

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA Nos. 1165 & 1378/AHD/2017 (AY: 2009-10)
(Hearing in Virtual Court)

Income-tax Officer, Ward 2(3)(8), Surat, Room No. 407, 4 th Floor, Anavil Business Centre, Hazira Road, Adajan, Surat-395001	Vs.	M/s Surya Impex 104, Jaishree, Harikrishna Complex, Dalgia Sheri, Mahidharpura, Surat-395003
M/s Surya Impex 104, Jaishree, Harikrishna Complex, Dalgia Sheri, Mahidharpura, Surat-395003 PAN : ABCFS3948N		Income-tax Officer, Ward 2(3)(8), Surat, Room No. 407, 4 th Floor, Anavil Business Centre, Hazira Road, Adajan, Surat-395001
APPELLANT		RESPONDEDNT

Appellant by	Shri Suchek Anchalia, CA
Respondent by	Shri H. P. Meena, CIT(DR)
Date of hearing	10/03/2022
Date of pronouncement	28/03/2022

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. These cross appeals filed by Revenue and assessee are directed against the order of ld. Commissioner of Income tax (Appeals)-3, Surat dated 22.02.2017, which in turn arises out of an assessment order passed by Assessing Officer under section 143(3) r.w.s 147 of the Act for assessment year (AY) 2009-10. The assessee in its appeal in ITA No. 1378/AHD/2017(AY 2009-10) 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 not considering that the assumption of jurisdiction by the Ld. Assessing Officer is bad in law as the conditions laid down under the Act for initiating reassessment proceeding have not been fulfilled.*
- 2. 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.*
- 3. The appellant craves leave to add, alter or delete all or modify any or all the above grounds of appeal."*
2. The revenue in its cross appeal in ITA No. 1165/AHD/2017 (AY 2009-10) has raised the following grounds of appeal.

- "1. On the facts and circumstances of the case and in Law, the Ld. CIT(A) has erred in deleting the additions of Rs. 8,10,56,469/- on account of bogus purchase.*
- 2. On the facts and in the circumstances of the case and in Law, Ld. CIT(A) has erred in estimating income @ 12.5% of bogus purchases without appreciating the fact that during the course of assessment proceedings, it was noticed that concerns like, M/s. Rose Gems Pvt. Ltd. was non-existent entity and it was used for providing bogus purchase bills to, the assessee i.e M/s Surya Impex. Therefore, CIT(A) should have treated whole amount of these purchases as income of the assessee as assessee reduced his income to this extent by inflating his purchases by this amount in his P & L account.*
- 3. On the facts and in the circumstances of the case and in Law, the Ld. CIT(A) has erred in accepting the plea of the assessee to estimate the profit at 12.5% of the bogus purchase on the basis that proper books of accounts and stock register were maintained without considering the fact that no such books of accounts and documents were produced before Assessing Officer. CIT(A) did not give any opportunity to the Assessing Officer to rebut the contention of the assessee raised before him and relied upon the judicial pronouncements, facts of which are different from the instant case."*

3. Brief facts of the case are that the assessee is engaged in the business of import, export and trading of cut and polish and rough diamonds. The assessee filed his return of income for Assessment Year 2009-10 declaring total income at Rs.1,17,752/- on 29.08.2009. The case was selected for scrutiny. The case was reopened on the basis of information received from DGIT (Investigation) Mumbai. In the information received from Investigation Wing, Mumbai it was informed that a search and seizure action was carried out by Investigation wing-Mumbai on Bhanwarlal Jain Group on 03.10.2013, which resulted in collection of evidence that Bhanwarlal Jain, his group were operating certain benami concerns in the name of their employees and staff for providing bogus accommodation entries of unsecured loans, sale and purchase of different kinds of material. The statement of Bhanwarlal Jain was recorded under section 132(4) of the Act, wherein he had admitted that his family members are managing various entities which are providing accommodation entries. During the course of search, blank cheque book signed by dummy partners / directors / proprietor of entities were found and seized. It was informed that assessee is one of the beneficiaries of bogus purchase form three following entities managed by Bhanwarlal Jain

Group. The assessee has shown purchases of Rs. 8.10 Crore From Rose Gems Pvt Ltd., which was managed by Bhanwar lal Jain Group.

