

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT**

**BEFORE SHRI PAWAN SINGH, JM & DR. A.L.SAINI, AM**

**आयकरअपीलसं./ITA Nos.1364 &1366/AHD/2017**

**(निर्धारणवर्ष / Assessment Year: (2007-08)**

**(Virtual Court Hearing)**

M/s. Nazar Impex, C/o. 408, Saryu Diamond Complex, Jaddakhadi, Mahidharpura, Surat-395003.	<b>Vs.</b>	The ACIT, Central Circle-4, Surat.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AACCN3603R</b>		
<b>(Assessee)</b>		<b>(Respondent)</b>

Shri Sanjay Kumar Choudhary (HUF) C/o 408, Saryu Diamond Complex, Jaddakhadi Mahidharpura, Surat-395003.	<b>Vs.</b>	The ACIT, Central Circle-4, Surat.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAQHS5732R</b>		
<b>(Assessee)</b>		<b>(Respondent)</b>

Assessee by : Shri Rasesh Shah & Shri Himanshu Gandhi, CA

Revenue by :Shri H. P. Meena, CIT(DR)

**सुनवाईकी तारीख/ Date of Hearing : 14/12/2021**

**घोषणाकी तारीख/Date of Pronouncement: 08/03/2022**

**आदेश / O R D E R**

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

Captioned two appeals filed by different assesseees pertaining to Assessment Year (AY) 2007-08, are directed against the separate orders passed by the Learned Commissioner of Income Tax(Appeals)-4, Surat [in short “the Id. 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 Act (hereinafter referred to as “the Act”) dated 27.03.2015.

2. Since, the issues involved in all the appeals are common, 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 facts narrated in ITA No.1364/AHD/2017, for assessment year 2007-08, in the case of M/s Nazar Impex have been taken into consideration for deciding these above appeals *en masse*.

3. Grounds of appeals raised by the assessee, as per lead case in ITA No.1364/AHD/2017, are as follows:

1. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in upholding the proceeding u/s 148 without appreciating the facts that assessment order was passed u/s 143(3) r.w.s. 147 instead of section 144 r.w.s. 147.*
2. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in upholding the proceeding u/s 148 without appreciating the facts that proceeding was initiated without jurisdiction and on borrowed reasons.*
3. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in upholding the proceeding u/s 148 without appreciating the facts that sanction for reopening was not obtained from appropriate authority.*
4. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming the action of Ld. AO of treating appellant as accommodation entry provider instead of genuine trader.*
5. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming the addition of Rs.5,25,340/- made by Ld AO on account of commission income on sales, imports and loan outstanding.*
6. *On the facts and circumstances of the case and law, the Ld CIT(A) erred in confirming the addition of Rs.5,25,340/- made by Ld. AO without providing information on he has relied, opportunity of cross examination and show cause notice. Thus action of AO is against the principal of natural justice and makes order invalid.*
7. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming the rejection of books of account without pointing out any defect in books of accounts.*
8. *On the facts and circumstances of the case and law, the Ld CIT(A) erred in confirming disallowance of genuine expenditure and allowed only 25% of commission income as expenditure on ad-hoc basis.*

9. Appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.”

4. Succinct facts are that assessee filed return of income declaring total income of Rs.1,31,654/-, on 10/10/2007. The said return was processed u/s 143(1) of the Income Tax Act. Information has been received that a search and survey action was carried out by the DGIT (inv.), Mumbai in the case of Rajendra Jain Group, Dharmi Chand Jain Group and Sanjay Choudhary Group on 03/10/2013. The search action resulted into collection of evidences and other findings which conclusively proved that said group, through a web of concerns run and operated by them, is engaged in importing goods at the behest of actual importers and handing over imported goods to them and thereafter providing accommodation entries of Bogus sales out of book's stock without actual delivery to other beneficiaries. Similarly, the group is also indulged in to providing bogus loan entries to various beneficiaries. On perusal of said information, it reveals that the assessee is one of such beneficiaries of the accommodation entries. Details of the party who have issued accommodation bills to the assessee are as under:

Sr. no.	Name of the concern	F.Y	Bill amount
1	Avi Exports	2006-07	5,26,500/-
2	Mayank Impex	2006-07	2,53,97,799/-
	Total		2,59,24,299/-

In view of the above, the case of the assessee has been re-opened u/s 147 of the I.T. Act and notice u/s 148 of the Income tax Act was issued on 29/03/2014 and duly served on the assessee. The assessee has stated to treat the original return filed on 10/10/2007 as return filed in response to notice u/s 148 of I.T. Act 1961. Notice under section 143(2)& 142 (1) along with questionnaire were issued on 27/11/2014 which were duly served on the assessee.

