

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA Nos. 1155 & 1388/AHD/2017 (AY 2012-13)
ITA No.277/SRT/2018 (AY 2013-14)
(Hearing in Virtual Court)

Income Tax Officer, Ward-3(1)(5) Room No. 115, 1 st Floor, Anavil Business Centre, Hazira Road, Adajan, Surat	Vs	Shri Pawan Fojmal Birawat, 304, Kohonoor Complex, Saiyedpura, Surat
Shri Pawan Fojmal Birawat, 304, Kohonoor Complex, Saiyedpura, Surat		Income Tax Officer Ward-2(3)(8) Surat
PAN : ANTPB 4422 F		
Appellant		Respondent

Assessee by	Shri Suchek Anchalia, C.A
Revenue by	Shri H. P. Meena, CIT-DR
Date of hearing	10.03.2022
Date of pronouncement	23.03.2021

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. These are three appeals, two cross-appeals by Revenue & assessee are directed against the common order of Id. Commissioner of Income tax (Appeals)-3, Surat dated 20.02.2017 for assessment year (AY) 2012-13 and another appeal by assessee is directed by CIT(A)-3 Surat dated 19.03.2018 for AY 2013-14. In all appeal, the party has raised

the certain common grounds of appeal, certain facts are also common for both the assessment year (AY). Therefore, with the consent of the parties. All appeals were clubbed together heard and are decided by consolidated order. For appreciation of facts, the facts in AY 2012-13 are treated as lead case. The assessee in its appeal in ITA No. 1388/AHD/2017 (AY 2012-13) has raised the following grounds of appeal.

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in estimating the profit @ 12.50% on alleged bogus purchase, without appreciating the fact that the payment was made through cross account payee cheque and the same goods were subsequently sold and quantity is tallied and the addition was made without providing any opportunity of cross examination, without any corroborative evidence and without providing copy of statements relied upon.”

2. The revenue in its cross appeal in ITA No. 1155/AHD/2017 has raised the following grounds of appeal.

“1. On the facts and in the circumstances of the case and in Law, the Ld. CIT(A) has erred in restricting the addition made by the AO on account of disallowance of non-genuine purchases from Rs.32,60,47,961/- to Rs.4,07,56,000/-.

2. On the facts and in the circumstances of the case and in Law, Ld. CIT(A) has erred in directing to make an addition of 12.5% 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 G.P. estimated.

3. On the facts and in the circumstances of the case and in Law, the Ld. 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 Gun.High Court has directed to estimate G.P. @ 5% and not 12.5% of unverified purchases were directed to be added.”

3. Brief facts of the case are that the assessee is proprietor of M/s Money Diam, engaged allegedly in manufacturing, importing and exporting of all types of diamonds, precious and semi-precious stones. The assessee filed his return of income for Assessment Year 2012-13 declaring total income at Rs.3,86,280/- on 15.09.2012. The case was selected for scrutiny.
4. During the course of assessment, the Assessing Officer has noted that the assessee has shown purchase from the entities managed by Sh. Bhanwarlal Jain Group. Bhanwarlal Jain Group is engaged in providing accommodation entry by various bogus concern. The assessee has shown bogus purchase of Rs. 32,60,47,961/- from various companies/ firms and proprietorship concern which were managed by Sh. Bhanwarlal Jain Group. The Assessing Officer issued a show cause notice narrating fact that DGIT (Investigation), Mumbai, informed that there was a search action under section 132 of the Act on the group of Shri Bhanwarlal Jain on 03.10.2013, which resulted in collection of evidences and other findings, which

