

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

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA No.3797/Mum/2017
(Assessment Year : 2007-08)**

M/s. Shantivijay Jewels Ltd., G-37, Gems & Jewellery Complex-III Seepz, Andheri (East) Mumbai – 400 096	Vs.	Dy. Commissioner of Income Tax-11(2)(1) Aayakar Bhavan M.K.Road Mumbai – 400 020
PAN/GIR No.AAFCS8914F		
(Appellant)	..	(Respondent)

**ITA No.5323/Mum/2017
(Assessment Year : 2007-08)**

Dy. Commissioner of Income Tax-11(2)(1) Aayakar Bhavan M.K.Road Mumbai – 400 020	Vs.	M/s. Shantivijay Jewels Ltd., G-37, Gems & Jewellery Complex-III Seepz, Andheri (East) Mumbai – 400 096
PAN/GIR No.AAFCS8914F		
(Appellant)	..	(Respondent)

Assessee by	Ms. Apurva Shah
Revenue by	Shri Jasbir Chauhan
Date of Hearing	21/02/2022
Date of Pronouncement	23/02/2022

आदेश / ORDER

PER M. BALAGANESH (A.M):

These cross appeals in ITA Nos.3797/Mum/2017 & 5323/Mum/2017 for A.Y.2007-08 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-18, Mumbai in appeal No.CIT(A)-18/IT-134/DC-11(2)(1)/15-16 dated 03/04/2017 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 30/03/2015 by the Id. Dy. Commissioner of Income Tax-11(2)(1), Mumbai (hereinafter referred to as Id. AO).

2. Though the assessee has raised several grounds, the only effective issue is to be decided in this appeal is disallowance made on account of bogus purchases.

2.1. We have heard the rival submissions and perused the materials available on record. We find that the Id. AO had made addition @100% on the value of purchases treating it as ingenuine, whereas the Id. CIT(A) had restricted the same to only the profit percentage of 3%. We find that the Revenue is aggrieved against the order of Id. CIT(A) for restricting the disallowance of 3% of the total value of the purchases and assessee is challenging the determination of profit percentage of 3% and is seeking 100% relief by way of filing of this appeal. Hence, both the appeals are taken together and disposed of by this common order for the sake of convenience.

3. We find that assessee is a public limited company engaged in the business of trading in diamonds and in the manufacture and sale of

diamond studded jewellery. The assessee filed its return of income for the A.Y.2007-08 on 23/10/2007 declaring total income of Rs.47,71,911/-. Thereafter, a revised return was filed on 10/09/2008 revising the income to Rs.1,52,84,540/-. The assessment was completed u/s.143(3) of the Act on 14/12/2009 determining total income at Rs.1,53,81,380/-. Subsequently, information was received to the effect that assessee had taken certain accommodation entries from group companies / concerns which were controlled and managed by Shri Rajendra Sohanlal Jain, Shri Dharmichand Jain and Shri Sanjay Chowdhary and all these concerns were engaged in mere paper transactions by providing accommodation entries of unsecured loans and bogus sales bills against cash. Accordingly, the case of the assessee was sought to be reopened by issue of notice u/s.148 of the Act on 26/03/2014 after due recording of reasons for reopening thereon. The assessee stated that the revised return filed by it on 10/09/2008 may be treated as the return in response to notice u/s.148 of the Act. The reasons recorded by the Id. AO were sought for which was duly furnished to the assessee by the Id. AO. Subsequently notice u/s.143(2) of the Act was issued by the Id. AO on 22/09/2014 which was served on the assessee on 25/09/2014. Later notice u/s.142(1) of the Act together with detailed questionnaire was also issued and served on the assessee calling for requisite details. The Id. AO observed that assessee had declared total purchases of Rs.50,93,64,553/- during the year under consideration. The assessee gave a complete list of purchases together with sample bills thereon from the Id. AO. It is not in dispute that assessee had made purchases from the following parties:-

Sr.No.	Name of the bogus entry provider	Amount (Rs)
1	AVI Exports (controlled and managed by Rajendra Jain)	7,17,41,939/-
2	Vitrag Jewels (controlled and managed by Mudit Karnawat)	6,18,55,498/-

3	Sun Diam (controlled and managed by Rajendra Jain and Manish Jain)	1,63,89,533/-
4	Moulimani Impex Pvt Ltd (controlled and managed by Rajendra Jain & Sachin Pareek)	13,45,624/-
	Total	15,13,32,594/-

3.2. The assessee furnished the following documents to prove the fact that the purchases made from aforesaid parties are genuine:-

- 1) Detail of goods purchases alongwith copy of Affidavit given by Mr Rajendra Jain, Partner of M/s Avi Exports confirming the transactions are genuine.*
- 2) Detail of goods purchases alongwith copy of Affidavit given by Mr. Rajendra Jain, Partner of M/s Moulimani Impex Pvt Ltd confirming the transactions are genuine.*
- 3) Detail of goods purchases alongwith copy of Affidavit given by Mr Rajendra Jain, Partner of M/s Sundiam confirming the transactions are genuine.*
- 4) Detail of goods purchases alongwith copy of Affidavit given by Mr Mudit Karnavat, Prop of M/s Virag Jewels confirming the transactions are genuine*

All the copies of Affidavits were submitted on 16th October, 2014. However, photocopies all the above affidavits are enclosed herewith for your ready reference. We are also informed that Mr Rajendra Jain has retracted the statement made to the Tax Officers about giving of accommodation entries as per retraction dated 9th January, 2014. The Assessee company is producing herewith Stock Register Book wherein the entries of the goods purchased and the same are utilized for manufacturing of the jewellery and sales made of these items.