The assessing officer noticed that a search was conducted on Rajendra Jain, Sanjay Choudhary and Dharmichand Jain group on 03-10-2013. Various evidences were collected during the search which explained the inter alia modus operandi of the "business of providing accommodation entries in the nature of bogus sales & unsecured loans". During the search proceedings, it was

established by evidences and statement of the Rajendra Jain, Sanjay Choudhary & Dharmichand Jain that there group concerns are:

- i) Engaged in merely paper transactions,
- ii) Engaged in import of rough & cut polished diamonds for other clients (who-do not want to show in the books), whose physical delivery is taken by actual importers, immediately after the clearance of consignment by CHA.
- iii) These concerns of Rajendra Jain, Sanjay Choudhary & Dharmichand Jain are left with stock on paper & zero stock in actual. These are basis of issuing bills & giving accommodation entries on commission basis, to various parties, who either purchases from cash, or want to inflate the cost.
- iv) In addition to these, this concern provides entries of unsecured loans against cash.

5. The assessing officer noted that Rajendra Jain in his 132(4) statement has explained the nature of his business and also identified its beneficiaries. He categorically admitted that his *"main source of income is from commission for providing accommodation entries by bogus bills & bogus loans.* During the course of post search enquiries also the above modus operandi followed by the above groups has been accepted by the key persons of the Groups. Statements of Shri Rajendra S. Jain, Shri Sanjay Choudhary and Shri Dharmichand Jain were recorded during the course of post search enquiries. All of them inter-alia admitted the fact that they are engaged in paper transactions only without any physical stock of the goods (diamonds). Based on the statements of Rajendra S. Jain, Shri Sanjay Choudhary and Shri Dharmichand Jain and other corroborating evidences gathered during the course of search action and post search enquiries; the modus operandi of the above concerns were summarized by assessing officer as under.

- (i) The above concerns are merely doing the paper transactions instead of carrying out any real business of diamonds trading.

(ii) These concerns actually do business of maintaining "books of accounts" only and do not do any actual trading of physical commodity i.e. diamonds.

(iii) The actual importers of rough diamonds, approaches these concerns to import their diamond through their group companies/concerns and on request of the consignment, fee real importer gets the delivery of diamond after clearance from CHA.

(iv) The book stocks of rough diamonds have been converted by these concerns to cut and polished diamonds through their commission companies, or sometimes these name lending concerns issue bills of rough diamonds to local purchasers and show purchase of polished diamonds from them to square up the transaction.

(v) On receipt of such cut and polished diamonds, they issue sale bills to various parties at the request of the actual importers. The actual importer arranges the sale proceeds from parties to whom sale bills were issued. Once the sale proceeds are received, these name lending concerns makes import remittance at the request of importer.

6. The assessing officer also observed that assessee has self-admitted the carrying of the business of accommodation entries. The evidences seized and documented clearly establishes the case of accommodation entries. In such business, the income of assessee is generated by commission of the Bills, loans and commission on import. Assessee has given statement u/s 132(4) that he receives following commission:

- i) On import = 0.20% on Billed import
- ii) On loan = 0.50 % on the bogus loan entry.
- iii) On local bills = No details (Considered 0.02% on the local sales bills after deducting imports & group turnover from turnover)

Since the business is not done by the assessee in actual which is shown and same is proved with evidence as well as agreed and stated in statement u/s 132(4) the books of accounts maintained by the assessee is rejected and order was being proceeded by assessing officer u/s 144 of I.T. Act on best judged assessment

basis. It was also held by AO that when assessee is doing import on behalf of client who is "not identified by the assessee" it is held that all expenses like exchange loss, VAT payment, Octroi payment, custom duties and all statutory expenses are also met by such client on whose behalf the goods are imported. Due to such reason the books of accounts and audit prepaid by assessee was rejected by AO and assessment of income was done on the basis of commission income earned by assessee.

Sales	Amount	Rate of commission	Commission income
Total turnover	29,31,28,138/-		
Total Import	22,22,18,082/-		
Total turnover (Excluding import & group turnover)	7,09,10,056/-	@ 0.02%	14,182/-
Import made	22,22,18,082/-	@ 6.26%	4,44,436/-
Loan outstanding at year end	1,33,44,485/-	@ 0.50%	66,722/-
Total Commission income earned			5,25,340/-
Deduction of expenses of 25% is given for paper transactions & related cost as the such.			1,31,335/-
Income Assessed			3,94,005/-

Therefore, assessing officer made addition to the tune of Rs.3,94,005/-.

7. The assessing officer noted that since, Shri Sanjay Choudhary has stated in his statement that he is the main person of the group and his group concerns were being run by himself through his associates and employees. Thus, assessing officer also made addition on protective basis in the hands of Shri Sanjay Choudhary.