conclusively proved that the said Shri Bhawarlal Jain was providing accommodation entries. The investigation team also provided the list of beneficiary of such accommodation entry. From the list of purchase provided to the Assessing Officer, the assessing officer identified such 16 bogus entities from which the assessee has shown purchase of Rs. 32,60,47,961/-. On the above observation the assessing officer issued show cause notice as to why the purchased should not be disallowed and added to the income of the assessee. The assessee filed its reply to the said show cause notice. In the reply, the assessee submitted that he has not dealt with Sh. Bhawarlal Jain Group and he don't even known him as far as the transaction of purchases of goods are concerned. The assessee has purchased the goods from the parties shown in the show cause notice, during the year under scrutiny, from their respective partner/proprietor. There is no corroborative evidence to prove that the assessee has taken accommodation entry from such concerns. The copy of the statement of Sh. Bhawarlal Jain is not provided to the assessee. No cross examination of Sh. Bhawarlal Jain is allowed. The assessee stated that the Assessing Officer is merely relying on the report of investigation wing which is third party information and has no connection with the assessee, which cannot be make basis for

addition. No separate inquiry or investigation is conducted by the Assessing Officer. All the parties are available at their address and notice under section 133(6) or summon under section 131 of the Act can be issued to them. The assessee purchase goods and payments were made through account payee cheques only. No cash is received back by the assessee against the said purchase. No evidence is provided to the assessee that cash was received back. Purchase of goods from the said parties have been shown in the stock register. Subsequently, quantitative tally thereof is given in the tax audit report which is perfectly tallied with books of account. Once sales are accepted purchase cannot be doubted. The assessee maintained proper books of accounts, purchase register, sales register, stock register, ledger book, and bank book etc, and no specific defects or irregularity is either found or observed by the auditors or by the Assessing Officer. The statement of Sh. Bhawarlal Jain cannot be used against the assessee. The assessee furnished confirmation of parties, copies of purchase bill, stock register, statement showing corresponding sales, ITR acknowledgement of parties and bank statement. The assessee prayed for copy of statement if any, recorded Assessing Officer of any of the supplier and corroborative evidence to prove that assessee obtained accommodation entry,

cross examination of Sh. Bhawarlal Jain and other director, partner or proprietor those concerns.

5. The reply of the assessee was not accepted by Assessing Officer. The Assessing Officer without making specific reference of various evidences filed by the assessee, solely relied upon the information received from DGIT(Investigation) Mumbai and recorded that search and seizure action was carried on Bhawarlal Jain Group on 3rd Oct, 2013 which resulted in collection of evidences, which conclusive prove that Bhawarlal Jain Group was managing 70 benami concern. The Assessing Officer noted that Bhawarlal Jain was providing bogus entry of unsecure loan and bogus purchase without actual delivery of goods. From the premises of Bhawarlal Jain Group, it was conclusive proved from those facts that their group were indulging in providing accommodation entry without actual delivery of goods. The Assessing Officer by relying upon report of investigation wing made addition of aggregate purchase from 16 parties of Rs. 32,60,47,961/- at bogus purchases.
6. Aggrieved by the addition, the assessee filed appeal before CIT(A). Before Id. CIT(A), the assessee reiterated the similar submission as made before Assessing Officer. The assessee also requested for cross examination of third party, on the basis of which the

additions/disallowance of purchase were made by Assessing Officer. The assessee also relied on certain case laws. The ld. CIT(A) after considering the submission of the assessee noted that the Assessing Officer has not discussed about the details of evidences furnished by the assessee to prove the purchase. The assessee filed books of accounts, other documents viz; stock register and sale register. During the assessment proceedings, the Assessing Officer has not examined nor pointed out any defect to discard such evidences. The assessee also produced day to day stock register of purchase and sale. There is nil opening& closing stock. This means, the purchase made during the year are sold during the year itself. If sales are treated as genuine and impugned purchases are treated as bogus then the stock will go into negative to the extent of impugned purchases. The day to day stock register shows the receipts and issue of diamonds and stock in hand along with the name of party to whom purchase and sales is made. The Assessing Officer while making addition relied on the statement of Bhawarlal Jain and report of investigation wing. No comments on the purchase bills, copy of bank statement and day to day registers was made. No deficiency or irregularity in the stock or sale is pointed out. The ld. CIT(A) further observed that from the statement of Bhawarlal Jain

and from modus operandi recorded by the investigation wing, Mumbai has created sufficient suspicion regarding the purchase made by the assessee. It is also observed that the said suppliers are assessed with Central Circle, Mumbai, wherein they are being treated as entry providers and assessed accordingly.

7. The ld. CIT(A) by referring the decision of Tribunal in Bholanath Polyfab Pvt. Ltd. in ITA No. 137/AHD/2009 dated 26.07.2011 wherein assessee held that in case of similar type of bogus purchases disallowance of 100% of purchase is not justified and only a reasonable percentage of purchases to avoid the possibility revenue leakage, may be made. The ld. CIT(A) further referring the decision of jurisdictional High Court in case of M/s Mayank Diamond Pvt. Ltd. reported in 2014 (11) TMI 812 (Gujarat) wherein average rate of gross profit in industry was considered at 5%, and disallowance of suspicious purposes was upheld in the said case.
8. The ld. CIT(A) after considering the fact that wherein the Gross Profit (G.P) shown by similar cases of more than 5%, the ld. CIT(A) confirmed the addition to the extent of 5%. However in the present case, the assessee has shown GP rate of 0.96% of turnover. Accordingly, the ld. CIT(A) restricted the disallowance to the extent of 12.5% impugned purchase/disputed purchase. Aggrieved by the

restricted addition of 12.5%, the assessee has filed present appeal before us. The similar, the revenue has also filed its cross appeal challenging the finding to restrict the addition to the extent of 12%% only.

9. We have heard both the submissions of Learned Authorized Representative (ld. AR) for the assessee and Learned Departmental Representative (ld. CIT-DR) for the Revenue and have gone through the order of lower authorities. The ld. AR of the assessee submits that Assessing Officer made addition on the basis of third party information. The Assessing Officer solely relied upon the report of investigation wing, Mumbai. The report of investigation, Mumbai was not provided to the assessee. The assessee demanded the copy of statement of Bhawarlal Jain and his cross examination. The Assessing Officer, nowhere rejected the demand of assessee. The assessee filed detailed evidence to prove that the purchases of assessee are genuine. The assessee provided complete details of purchase, PAN and addresses of parties, purchase invoice, stock register, day to day register and sales register. No comment was made by Assessing Officer on the documentary evidence furnished by assessee. The sales of assessee was not disputed. The books of accounts of assessee was not rejected. The Assessing Officer made

estimation without rejecting books of accounts. The ld. CIT(A) restricted to addition to the extent of 12.5% of the total purchase shown from 16 parties. The entire purchase of assessee is genuine. The ld. AR prayed for deleting the entire addition. In the alternative submission, the ld. AR of the assessee would submit that to avoid protracted litigation some token disallowance may be made.

10. On the other hand, ld. CIT-DR for the revenue supported the order of Assessing Officer. The ld. CIT-DR for revenue submits that investigation wing of the department has made full-fledged investigation during the search action on Bhawarlal Jain and its group. The investigation wing investigated about the beneficiary of accommodation entry provided by Sh. Bhawarlal Jain. The assessee is one of the beneficiary of such purchases/accommodation entry. No stock of any goods/diamonds was found at the premises of Bhawarlal Jain. The entire purchases shown by assessee from Bhawarlal Jain are bogus and liable to disallow in toto. The ld. CIT(A) at the time of deciding, the appeal restricted the addition to the extent of 12.5% and the same is enhanced to 100% of purchase.

11. We have heard the submission of both the parties and have gone through the order of lower authorities. We have also gone through the various documentary evidences furnished by assessee in the

form of paper books. We have also deliberated on various case laws relied by Ld. CIT(A).