4. On the basis of such information, the Assessing Officer (AO) formed opinion that income of the assessee of Rs. 8.10 Crore has escaped from assessment and that he was satisfied that it is a fit case for reopening under section 147 of the Act. Notice under section 148 dated 27.03.2014 was served on the assessee by way of affixation. The assessee in response to notice under section 148, the assessee filed his reply vide his letter dated 12.12.2014 raising objection against reopening. The objections of the assessee was rejected in detailed and speaking order dated 09.02.2015 by the assessing officer.
5. During the course of assessment, the Assessing Officer has noted that the assessee has shown purchase from the entities managed by Bhanwarlal Jain Group. Bhanwarlal Jain Group is engaged in providing accommodation entry by various bogus concern. The assessee has shown bogus purchase of Rs. 25,000/- 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 entities i.e Rose Gems Pvt Ltd from which the assessee has shown purchase of Rs. 8,10,56,469/-.

6. 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 vide his reply dated 24.02.2015. 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. 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 party, 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.

7. 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 of Rs. 8,10,56,469/- at bogus purchases.

8. Aggrieved by the addition, as well as against the validity of reopening the assessee filed appeal before CIT(A). Before Id. CIT(A), the assessee reiterated the similar submission as made before Assessing Officer. Before Id. CIT(A), the assessee reiterated the similar submission on the additions of purchases as made before Assessing Officer. On the validity of reopening, the assessee specifically stated that the purchases made by the assessee are genuine and that the information to the assessing office was vague. The assessing officer has not disclosed that he obtained permission of Commissioner for reopening. 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.
9. The Id. CIT(A) after considering the submission on the validity of reopening held that AO relied on the report of Investigation Wing without furnishing copy of material relied upon to the assessee. The Id.CIT(A) concluded that in holding assessment as invalid for the above reason without going into merit would be amount to give undue benefit to the assessee for technical mistake or omission by AO and the principle of equity do not allow this, without considering the grounds on merit.

10. On the merit of the Id CIT(A) held 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 and 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 Id. 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. 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.

11. 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 1.15% 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. Similarly, the revenue has also challenged the action of Ld. CIT(A) in sustain the addition to the extent of 12.5%.

12. We have heard 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. Ground No.1 relates to validity of reopening under section 147/148. The Ld. AR for the assessee submits that 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. The assessee has made purchases one party which is genuine.

13. On the other hand, 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. Whether, the assessee made purchases or sale all the transactions are bogus. The assessee has shown bogus transaction with the entity managed by Bhanwar Lal Jain Group. 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),

14. 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 the assessee, consisting of computation of income and audit report. 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 Assessing officer, the objections of the assessee was duly disposed in a

speaking order. The assessee raised ground of appeal before Id CIT(A) while assailing the order of AO on reopening. The Id 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.

15. 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.

16. Ground No. 2 relates to the addition on account of alleged bogus purchases. 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. 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. To support his various submission, the ld.AR for the assessee is relied upon case laws:

1	M/s Andaman Timber industries Vs Commissioner of Central Excise, CIVIL APPEAL NO. 4228 OF 2006 (Supreme Court)
2	CIT vs. Indrajit Singh Suri [2013] 33 taxmann.com 281 (Gujarat)
3	Albers Diamonds Pvt. Ltd. Vs ITO 1(1)(1), Surat I.T.A. No.776 &1180/AHD/2017

4	The PCIT-5 vs. M/s. Shodiman Investments Pvt. Ltd. TTANO. 1297 OF 2015 (Bombay High Court)
5	Shilpi Jewellers Pvt. Ltd. vs. Union of India &Ors. WRIT PETITION NO. 3540 OF 2018 (Bombay High Court)
6	CIT in Vs. Mohmed Juned Dadani 355 ITR 172 (Gujarat)
7	Micro Inks Pvt. Ltd. Vs. ACIT [2017] 79 taxmann.com 153 (Gujarat)
8	Shakti Karnawat Vs. ITO - 2(3)(8), Surat ITA 1504/Ahd/2017 and 1381 /Ahd/2017
9	Asian Paints Ltd. Vs. DCIT, [2008] 296 ITR 90 (Bombay)
10	PCIT, Surat 1 Vs. Tejua Rohit kumar Kapadia [2018] 94 taxmann.com 325 (SC)
11	The PCIT-17 vs. M/s Mohommad Haji Adam & Co. ITA NO. 1004 OF 2016(Bombay High Court)
12	Pankaj Kanwarlal Jain HUF Vs. ITO 2(3)(8) Surat ITA.No.269/SRT/2017

17. 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 be enhanced to 100% of purchase.

18. We have heard the considered 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).

19. 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 by taking view that the assessee shown G.P of less

than 1.15% .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 i.e. 1.15% only, 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 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.

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

ITA No. 1165/AHD/2017 (by revenue for A.Y 2009-10)

21.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.

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

Order pronounced on 28/03/2022, in open court and result was placed on notice board.

Sd/-

(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 28/03/2022

Ganesh Kumar

Copy to:

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

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			