8. On appeal, Id CIT(A) deleted the protective addition made in the hands of Shri Sanjay Choudhary. However, Id CIT(A) confirmed the addition in the hands of assessee. Aggrieved, the assessee is in appeal before us.

9. Shri Rasesh Shah and Shri Himanshu Gandhi, argue that reassessment proceedings initiated by the assessing officer is bad in law. There is no whisper in

the reasons recorded, of any tangible material which came to the possession of the assessing officer. It reflects an arbitrary exercise of the power conferred under section 147 of the Act and reasons were recorded on borrowed satisfaction.

Both the Id Counsels further pointed out that in the reasons supplied to the assessee, there is no whisper, what to speak of any allegation, that the assessee had failed to disclose fully and truly all material facts necessary for assessment and that because of this failure there has been an escapement of income chargeable to tax. They further contended that reassessment proceedings were initiated based on the bogus purchases, however, the addition was made by the assessing officer based on the accommodation entry on bogus purchases, therefore reassessment proceedings were bad in law and hence should be quashed.

10. On the other hand, Shri H. P. Meena, CIT(DR), relied on the findings of the Id CIT(A).

11. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We note that Ld. CIT(A) dismissed the technical ground of assessee challenging the reopening of assessment under section 147/148 of the Act observing as follows:

*“7. I have gone through the facts of the case, the reasons recorded for reopening u/s 147 of the Act, the submission and the various decisions of the Courts including those relied upon by the appellant. The appellant has challenged the reopening on basically on the following grounds:*

- a) The reopening was for the belief that the appellant has taken accommodation entries from concerns of Rajendra Jain group and Dharmichand Jain group whereas the final assessment has been made holding the appellant itself as an entry provider.*
- b) The AO has not applied his mind to the information available and his satisfaction is a borrowed satisfaction.*
- c) The reopening is beyond four years and according to the appellant the basic condition for reopening is not fulfilled as according to it full and the disclosure of the relevant facts was made to the department.*

- d) The case has been reopened without the mandatory approval of Commissioner of Income Tax.

**Decision:**

7.2 Before I proceed further, I would like to reproduce the relevant part of the satisfaction recorded by the AO:

***"Reasons for belief that income was escaped:***

*In this case return of income was filed on 10.10.2007 declaring total income at Rs.1,31,650/-. Order u/s 143(1) of the Act was passed on 17.10.2008 determining the total income at Rs.1,31,650/-.*

*Intimation has been received from DGIT(Inv.), Mumbai, vide letter dated 21.03.2014 in respect of accommodation entries of bogus purchase taken by various persons.*

*It has come to light that the assessee managed to have received bogus purchases to the tune of Rs.5,26,500/- & Rs.2,53,97,799/- from AVI & MAYANK, respective during the F.Y. 2006-07 relevant to the A.Y.2007-08. Thus, aggregate bogus purchase is of Rs.2,59,24,299/-.*

*This information was not available at the time of passing the original assessment order, hence, entire bogus purchases were allowed. As per the information provided by the DGIT(Inv.), Ahmedabad the assessee has manage bogus purchase of Rs.2,59,24,299/- and thus it cannot be allowed as deduction.*

*Evidently, in the case of assessee, income to the tune of Rs.2,59,24,299/- has escaped assessment on account of accommodation entry received by the assessee.*

*In view of the above facts and material, I have reason to believe that income of Rs.2,59,24,299/- chargeable to tax has escaped assessment within the meaning of section 147 of the Act and hence, the case of the assessee needs to be reopened u/s. 147 of the Act."*

***From the reasons recorded, as reproduced above; the following facts and sequence of events are observed:***

- a) *Credible information was received by the AO from the Investigation Wing, Mumbai, regarding search and seizure action carried out in the case of Shri Rajendra Jain group and Dharmichand Jain group evidences found during it including the statements of various persons, it was found that they were engaged in systematic providing of accommodation entries.*
- b) *The AO has noted that the search has revealed that the assessee managed to have received bogus purchases to the tune of Rs.5,26,500/- & Rs.2,53,97,799/- from AVI & MAYANK, respectively during the F.Y. 2006-07 relevant to the A.Y. 2007-08. Thus, aggregate bogus purchase is of Rs.2,59,24,299/-.*
- c) *This information was not available at the time of passing the original assessment order, hence, entire bogus purchases were allowed.*
- d) *He had verified the information with the record available in his office and duly noted it is seen that the assessee has filed his return of income for the year under consideration on 19.10.2007, disclosing a total income of Rs.2,44,372/-. The return of income was processed u/s 143(1) of the Act,*

accepting the income disclosed. Since, the evidential and materials facts found during the course of search and survey in the case in Rajendra Jain group and Dharmichand Jain group **prove giving of accommodation purchase entries of Rs.3,48,45,202/- to the instant assessee. it is prima facie apparent that the assessee has utilized such bogus purchases to suppress his profits for the year to that extent. There is no other prudent use of bogus purchase bills.**

- e) He has thus recorded his prima facie reason to believe that accommodation entries of Rs.2,59,24,299/- represents bogus purchases managed by it and the income has escaped assessment to that extent. Therefore, the AO has believed it to be fit case for reopening u/s 147 of the Act.

7.2.1 Having gone through the entire gamut of facts and circumstances, I am of considered opinion that not only **there existed new information** with the AO **from the credible sources**, but also **that he has applied his mind** and recorded the **conclusion that the purchases claimed were non-genuine and therefore bogus**, (clearly meaning that **what was disclosed was false and untruthful**).

The Hon'ble Supreme Court in the case of **Phul Chand Bajrang Lal and another vs. ITO 203 ITR 456**, was considering the question of reassessment beyond the period of four years in the case of an assessee firm; and had held that in case of acquiring fresh information specific in nature and reliable, relating to the concluded assessment, which went to falsify the statement made by the assessee at the time of original assessment and, therefore, he would be permitted under the law to draw fresh inference from such facts and material. **The Court also went to an extent of saying that there are two distinct and different situations where the transaction itself, on the basis of subsequent information is found to be bogus transaction and in such event, mere disclosure of the transaction cannot be said to be true and full disclosure and the Income-tax Officer would have jurisdiction to reopen the concluded assessment.** It would be apt to quote some observations of the Apex Court in the case of PhulChand Bajrang Lal (supra), which read as under:

"...one has to look to the purpose and intent of the provisions. One of the purposes of Section 147 appears to be to ensure that a party cannot get away by willfully making a false or untrue statement at the time of original assessment and when that falsity comes to notice to turn around and say 'you accepted my lie, now your hands are tied and you can do nothing'. It would, be travesty of justice to allow the assessee that latitude."

The Hon'ble Gujarat High Court in the case of **Dishman Pharmaceuticals and Chemicals Ltd. vs. DCIT (OSD), Ahmedabad (2012) 346 ITR 228 (Guj)** has summed up the requirements of the law, in such circumstances and has held that:

**"There is no set format in which such reasons must be recorded. It is not the language but the contents of such recorded reasons which assumes importance. In other words, a mere statement that the Assessing Officer had reason to believe that certain income has escaped assessment and such escapement of income was on**

*account of non-filing of the return by the assessee or failure on his part to disclose fully and truly all material facts necessary for assessment would not be conclusive. Nor, absence of any such statement would be fatal if on the basis of reasons recorded, it can be culled out that there were sufficient grounds for the Assessing Officer to hold such beliefs."*

*A three Judges bench of Hon'ble Gujarat High Court in the case of A.L.A. Firm v. CIT, 189 (1991) ITR 285, after an elaborate discussion of the subject opined that the jurisdiction of the Income Tax Officer to reassess income arises if he has in consequence of specific and relevant information coming into his possession subsequent to the previous concluded assessment, reason to believe, that income chargeable to tax and had escaped assessment. **It was held that even if the information be such that it could have been obtained by the I.T.O. during the previous assessment proceedings by conducting an investigation or an enquiry but was not in fact so obtained, it would not affect the jurisdiction of the Income Tax Officer to initiate reassessment proceedings, if the twin conditions prescribed under Section 147 of the Act are satisfied.***

*As observed earlier not only **there existed new information** with the AO from the credible sources, but also **he had applied his mind** and recorded the conclusion that the purchases claimed were non-genuine and therefore bogus, (clearly meaning that what was disclosed was false and untruthful). The requirements of section 147 r.w.s. 148 have clearly been met; and the reopening is held justified and legal. Further, there is no requirement in law that approval of CIT/Addl. CIT or JCIT taken as per law should be mentioned in the reasons recorded itself. In fact reasons are first recorded and then approval is taken. The approval was granted by the Addl. CIT, vide his office letter No. SRT/Addl. CIT/R-1/147/2013-14 dated 28.03.2014. He has written the following remarks, while granting the approval:*

*"Reason had been perused by me and on that basis, am satisfied.*

*Sd/-  
(H K Lal)*

*At the original order was only u/s 143(1), no approval of Commissioner of Income Tax was required. The judgments relied upon by the appellant are clearly distinguishable on facts and are not applicable to the facts of the case. In fact, in three recent judgments; **the Hon'ble Gujarat High Court has upheld the reopening on similar facts.** The case is squarely covered by these judgments which are:*

- i. Yogendrakumar Gupta vs. ITO 366 ITR 186 (Guj)*
- ii. Order dated March 25, 2014 in the case of Lalita Ashwin Jain vs. ITO, Special Civil Application No. 1626 and 1627 of 2014.*
- iii. Peass Industrial Engineers (P) Ltd. 73 taxmann.com 185 (2016)*

