

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA Nos. 889 to 893/AHD/2017

Assessment Years: (2007-08 to 2013-14)

(Physical Court Hearing)

Keshri Exports, Shreeji Chambers, Sadhina Society, Varachha Road, Surat-395006.	Vs.	The DCIT, Circle-3(3), Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AADFK 3785 D		
(Appellant)		(Respondent)

आयकर अपील सं./ITA Nos. 916 to 920/AHD/2017

Assessment Years: (2007-08 to 2013-14)

(Physical Court Hearing)

The DCIT, Circle-3(3), Surat.	Vs.	Keshri Exports, Shreeji Chambers, Sadhina Society, Varachha Road, Surat-395006.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AADFK 3785 D		
(Appellant)		(Respondent)

आयकर अपील सं./ITA Nos. 753 to 754/SRT/2018

Assessment Years: (2010-11 to 2013-14)

(Physical Court Hearing)

The DCIT, Circle-3(3), Surat.	Vs.	Keshri Exports, Shreeji Chambers, Sadhina Society, Varachha Road, Surat-395006.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AADFK 3785 D		
(Appellant)		(Respondent)

आयकर अपील सं./ITA Nos. 761 to 762/SRT/2018

Assessment Years: (2010-11 to 2014-15)

(Physical Court Hearing)

Keshri Exports, Shreeji Chambers, Sadhina Society, Varachha Road, Surat-395006.	Vs.	The DCIT, Circle-3(3), Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AADFK 3785 D		
(Appellant)		(Respondent)

Assessee by	Shri Hiren Vepari, CA
Respondent by	Shri H. P. Meena, CIT(DR) and Shri Vinod Kumar, Sr. DR
Date of Hearing	26/05/2022
Date of Pronouncement	28/06/2022

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned cross appeals filed by the Assessee and Revenue, pertaining to Assessment Years (AYs) 2007-08 to 2013-14, are directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals)-3, Surat [in short “the ld. CIT(A)”], which in turn arise out of separate assessment orders passed by the Assessing Officer under section 143(3) and under section 147 r.w.s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”).

2. Since, the issues involved in all these appeals are common and identical, therefore these appeals have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity. The grounds as well as facts narrated in ITA No.889/AHD/2017 for AY.2007-08 in the case of Keshri Export has been considered for deciding above appeals *en masse*.

3. Brief facts *qua* the issue are that certain information was received from the Investigation Wing, Mumbai that certain parties on whom search action has been carried out by them have admitted during the search proceedings that they have been providing accommodation entries by way of issuing non-genuine bills/loans. From the names/details provided during the search proceedings, the name of M/s. Jewel Diam and M/s Kothari & Company also figures. The assessee is a beneficiary of non-genuine transaction of Rs.1,53,34,095/- from the said parties. During the post assessment proceedings, based on the information available on record, reason were recorded under section 148(2) and after taking prior approval from the appropriate authority, notice under section 148 was issued on 28.03.2014 and duly served upon the assessee by speed post. In response to the notice under section 148 issued, the assessee furnished its reply dated 01.04.2014 stating that the return filed on

31.01.2007 may be taken as return filed in response to the notice issued under section 148 of the Act. The assessee also sought copy of reasons for reopening of assessment. The assessee was provided the copy of reasons for reopening of assessment vide letter dated 07.07.2014. the assessee vide letter dated 08.08.2014 raised objections to the reasons recorded for reopening of assessment. The objections raised by the assessee were disposed off vide letter dated 09.09.2014. Subsequently, notice under section 143(2) was issued on 09.09.2014 and served upon the assessee. In the meantime, assessee filed a Special Civil Application on 10.11.2014 before the Hon'ble High Court of Gujarat to quash the notice issued under section 148 and the order disposing the objections. The Hon'ble High Court of Gujarat, vide order date 11.11.2014 directed to proceed with the assessment proceedings but to not pass final assessment order till the disposal of the petition.

3. Therefore, Assessing Officer issued a show cause notice to the assessee stating that as per statement recorded under section 132(4)/131, Shri Bhanwarlal Jain and other associated persons have admitted that they are engaged in providing bogus accommodation entries of purchase sales, loans and advances to various beneficiaries parties, therefore Assessing Officer made addition on account of unverifiable purchase and on account of rejection of diamonds from opening stocks. On appeal, ld. CIT(A) restricted the addition at the rate of 5% of bogus purchase following the judgment of Hon'ble Gujarat High Court in the case of M/s Mayank Diamond Ltd., in TA No.200 of 2003, order dated 07.11.2014.

4. Aggrieved by the addition made by ld. CIT(A), the Revenue and Assessee both are in further appeal before us.

5. The Ld. Counsel contended that the 5% disallowance sustained by the ld. CIT(A) should also be deleted, whereas Ld. Departmental Representative (Ld. DR) for the Revenue contended that addition made by the Assessing Officer should be upheld.

6. Based on these facts, we note that issue involved in these appeals are squarely covered by the judgment of this Coordinate Bench in the case of Pankaj K. Chaudhary

(in ITA No.1152/AHD/2017, for AY.2007-08, order dated 27.09.2021, wherein the Tribunal has sustained the addition @ 6% of bogus purchases / accommodation entries on account of bogus purchases.

7. We see no reasons to take any other view of the matter than the view so taken by the Division Bench of this Tribunal in group case in Pankaj K. Chaudhary (supra) vide order dated 27.09.2021. In this order, the Tribunal has *inter alia* observed as follows:

“17. 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 all the assessee(s) consisting of computation of income and audit report. We have also gone through the documentary evidences furnished in all cases. Ground No.1 in assessee’s appeal relates to the validity of reopening. 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 AO. The objections of the assessee was duly disposed by AO in his order dated 09.02.2015. The assessee raised ground of appeal before ld CIT(A) while assailing the order of AO on reopening. The ld 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.

18. 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.

19. Ground No. 2 in assessee's appeal and the grounds of appeal raised by the revenue are interconnected, which relates to restricting the disallowance of bogus purchases to the extent of 12.5%. The AO made of 100% of purchases shown from the hawala dealers/ entry provider namely Bhanwarlal Jain. We find that the AO while making additions of 100%, of disputed purchases solely relied on the report of the investigation wing Mumbai. No independent investigation was carried by the AO. The AO has not disputed the sale of the assessee. The AO made no comment on the evidences furnished by the assessee. We further find that ld CIT(A), while considering the submissions of the assessee accepted the lapses on the part of the AO and noted that no sale is possible in absence of purchases. The Books of the assessee was not rejected by the AO. The ld CIT(A) on further examination of the facts and various legal submissions find that Ahmedabad Tribunal in Bholanath Poly Fab Private Limited (supra) held that in the such cases the addition of bogus purchases was sustained to the extent of 12%, on the observation that the assessee may have made purchases from elsewhere and obtained the bills from impugned supplier to inflate Gross Profit Rate. The ld CIT(A) by considering the overall facts, concluded that the 100% disallowance of purchase is not justified. We also find that the ld.CIT(A) also considered the decision of jurisdictional High Court in Mayank Diamonds Pvt. Ltd. (supra) and compared the fact of the present case with the facts in Mayank Diamonds Pvt Ltd (supra) and noted that assessee in that case was also engaged in the trading of polished diamonds. The ld CIT(A) noted that in that case the AO made disallowance of entire bogus purchase and on first appeal before CIT(A) the disallowances were maintained. However, the Tribunal gave partial relief to the assessee directing to sustain the addition @12% of such bogus purchases. And on further appeal, the Hon'ble High Court sustained Gross Profit Rate @ 5% being average rate of profit in industry.

20. Now advertent to the facts of the present case, the ld.CIT(A) held that in some other similar cases; though he had sustain 5% of Gross Profit Rate, considering the fact that where Gross Profit shown by those assessee's are more than 5%. However, in the present case, the assessee has merely shown Gross Profit Rate only at 0.78% of turnover, accordingly, the ld. CIT(A) was of the view that disallowance of 12.5% of impugned purchases/bogus purchases would be reasonable to meet the end of justice.

21. We have seen that during the financial year under consideration the assessee has shown total turnover of Rs.66,09,62,458/-. The assessee has shown Gross Profit @ 0.78% and net Profit @ 0.02% (page 11 of paper Book). The assessee while filing the return of income has declared taxable income of Rs.1,81,840/- only. We are conscious of the facts that dispute before us is only with regard of the disputed purchases of Rs.4.34 Crore, which was shown to have purchased from the entity managed by Bhanwarlal Jain Group. During the search action on Bhanwarlal Jain no stock of goods/ material was found to the investigation party. Bhanwarlal Jain while filing return of income has offered commission income (entry provider). Before us, the ld CIT-DR for the revenue vehemently submitted that the ratio of decision of Hon'ble Gujarat High Court in Mayank Diamond Private Limited (supra) is directly applicable on the facts of the present case. We find that in Mayank Diamonds the

Hon'ble High Court restricted the additions to 5% of GP. We have seen that in Mayank Diamonds P Ltd (supra), the assessee had declared GP @ 1.03% on turnover of Rs.1.86 Crore. The disputed transaction in the said case was Rs.1.68 Crore. However, in the present case the assessee has declared the GP @ 0.78%. It is settled law that under Income-tax, the tax authorities are not entitled to tax the entire transaction, but only the income component of the disputed transaction, to prevent the possibility of revenue leakage. Therefore, considering overall facts and circumstances of the present case, we are of the view that disallowances @ 6% of impugned purchases/disputed purchases would be sufficient to meet the possibility of revenue leakage. In the result the ground No. 2 of appeal raised by the assessee is partly allowed and the grounds of appeal raised by revenue are dismissed.

22. In the result the appeal of revenue is dismissed and the appeal of the assessee is partly allowed."

8. These appeals filed by the Revenue and Assessee, relate to Bhanwarlal Jain ground cases. The Assessing Officer made 100% addition of bogus purchases. On appeal by assessee, Ld. CIT(A) restricted the addition to 5% of bogus purchases by following the judgment of Hon'ble Gujarat High Court in the case of M/s Mayank Diamond Pvt. Ltd. (2014) (11) TMI 812 (Guj.).

9. The Ld. DR for the Revenue argued before us that assessee was engaged in taking bogus purchase bills/accommodation entry of bogus purchases therefore addition made by the assessing officer should be sustained.

10. Whereas, Ld. Counsel for the assessee contended that addition restricted by Ld. CIT(A) at the rate of 5% of bogus purchase should also be deleted. He also stated that assessee submitted bills, vouchers stock regular and bank statements, so there should not be addition in the hands of assessee.

11. We note that the issue under consideration is squarely covered by the decision of the Co-ordinate Bench in the case of Pankaj K. Choudhary (supra) and there is no change in facts and law, therefore respectfully following the binding precedent, we confirm the addition at the rate of 6% of bogus purchases / accommodation entry in respect of bogus purchases.

12. Learned Counsel for the assessee informs the Bench that assessee does not wish to press ground no.1 relating to reassessment for assessment years 2007-08 and

2008-09, the assessee also does not wish to press ground about rejection of books of account. In nutshell, assessee has pressed ground on merit which is covered by the coordinate bench in the case of Pankaj K. Chaudhary (supra). Except to AY.2007-08 and 2008-09, assessee has pressed ground relating to reopening, which is being adjudicated in subsequent paras of this order.

13. Before parting, we would like to deal with other arguments made by Ld. Counsel for the assessee, challenging the validity of reopening of assessment under section 147 of the Act. The Id Counsel contended that reasons recorded by the assessing officer is bad in law. The reasons were recorded based on the report of investigation wing, which came late in the possession of the assessing officer whereas; the reasons were recorded prior to the report of the investigation wing. Besides, the assessing officer did not dispose of the objection of the assessee.

14. On the other hand, Id DR for the Revenue submitted that objections raised by the assessee were disposed of by the assessing officer, vide letter dated 09.09.2014 of the assessing officer (vide para No.3 of assessment order). Besides, the assessment was reopened based on information available before the assessing officer and not based on the report of investigation wing, hence reasons were recorded by the assessing officer as per the provisions of the Act. The Id DR pointed out that there is no infirmity in the reasons recorded by the assessing officer.

15. We have heard both the parties. Having gone through the entire gamut of facts and circumstances, we are of the view 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/mere accommodation entry on bogus purchases, and therefore bogus, (clearly meaning that what was disclosed was false and untruthful). The Hon'ble Supreme Court in the case of Phul Chand BajrangLal 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 Phul Chand 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."

16. 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."

17. 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.

18. 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/bogus 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. Therefore, we dismiss the ground raised by the assessee challenging the validity of reassessment.

19. In the result, appeals filed by assessees (ITA Nos. 889 to 893/AHD/2017 and ITA Nos. 761 to 762/SRT/2018) are dismissed, whereas the appeal filed by the Revenue (ITA No.916 to 920/AHD/2017 and ITA Nos. 753 to 754/SRT/2018) are partly allowed.

Registry is directed to place one copy of this order in all appeals folder / case file(s).

Order is pronounced in the open court on 28/06/2022 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

सुरत /Surat

दिनांक/ Date: 28/06/2022

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

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

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat

// TRUE COPY //