12. We find that the Assessing Officer made addition solely on the basis of third party information/report of investigation wing, Mumbai. The report of investigation, Mumbai was not provided to the assessee. During the assessment, the assessee demanded the copy of statement of Bhawarlal Jain and his cross examination, copy of such statement was not provided to the assessee. The Assessing Officer, nowhere rejected the demand of assessee. We find that the assessee filed detailed evidence consisting details of purchase, PAN and addresses of parties, purchase invoice, stock register, day to day register and sales register. No comment was made by Assessing Officer on the documentary evidence furnished by assessee. The sales of assessee was not disputed. No sale is possible in absence of purchases. The Assessing Officer estimated addition on account of purchases without rejecting books of accounts of assessee. The Ld. CIT(A) restricted to addition to the extent of 12.5% of the total purchase shown from 16 parties by taking view that the assessee shown G.P of less than 1%/. In our view the disallowance restricted by Ld. CIT(A) is on higher side. The profit margin in the industry is 5% to 7%. It is settled law in case of disputed purchases shown from

such hawala dealers on the profit element embedded to avoid the possibility of revenue leakage is to be disallowed. No doubt made the assessee has shown extremely low G.P yet the disallowance at rate of 12.5% is on higher side. This combination is similar cases, wherein the purchases are shown from Bhawarlal Jain of Rajendra Jain, who are operating similar syndicate for providing accommodation entry, have restricted or enhanced the addition to the extent of 6% of impugned or disputed purchases. Therefore, taking the consistent the disallowance of purchases in the present case is also restricted to 6% of the disputed purchases. In the result, the grounds of appeal raised by assessee is partly allowed.

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

ITA No. 1155/AHD/2017 (by revenue for A.Y 2012-13)

14. Considering the fact that while deciding the grounds of appeal raised by assessee, we have restricted the disallowance of bogus purchases to the extent of 6%, therefore, the grounds of appeal raised by revenue have become infructuous.

15. In the result, appeal of revenue is dismissed.

16. Now, we take up the assessee's appeal in ITA No. 277/SRT/2018 for AY 2013-14, wherein the assessee has taken the following grounds of appeal.

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in assessing the income at Rs.62,11,73,148/- as against the returned income of Rs.3,03,460/-, on account of addition of alleged bogus purchases.

2. On the facts and in the circumstances of the case and in Law, Ld. CIT(A) has erred in enhancing the income by Rs.46,58,79,861/- as against the addition made by the Ld. A.O of Rs.15,52,93,287/-.

3. On the facts and in the circumstances of the case and in Law, the Ld. CIT(A) erred in enhancing the income by Rs,46,58,79,861/-, without providing an opportunity to the appellant to be heard.

4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of genuine purchases solely on the basis of statement of Shri Bhanwarlal Jain, given before Investigation Wing, Mumbai, without giving an opportunity of cross-examination of the said Shri Bhanwarlal Jain to the appellant.

5. The appellant craves to add, alter, classify, reclassify, delete or modify any of the above grounds of appeal and requests to consider each of the above grounds without prejudice to one another”

17. We find that the Assessing Officer while passing the assessment order made addition of disallowance 25% of alleged bogus purchase. Aggrieved by the additions in the assessment order, the assessee filed appeal before ld. CIT(A). During the pendency of appeal, the ld. CIT(A) issued notice of enhancement from disallowance of 25% to 100% of the disputed purchases vide notice dated 19.02.2018. The ld. CIT(A) recorded that no reply of notice enhancement was furnished by assessee. The ld. CIT(A) enhanced the addition to 100% of disallowance of purchase.

18.Considering the fact that on similar setof facts on similar disallowance in earlier years, we have restricted the addition to the extent of 6%. Therefore, following principal of consistency, the appeal for Assessment Year 2013-14 is also partly allowed with similar observation. In the result, the grounds of appeal raised by assessee is partly allowed.

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

Order pronounced on 23/03/2022, in open court and result was placed on notice board.

Sd/-

(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Surat, Dated: 23/03/2022

Ganesh Kumar

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

By order

Assistant Registrar, ITAT, Surat

		Date	Initial	
	Draft order was prepared by author himself			
	Draft placed before author			
	Draft proposed & placed before the second member			
	Draft discussed/approved by Second Member.			
	Approved Draft comes to the Sr.PS/PS			
	Kept for pronouncement on			
	File sent to the Bench Clerk			
	Date on which file goes to the AR			
	Date on which file goes to the Head Clerk.			
	Date of dispatch of Order.			
	Draft dictation sheets are attached			