*The other issue raised is that according to the appellant, the final decision in the reassessment order is different than the basis of reopening. The argument of the appellant is totally misplaced. The reopening was done because the AO had information that Rajendra Jain and his affiliated concerns were giving*

*accommodation entries, and the appellant has also taken some such entries shown as purchases; and he had reason to believe that this was done to suppress the total income shown. Finally also the basis has not been proved wrong and only the final decision was that though the appellant had himself taken accommodation entries he was not disclosing true business, which was actually providing accommodation entries itself. Actually, ultimately it is held that **not only the purchases claimed from these two parties are bogus (reason for reopening)**; actually the entire import and trading business is fictitious and the appellant has suppressed his income accordingly. The final decision is in conformity with the reasons recorded and the belief as discussed above was based on credible information. **Therefore, the grounds no. 1 to 5 of appeal raised by the appellant for A.Y. 2007-08 are dismissed.***”

12. We have gone through the above findings of Id CIT(A) and noted that Id CIT(A) adjudicated the technical ground of the assessee, (reopening the assessment u/s 147 of the Act) in detailed manner. We note that findings of Id CIT(A) does not contain any factual error therefore we affirm the order of Id CIT(A).

13. Now, we deal with other arguments of Id Counsel. The Learned Counsel contends that reasons of reopening is based of bogus purchase and assessing officer made the addition on the basis of percentage of accommodation entry, hence assessing officer reopened the assessment based on bogus purchases but made the final addition on the basis of percentage of accommodation entry on bogus purchases, thus reassessment proceedings are bad in law. For this, Id Counsel relied on the judgment of Jet Airways, 331 ITR 0236 (Bom) and contended that when the assessment was sought to be reopened on the ground that income had escaped assessment on a certain issue, the AO could not make an assessment or reassessment on another issue which came to his notice during the proceedings, hence reassessment proceedings are bad in law.

14. We note that Id Counsel wanted to point out that assessment was re-opened on ‘X’ issue but the final addition was made by assessing officer on ‘Y’ issue, therefore, reassessment proceedings are bad in law and may be quashed. However, we do not agree with Id Counsel, as the assessing officer reopened the

assessment on account of bogus purchases, and made final addition based on percentage of bogus purchases. That is, after rejecting the books of accounts of the assessee, the assessing officer made addition on bogus purchase, based on certain percentage, therefore, the final addition made by assessing officer is not an addition on different issue. We note that assessing officer, as per the facts of the case, may make addition at the rate of 100% of bogus purchases, or 25% of bogus purchases or certain percentage of bogus purchases considering accommodation entries of bogus purchases, in all these cases it will be deemed that there is addition on account of bogus purchases, only. Therefore, we reject the plea of the Id Counsel to the effect that assessing officer had re-opened the assessment on 'X' issue and made final addition on 'Y' issue.

15. We note that on merit, the various grounds raised by the assessee are covered by the judgment of the Coordinate Bench in the case of Sh Rajendra Sohan Lal Jain, in ITA No.293 to 299/AHD/2017 (AY 2008-09 to 2014-15), wherein the Coordinate Bench held as follows:

*“10. We have heard the submissions of the learned authorised representative (ld AR) of the assessee and the learned Commissioner of Income Tax- departmental representative (ld CIT-DR) for the revenue and have gone through the entire record carefully. The Ld. AR for the assessee submits that investigation team was recorded the statement of assessee by pressurizing him. The assessee has already retracted the statement by filing retraction statement dated 21.10.2013 and 09.01.2014, before the assessing officer on 31.03.2014. When search was conducted the assessment for 2008-09 to 2012-13 were not pending and were already concluded either under section 143(3) or 143(1) and hence no income can be assessed unless there is incriminating material found during the course of search action. The A.O. merely relied on the fact that no stock of the diamonds was found at the time of search. The goods were given for approval to customers for sales. The assessing officer overlooked the entire documentary evidences. The Ld. AR for the assessee read over the written submissions filed before Ld. CIT(A). On merit the Ld. AR of the assessee submitted that the assessee was doing the real business and has shown business income while filing return of income. The ld AR for the assessee submits that Kolkata Tribunal in Manoj Begani Vs ACIT ( ITA No. 932,933,935 936/Kol/2017), which is case of beneficiary of the alleged accommodation entry from Rajendra Jain, deleted the entire additions. In other words the ld AR for the assessee impressed that the business model of Rajinder Jain was accepted as genuine. In alternative claim the assessee claimed that he has already included the commission income in his business income disclosed in his audited accounts. To support all his legal and factual submissions the ld AR for the assessee relied on the following case laws;*

- ❖ *CIT Vs Singhad Technical Education Society [(84 taxmann.com 290(SC))],*
- ❖ *CIT Vs Calcutta Knitwear ( 362 ITR 673 SC),*
- ❖ *PCIT Vs Munisuvrat Corporation (115 taxmann.com 265 SC),*