Hence no reliance can as such be placed on his earlier statement which is only on the basis of the present reassessment. Mr Rajendra Jain & Mr Mudit Karnawat have also made affidavits wherein they have duly confirmed that they have sold the diamonds to the Assessee firm and received the sale proceeds from the assessee firm confirming that the goods were actually sold to us -copies enclosed and originals available for verification. Consequently, a subsequent statement on oath would carry more credence compared to a statement given on a earlier date, and in particular when the earlier statement is already retracted.

3.3. The Id. AO however, disregarded the aforesaid contentions of the assessee and proceeded to make 100% disallowance on account of bogus

purchases made from aforesaid four parties amounting to Rs.15,13,32,594/-.

3.4. We find that the Id. AO also observed that assessee had made purchases from other parties also which were sought to be verified by him. Notice u/s.133(6) of the Act was issued to 28 suppliers. In response to the notice issued, the replies were received in case of 12 suppliers which were reconciled with the submissions filed by the assessee. The Id. AO observed on verification of the transactions pertaining to M/s. Tanvi Gems, the assessee has shown excess purchase from said party amounting to Rs.4,97,530/- which was sought to be added by the Id. AO.

3.5. In respect of purchases made from M/s. M.S. International, the Id. AO observed that the said party was not available at the address provided by the assessee and on enquiries made with the officer bearers of the society premises, the Id AO was intimated that no such party operated in such building premises. Accordingly, the Id. AO concluded that the purchases made by the assessee from M/s. M.S. International is bogus and added a sum of Rs.3,25,41,193/- in the assessment.

3.6. Similarly, the Id. AO sought to examine the purchases made by the assessee from the following parties by way of issue of notices u/s.133(6) of the Act which could not be served due to the following reasons as tabulated hereunder:-

Sr.No.	Name of the party	Remarks
1	Super Jewels	Office was found closed since a very long time
2	Cartier Jewels	Tara Niwas has been taken for complete repairs and no one present at the said premises

3	Royal Diamond Pvt Ltd	Tara Niwas has been taken for complete repairs and no one present at the said premises
4	Uniquestar Gems (I) FM Ltd	Tara Niwas has been taken for complete repairs and no one present at the said premises
5	Mayur Gems	Found to be closed, served by affixture
6	Mangalam Exports	Found to be dosed, served by affixture
7	Shikha Diamonds Pvt Ltd	Found to be closed, served by affixture
8	Mohit Gems	Found to be occupied by some other concern
9	Dharmi Impex	Not found at the given address. Occupied by some other concern viz Meera Impex
10	Yash Overseas	Returned back by the postal authorities with the remark 'not known'
11	Sunil & Co	Returned back by the postal authorities with the remark 'left'

3.7. Based on the above, the Id. AO concluded that the purchases made by the assessee from the aforesaid 11 parties totalling to Rs.7,32,98,471/- are ingenuine and accordingly disallowed the same in the assessment.

3.8. We find that the Id. CIT(A) had categorically observed that the Id. AO had not doubted the sales as disclosed by the assessee out of the purchases made from the aforesaid disputed parties. He also held that without the purchases there could not be any sales. Ultimately going by the VAT rate prevailing at the relevant point in time for diamonds, and incidental profit element thereon, the Id. CIT(A) estimated the profit percentage @3% on the entire value of disputed purchases as detailed hereinabove.

3.9. We find that the very same issue was subject matter of adjudication by this Tribunal in assessee's own case in ITA No.4190/Mum/2017 and 6138/Mum/2017 dated 08/03/2019, wherein the purchases made from the similar parties were restored back to the file of the Id. AO for denovo adjudication. Both the parties before us fairly agreed that let this entire appeal to be restored to the file of the Id. AO for denovo adjudication. In view of the aforesaid facts and in light of the Tribunal decision in A.Y.2008-09 and in view of the fact that both the parties had consented to the decision, we deem it fit and appropriate to restore this entire appeal to the file of Id. AO for denovo adjudication in accordance with law. The assessee is at liberty to furnish additional evidences, if any, in support of its contentions. Needless to mention that the assessee be given reasonable opportunity of being heard. The Id. AO is hereby directed to dispose of the set aside assessment in accordance with law uninfluenced by the decision taken earlier by him or by the Id. CIT(A) in the case of the assessee. Accordingly, the grounds raised by the assessee as well as by the Revenue are allowed for statistical purposes.

4. In the result, appeals of the assessee and Revenue are allowed for statistical purposes.

Order pronounced on 23/02/2022 by way of proper mentioning in the notice board.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 23/02/2022
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai