

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 327/Srt/2019 (Assessment Year: 2013-14)  
**(Hearing in Virtual Court)**

Sanjay Vimal Jain, 5/1129-30 401, Nisit Diamond Complex, Contractor No Khancho, Hathifalia, Surat-395003. <b>PAN No. AIFPJ 1376 F</b>	Vs.	I.T.O., Ward-2(3)(8), Surat.
Appellant/ assessee		Respondent/ revenue

Appellant represented by	Shri Mehul Shah, CA
Respondent represented by	Shri Vinod Kumar, Sr. DR
Date of hearing	04/07/2022
Date of pronouncement	04/07/2022

**Order under section 254(1) of Income Tax Act**

**PER: PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-1, Surat (in short, the Id. CIT(A) dated 09/04/2019 for the Assessment year 2013-14. The assessee has raised following grounds of appeal:

- "1. On the facts and the circumstances of the learned Commissioner of income Tax (Appeal) erred in confirming certain purchases as in-genuine on the basis of certain documents and statements recorded by DST without the knowledge of Assessee and without granting the copies of those documents or opportunity to cross examine them and therefore the same could have not been considered as evidence and therefore the same is bad in law.*
- 2. On the facts and the circumstances of the learned Commissioner of income Tax (Appeal) erred in confirming certain purchases as in-*

*genuine after acknowledging that assessing officer has not brought out any material on record or made any efforts to establish de-jure connection between the supplier entity and so called Gautam Jain group.*

3. *On the facts and the circumstance of the case the Commissioner of Income Tax (Appeal) erred in confirming addition u/s.69C treating the certain purchases made as ingenuine without appreciating that the said purchases were duly recorded in the books of accounts and the payments were made through account payee cheques out of the funds generated from the regular business of the appellant and therefore there could be no addition u/s.6SC which applies only when the source of the payment is not explained.*
4. *The learned Commissioner of income Tax (Appeal) erred in sustaining disallowance of Rs. 8,37,500/- being 5% of the Purchases from certain Parties purported to be part of Gautam Jain Group without appreciating that the said Purchases were fully evidenced by the Invoices, Challans, Stock Records and further the suppliers Confirmation and their Return of Income were also filed and the material was subsequently sold.*

*The Appellant craves the leave to add, amend, alter and/or delete any of the above grounds of appeal at/or before the time of hearing.”*

2. Brief facts of the case are that the assessee is a proprietor of Laxmi Enterprises engaged in trading of diamonds and gold, filed his return of income for the Assessment year (A.Y.) 2013-14 on 20/09/2013 declaring total income of Rs. 7,65,930/-. In the computation of income and book results, the assessee has shown turnover of Rs. 63.05 crores and net profit of Rs. 6,98,521/- which is 0.11%. The case of assessee was selected for scrutiny. During the course of assessment proceedings, the Assessing

Officer noted that the assessee has made a transaction with Khushi Gems Pvt. Ltd., the entity managed by Gautam Jain group which was indulged in providing accommodation entries in the form of unsecured loans, bogus purchase and sales to the interest parties. A search action was conducted by the Investigation Wing, Mumbai on 03/10/2013 on Gautam Jain group wherein it was established from the statement of Gautam Jain and the material seized from the premises of Gautam Jain, that they were indulged in providing accommodation entries by fictitious companies, proprietary firm etc. Khushi Gems Pvt. Ltd. is also one of the entity managed by Gautam Jain who was providing accommodation entry. No stock of diamond or jewellery was found at the premises of Gautam Jain or various entities managed by Gautam Jain. The Assessing Officer recorded that the assessee has shown purchases of Rs. 1.67 crores from Khushi Gems Pvt. Ltd. On the basis of his aforesaid observation, the Assessing Officer issued very detailed show cause dated 11/03/2016 as recorded in para 7 of assessment order, recording modus operandi of Gautam Jain and the assessee was asked as to why the books of account be not rejected and purchases shown from bogus entity of Rs. 1.67 crores should not be treated as bogus and added to the income of assessee. The assessee filed his reply on 18/03/2016. In the reply, the assessee contended that he is engaged in trading of diamond, gold and gold jewellery. The assessee has

made purchases from Khushi Gems Pvt. Ltd. and payment was made through banking channel. All purchases were sold to various parties. The assessee furnished purchase register, sale register and stock register and claimed that the purchases of assessee are genuine. The reply of assessee was not accepted by the Assessing Officer by taking a view that the assessee has made general and vague reply. The Assessing Officer on the basis of information shared with him by the Investigation Wing, held that the income tax department conducted a search and seizure action on Gautam Jain group and it was conclusively proved that those parties managed by Gautam Jain were providing accommodation entries. The books of account of assessee to the extent of purchases shown from such bogus parties remained unverifiable. The Assessing Officer rejected the books of account and made addition of entire purchases of Rs. 1.67 crores in the assessment order dated 23/03/2016.