- ❖ PCIT Vs Himanshu Chandulal Patel (108 CCH 0019 SC),
- ❖ PCIT Vs Himanshu Chandulal Patel ( 419 ITR 132 Guj),
- ❖ Anil Kumar Gopikrishan Aggarwal Vs ACIT ( 106 taxmann.com 137 Guj HC),
- ❖ PCIT Vs Ananad Kumar Jain 432 ITR 384 Delhi HC,
- ❖ CIT Vs Renu Construction Pvt Ltd ( 99 taxamann.com426 ( Delhi HC),
- ❖ CIT Vs Harjeev Aggarwal (70 taxmann.com 95 Delhi HC),]
- ❖ PCIT Vs Allied Perfumes Pvt Ltd ( 124 taxmann.com 358 Delhi HC),
- ❖ PCIT Vs MeetaGutgutia ( 82 taxmann.com 287 (Delhi HC),
- ❖ PCIT Vs Saumya Construction ( 81 taxmann.com 292 Guj HC),
- ❖ CIT Vs Ramanbhai Patel ( (96CCH 0495 Guj HC),
- ❖ Chetnaben J Shah Vs ITO ( 79 taxmann 328 Guj HC),
- ❖ PCIT Vs Star PVG Export (112 taxmann. Com163 Kar HC)
- ❖ CIT Vs Continental Warehousing Corporation Ltd ( 58 taxmann.com 78 Bom)’,
- ❖ CIT Vs Kabul Chawla ( 92 CCH 210 Delhi HC)
- ❖ DCIT Vs Sourabh Naval Kishore Garg (ITA No.4130/Mum/2017),
- ❖ Rajinder P Jain Vs DCIT (ITA No. 296 to 298/ Mum/2018,
- ❖ Manoj Begani Vs ACIT ( ITA No. 932,933,935 936/Kol/2017),
- ❖ M B Jewellwrs & sons (ITA No. 1/Kol/2017).

11. On the other hand the Ld. CIT-DR for the revenue supported the order of the Ld. CIT(A). The ld CIT-DR for the revenue submits that during search action sufficient incriminating evidence was unearthed. The statement of assessee and his associates were recorded under section 132(4). The assessee in his statement disclosed the modus operandi of the operation of accommodation entry. During the search action the assessee confessed in his statement recorded under oath that he along with his other associate, employees and family members are operating through a number of business concern of three natures i.e. Proprietorship firm, partnership firm as well as companies in the name of various persons including his employees. For all practical purposes, he himself ensures the chain of entire business network on profit sharing basis. During the search on business premises as well as residential premises and survey on their employee it was admitted by all the person and family members and relatives that they were working for the assessee. Not a single piece of diamond was found from any of the business or residential premises of the assessee. The ld CIT-DR for the revenue further submits that while recording statement of the assessee, he was confronted with various e-mails extracted from his computers. The assessee clearly admitted that he was receiving commission on value of import at the date of .2% from the real importer who route the transaction through his paper concern. It was also disclosed that on entry of unsecured loan, he received commission in the range of 0.25% to 0.5%. The AO on the basis of his statement, incriminating evidence found in the form of statement of account recovered from the pen drive and on post search inquiry the assessee was served with the notice under section 153A to file his return of income for assessment year under consideration. The assessee filed return of income in response to the notice under section 153A, however, no additional income was offered by the assessee, despite recovery of huge incriminating material. During assessment the assessee tried to impress that he has retracted his statement. The so called retraction has no evidentiary value, which is otherwise afterthought story. The alleged retraction was filed after more than one year before the AO. No complaint or protest was raised by the assessee before the investigation team. The AO made additions on the basis of statement of assessee which is corroborated with incriminating evidence found during the search action. The AO made very fair and reasonable additions of commission income in the assessment. The allegation of the assessee that no incriminating material was found in the search is unfounded and baseless. All the appeals of the assessee are liable to be dismissed.

12. We have considered the rival submissions of the parties and have gone through the orders of the lower authorities. We have also perused all the documents placed on record by the assessee. We have also deliberated on the various case laws relied by the Id. AR for the assessee. We find that in Ground No. 1, the assessee has challenged the validity of search action carried out under section 132 and upholding the action of A.O. in making assessment under section 144 rws 153A, however, during the submissions no specific submissions was made, therefore, the corresponding ground No.1 of appeal is treated as not pressed and dismissed as such.

