

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri Shamim Yahya (AM)

I.T.A. No. 5308/Mum/2019 (A.Y. 2013-14)

| | | |
|---|-----|---|
| M/s. Spark Gems 201, Shreeji Darshan Tata Road No. 1&2, Opera House Mumbai-400 004. PAN : AACFS3800Q (Appellant) | Vs. | ACIT-19(3) Room No. 202/203 Matru Mandir Tardeo Mumbai-07. (Respondent) |
|---|-----|---|

| | |
|-----------------------|---------------|
| Assessee by | None |
| Department by | Shri T.Sankar |
| Date of Hearing | 11.01.2022 |
| Date of Pronouncement | 16.03.2022 |

ORDER

The appeal by the assessee is directed against the order of learned CIT(A) dated 17.5.2019 pertains to A.Y. 2013-14.

2. The grounds of appeal read as under :

1. The Ld. Commissioner (A)-3 erred in confirming the addition to the income declared in the statement of income on estimated profit margin @ 5% amounting to Rs.10,75,830/- of alleged purchases from three non-genuine parties merely on the basis of the information received from investigation of Sales Tax Department and without verifying the facts independently or giving the opportunity to the Appellant to cross examine the alleged non-genuine vendors.

2. The Ld. Commissioner (A)-3 failed to pass a reason order rather than going solely by the findings in the assessment by the AO. The Ld. Commissioner (A)-3 ought to have considered the submissions made by the Appellant and the relevant case laws.

3. Brief facts of the case are that pursuant to search and survey in the case of Rajendra group of companies who were found to be entry provider, it was noted that the assessee has purchased goods worth Rs. 21,51,6600/- from companies belonging to this group by way of bogus entries. Based upon the

findings of investigation wing the Assessing Officer made 5% addition by concluding as under :

11.5 It is to be understood here that the diamond merchant operating in the is always aware of the GP which he earns in any transaction. In this particular modus operandi adopted, this merchant deals with the petty dealers who either supplies him the diamonds in lieu of cash or makes him available the diamonds by adjusting his cheque vis-a-vis the cash received from parties like Rajendra Jain Group, Shri Sanjay Choudhary Group and Shri Darmi Chand Group concerns. These petty dealers always operate on a very thin margin and as they operate on the concept of cash discounts, the diamonds purchased from them are comparatively cheaper than the similar grade/quality of diamond if the same is to be purchased from a registered dealer. Hence, the actual GP margin in such instances of dealing with petty dealers is always higher for diamond traders than his average GP. The diamond merchant then tries to bring it down to the level of its normal G.P, by taking the bills from third parties, such as those of (Rajendra Jain) group concerns, wherein they "adjust" the price in the bill so as to suit the sale price of diamonds sold.

11.6 Taking into consideration all these aspects, once again, the issue arrives, as to what would be the margin, one can expect while buying the material from grey market instead of normal course. Two aspects need to be taken into consideration in such circumstances. First is, these diamonds in the grey market are always cheaper than the diamonds sourced from the genuine dealer. This is because, the genuine dealer would charge his incidental cost including the whole administrative cost while selling the diamond in the market, whereas the petty dealers in the grey market do not carry such incidental charges on such sales, wherein they are only looking for a quick profit. Secondly, there is always an element of discount in the case of instant cash purchase. This is a common practice followed in the diamond market, and the entities operating in the market would always look for reaping such benefits.

11.7 Hence, the endeavour is to impute the additional G.P., which the assessee must have earned by purchasing the diamonds in the grey market, than from the regular dealer. This would be the margin which the petty trader in the grey market offers you over the established genuine trader.

11.8 The assessee in his submission has demonstrated that although the assessee might have got diamonds from grey markets, but the bills were obtained from (Rajendra Jain) group concerns at rates which are more or less comparable to grey market purchases.

11.9 In such a scenario, wherein there is circumstantial evidence of obtaining of bills from Rajendra Jain group concerns, the benefit obtained by the assessee would not be more than 5% of the purchase cost debited against (Rajendra Jain) group concerns. This should take care of the margin earned by the assessee to indulge into such transaction. The reason, why

this margin looks practical is that most of the traders in the market actually operate at this level of margin in the open market. In fact, this fact was also identified in the Report of the Task Group constituted by Department of Commerce in 2013, in which the margin in diamond industry was accepted to be in the range between 1 to 4.5%. Hence, the margin for the assessee in the grey market would be not more than 5% which is the same margin that is now being adopted for purchases made from dealers in the grey market by assessee and for which the bills are procured from the (Rajendra Jain) group concerns. Accordingly, the profit margin embedded in these transactions is taken at 5% of the value of the purchases of made from the parties mentioned in para 3 and the said amount of Rs. 10,75,830/- is added to the total income of the assessee for the assessment year under consideration. Penalty proceedings u/s. 271(l)(c) of the Act are initiated for filing inaccurate particulars and concealment of income.”

4. Upon assessee appealed learned CIT(A) upheld the Assessing Officer’s order as under :

“I have considered the facts of the case, AO's contentions and appellants' submission and also the case laws relied upon by the appellant. The assessee is engaged in the business of (rading of cut and polished diamonds. The assessee has shown purchases of Rs.2,15,16,600/- from various non-genuine parties as per the information received from the Investigation Wing. Sales Tax Department has found that the said concerns were not doing genuine business of purchases and sales and merely indulging providing non genuine purchase bills and also loan accommodation entries to various interested parties. AO has denied the explanation offered by the assessee as it is seen from the details that the assessee had obtained only the bi/l from parties without actually getting the material. Thus, the bill issued by above parties is nothing but an accommodation entry. Moreover, the fact mains that these parties have admitted that they were made directors, partners and prietors of various concerns at the direction of Rajendra Jain Group, Shri Sanjay Choudhary Group and Shri Darmi Chand Group & Family which were eventually being managed and controlled by the later. The margin for the assessee in the grey market would be not more than 5% which is the same margin that is now being adopted for purchases made from dealers in the grey market by the assessee and for which the bills are produced firm the (Rajendra Jain group) concerns.

Accordingly, after considering the submission of the appellant and relying on the Gujarat High Court decision in the case of CIT Vs Simit P. Sheth (2013) reported in 356 ITR 451 (Gujarat), the profit margin embedded in these transactions is taken at 5% of the value of purchases made from of non-genuine parties of Rs. 2,15,16,600/- which accounts to Rs.10,75,830/-. In view of the above, the addition made by the AO is justified and there is no interference is called for in the order of the AO.”

5. Against the above order assessee is in appeal before the ITAT.

6. I have heard learned Departmental Representative. None appeared on behalf of the assessee. I note that pursuant to information that assessee was engaging into obtaining bogus accommodation entry from purchases, the Assessing Officer made disallowance of only 5%. No examination of genuineness of sale was done. No examination was done as to whether the bogus entries are with relation to actual sales or are circuititious rotation of money. However I note that neither any action under section 263 has been done nor there is any appeal by the Revenue. In these circumstances, when Assessing Officer is himself observing that only fault on the part of the assessee is to make purchases from grey market, the disallowance of 5% does not need any interference. In this fact Assessing Officer has made only disallowance of 5%. Hence, I affirm the order of learned CIT(A).

8. In the result, assessee's appeal is dismissed.

Order pronounced in the open court on 16.3.2022.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 16/03/2022

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS