (Appellate Tribunal) Rules 1963.

Sd/-
PAWAN SINGH
(JUDICIAL MEMBER)
सुरत/ Surat, दिनांक Dated: 06/01/2022
Rajesh Kumar, Sr. PS (on tour)/SS
Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

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

// TRUE COPY //

By order

Assistant Registrar, Surat