13. Now advertent to the Ground No. 2 to 5 which relates to the additions of commission income that such additions are not based on incriminating evidence. A search action was carried out by the revenue at the assessee group on 03.10.2013, during the search action the statement of Rajinder Jain, Dharmi Chand Jain and Sanjay Chowdhary was recorded. Consequent on the search action and evidences gathered during search and post search action, notice under section 153A was served on the assessee to file return of income. The assessee filed return in response to the said notice, but no additional income was offered. The assessing officer after serving statutory notices proceeded for assessment. During the assessment the assessing officer referred relevant part of the statement of assessee and diagram of modus operandi of business operation which was prepared during the search action, as followed by assessee and his group while making the business of accommodation entry. The assessing officer further noted that the statement of Sachin Pariekh proprietor of Arihant Export, director of Karnawat Impex Pvt Ltd & Moulimani Impex, Manish Jain (prop of Kalash Enterprises, Director of Kriya Impex Pvt Ltd and Karnawat Impex Pvt Ltd.) and Anoop Jain (Prop of Adi Impex) was recorded during search. The Assessing Officer (AO) on the basis of statement of Sachin Parikh, Manish Jain and Anoop Jain in wherein they admitted that all they were working on remuneration with Rajinder Kumar Jain (assessee). The AO also held that during recording statement of assessee, in Question No. 15, the assessee was asked to explain the modus operandi of his business. The AO prepared the diagram of modus operandi disclosed by the assessee. The AO on the basis of incriminating material gathered during the search action and on the basis of statement of Rajendra Jain and his associates held that all the business concerns of the assessee were merely doing paper transaction, instead of carrying any real business, those concern were doing of maintaining 'books of accounts' and do not carry any actual or physical business of diamonds. It was held by AO that the actual importers of rough diamonds approach assessee to import their diamonds through his group and on receipt of consignment, the real importer get the delivery of diamonds after clearance from CHA (clearance house agent). The books of stock of rough diamonds have been converted by assessee group to cut and polished diamonds through commission companies or through name landing concern, issues bill of rough diamonds to local purchasers and show purchase of polished diamonds from them. On receipt of sale proceed; this group makes import remittance at the request of importer. Further, the AO on the basis of discloser of assessee, evidences of e-mails and other material which was incriminating material gathered during the search held that the assessee is entry provider as stated by him in his statement recorded during the search and received commission @ 0.20% of bill amount of import and commission @ 0.50% on loan transactions. The AO worked out the total disallowance of Rs.24,54,136/- as a commission income and after granting deduction of expenses @ 25% on such addition made addition of Rs.18,40,602/- in the following way;

Sales	Amount	Rate of commission,	Commission income
Total turnover	2,43,23,94,646/-		

Total Import	86,88,19,534/-		
Total turn over (Excluding import & group turnover)	1,47,37,83,599/-	@ 0.02%	2,94,757/-
Import made	89,88,19,534/-	@ 0.20%	17,37,639/-
Loan outstanding at year end	8,43,48,087/-	@ 0.50%	4,21,740/-
Total commission income earned			24,54,136/-
Deduction of expenses of 25% is given for paper transactions & related cost as the such			6,13,534/-
<b>Income Assessed</b>			<b>18,40,602/-</b>

14. Though, the AO also made various protective additions of income assessed in assessee's group concern, however, all those protective additions were deleted by the ld CIT(A). No further appeal is filed by revenue against such order in deleting the protective additions.

15. The Ld. CIT(A) confirmed the additions of commission income on export as well as on unsecured loan. The ld CIT(A) while confirming the order of the assessing officer recorded that that the basic objection of the assessee that his admissions of doing only paper business of trading of diamonds, in providing accommodation entry; is not correct and not based on incriminating document recovered in search action. The ld CIT(A) noted that assessee is Director in various companies/partners in various firms and also proprietor of a firm, the business of all firms and companies are controlled by the assessee. During the search no physical stock of diamonds was found, there were numerous e-mails including some e-mail found and seized during search clearly proved that the real beneficiary of importer of diamonds were different then the books, there were also e-mails which prove that the person wanting accommodation entry were approaching the assessee and his group, the correspondence of orders were found not placed by the assessee and his group to the foreign parties. Besides, books of account of various concerns was maintained by assessee, which the assessee himself said being run by him in the name of various persons, which he able to get them to his residence from Surat, during the search though Sachin Parikh, who is his accomplice. A pen drive containing accounts from various concerns including those where Rajendra Jain as per ownership had no interest was also provided by the assessee. All these facts and evidence clearly prove with the corroborative evidence recovered during the search action that assessee was indulging in providing accommodation entry. All these aforesaid evidence and corroborative facts found during the search are incriminating material. The ld CIT(A) also recorded that not a single piece of diamond found during the search action. Further, from the admission of assessee, Sachin Pareek and Surendra Jain in their statement and identification of actual beneficiary of import and delivery of diamonds by actual beneficiary and e-mail found to actual beneficiary, the ld CIT(A) concluded that assessee and his group was providing accommodation entry. The ld CIT(A) further concluded that once the business as per books is proved fictitious and bogus, the action of AO in rejecting the books is obvious. On the ground/ grievance of the assessee on additions of commission and allowance of 25% expenses the ld CIT(A) concluded that the addition made by AO is on lower side comparative to the addition in case of Bhanwar Lal Jain, who was also providing similar accommodation entry with similar modus operandi. The ld CIT(A) further held that once books are rejected, the profit is to be estimated on the basis of commission rates and net profit is to be determined. On the grievance of assessee of exchange

rate difference, the ld CIT(A) held that when the actual business is importing for others and in the books credit in the name of exporters (other beneficiary), the exchange rate difference is not payable by the assessee and rejected the ground raised by the assessee.

16. Before us, the ld AR for the assessee basically made two fold submissions that no incriminating material/ evidence was recovered during the course of search and that the assessee retracted from his statement recorded by the search party and the assessee was doing real business and not engaged in providing accommodation entry. We find that during the search action more than sufficient incriminating evidence was found, which is also supported with the corroborative evidence found in the form of e-mails and other evidence in the form of books of account recovered from the pen drive, which itself is incriminating evidence against the assessee. We further noted the assessee in his retraction statement has not explained the material evidence found in the form of e-mail, from his e-mail account, his background history as to how he entered in the this particular business of providing entry, which he himself disclosed during the search action that he learnt all this business module of providing accommodation entry from his ex-employer namely Ratanlal Jain. The said retraction is filed for the first time before AO after gap of months period. The reliance in case Manoj Begani Vs ACIT (supra), passed by Kolkata Tribunal which is case of beneficiary of the alleged accommodation entry from Rajendra Jain, is not helpful to the assessee. Here in the present case, there is clear admissions of the assessee about the entire business affair carried out by him with his associate for providing bogus entry, mere obitor in case of beneficiary by the Coordinate bench, will not absolve the assessee from his own admission. The finding of Tribunal in Manoj Begani vs. ACIT(supra) is based on the facts and evidences produced by that assessee. Therefore, in view of the abovesaid discussions, we are in full agreement with the finding of ld CIT(A) that once the books are rejected the profit is to be estimated on the basis of commission rates and net profit is to be determined. We also affirms the finding of ld CIT(A) that that when the actual business of assessee was importing goods for others and in the books credit in the name of exporters, thus exchange rate difference is not payable by the assessee and the assessee is not eligible for deduction of such exchange rate fluctuation. Even otherwise, no evidence is file by the assessee on record to prove the fact that the assessee entered into hedging contract with the Banker, the evidence found in the form of e-mail and other evidences show the facts otherwise. Therefore, the submissions made by the assessee do not inspire confidence. None of the case laws relied by the ld AR for the assessee is helpful to the assessee as there was sufficient incriminating material seized during the search action on the assessee on the basis of which it is clearly proved that the assessee is in the business of entry provider. Therefore, we do not find any merit in the grounds No. 2 to 5 raised by the assessee, which we dismissed.

17. Ground No. 6 relates to alternative and without prejudice ground that the alleged commissions has already included by the assessee in his sales transaction. Considering the facts that the lower authority have categorically held that the assessee was not doing any genuine business transactions and was engaged in providing accommodation entry, books of the assessee was rejected and only very meager rate of commission income was added to the total income of the assessee, which we have already affirmed. If for the sake of assuming it is considered that the assessee was doing genuine business, thus, keeping in view of volume of transactions in his bank account, the income of assessee would be estimated many fold comparative to the commission income added by the AO. Thus, the alternative ground of appeal is also rejected.

18.Ground No. 7 relates to rejection of books of accounts and ground No. 8 relates to expenses including foreign exchanges expenses, we find that the grievances of the assessee raised in these grounds of appeal has already been discussed in ground No. 3 to 5, therefore, needs no further adjudication. In the result all the grounds of appeal raised by the assessee are rejected.

19.In the result, the appeal of the assessee for AY 2008-09 in ITA No. 294/SRT/2021 is dismissed.”

16. As the issue is squarely covered against the assessee by the decision of the Coordinate Bench, Sh Rajendra Sohan Lal Jain (supra), and there is no change in facts and law and the assessee 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 (supra), therefore, respectfully following the judgment of the Coordinate Bench, we dismiss both appeals of assessee.

17.In the result, the appeals of the assessee (in ITA Nos. 1364/AHD/2017 & 1366/AHD/2017 ) are dismissed. Registry is directed to place one copy of this order in all appeals folder / case files.

Order is pronounced in the open court on 08/03/2022 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**

सूरत/Surat  
दिनांक/ Date: 08/03/2022  
SAMANTA

**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

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

By Order

// True Copy //

Assistant Registrar/Sr. PS/PS  
ITAT, Surat