3. Aggrieved by the addition in the assessment order, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee filed detailed written submission as recorded in para 5 of his order. In the written statement, the assessee reiterated the similar contention as raised before the Assessing Officer that purchases shown by assessee are genuine, payments were made through account payee cheques/RTGS. The name of disputed supplier is reflected in the bank statement. The assessee

has no source of unaccounted funds, thus possibility of making any unexplained payment could not arise. The Assessing Officer relied on the third party information and made the addition. In without prejudice the submission, the assessee contended that the concept of real income be adopted and only profit embedded in the disputed purchases could be brought to tax. The margin in the diamond trading is ranging from 1% to 3%. The assessee also furnished summary of stock register.

4. The Id. CIT(A) after considering the submission of assessee held that the Assessing Officer relied on the statement of Gautam Jain which was allegedly retracted later on. The assessee produced confirmation from supplier, invoices, ledger account, and shown payment through bank, stock register showing movement of stock and corresponding sales. The Assessing Officer has not discarded or rebutted the material evidence nor doubted the sale. The assessee in stock summary has demonstrated that quantity details are duly entered in the stock register and corresponding sales have been made. Thus, the impugned purchases cannot be denied in quantitative terms. However, the Id. CIT(A) by referring his earlier order in Gagnani Impex in Appeal No. CAS-3/512/2015-16 dated 24/11/2016 for A.Y. 2013-14, wherein he also relied upon the decision in Bholanath Polyfab Pvt. Ltd. in ITA No. 137/Ahd/2009 order dated 26/07/2011 and restricted the addition to the extent of 5% of similar impugned/bogus

purchases being reasonable and to avoid the possibility of revenue leakage. The Id. CIT(A) held that his decision in Gagnani Impex (supra) has been confirmed by the Jurisdictional Tribunal. Thus, following his earlier order and order of the Tribunal in other similar cases, restricted the disallowance to the extent of 5% of impugned/disputed purchases. Further aggrieved, the assessee has filed the present appeal before the Tribunal.

5. We have heard the submission of the learned Authorised Representative (Id. AR) of the assessee and the learned Sr. Departmental Representative (Sr.DR) for the revenue and have gone through the orders of the lower authorities carefully. The Id. AR of the assessee submits that the purchases shown by the assessee are genuine. The assessee furnished complete details to prove the genuineness of purchases which consists of stock register, purchase register, purchase invoices of Khushi Gems Pvt. Ltd., account confirmation by Khushi Gems Pvt. Ltd. The sale of assessee was not disputed. The sale is not possible in absence of purchases. The assessee proved one to one nexus of purchases. The Id. AR submits that the disallowance of purchases at 5% is on higher side, it may be reduced to 1 or 2% keeping in view that the assessee has furnished complete details to substantiate its purchases.
6. On the other hand, the Id. Sr. DR for the revenue submits that the Investigation Wing of Income Tax Department, Mumbai made a search

action on Gautam Jain group on 03/10/2013 wherein incriminating material and evidence was gathered which proved that Gautam Jain and his associates were indulged in providing accommodation entries in the form of sale and purchase without actual delivery of goods. No stock of diamonds was found at the time of search. In the statement of Gautam Jain and his associates they confirmed that they were merely providing accommodation entry without actual delivery of goods. The Id. CIT(A) has already granted substantial relief to the assessee, thus the assessee has not entitled for any further relief. The Id. CIT(A) in a reasonable manner restricted the addition to the extent of 5% of the purchases only to avoid the possibility of revenue leakage. The Id. Sr. DR for the revenue prayed for dismissal of appeal.

7. We have considered the rival submissions of the parties and have gone through the orders of the lower authorities carefully. There is no dispute that the assessee has shown purchases from Khushi Gems Pvt. Ltd. of Rs. 1.67 crores. The assessee has not disputed that the seller party from which the assessee has shown purchases were not belonging from Gautam Jain group. The assessee claimed that the purchases are genuine which are supported by purchase invoices account, confirmation, purchase register, stock register, sale and purchase register and further the payments were made through account payee cheques. We find that the

Assessing Officer made addition of 100% of the purchases shown from the said Hawala/bogus trader who were allegedly engaged in providing accommodation entries. The additions were basically made on the basis of information with the assessing officer. We find that the Assessing Officer has not given any specific finding on various documentary evidences and made addition of 100% of purchases shown from the entity managed by Gautam Jain and his group. We find that the Id. CIT(A) on appreciation of fact that the Assessing Officer has not disputed the sale of assessee nor given any finding on various documentary evidences. The Id. CIT(A) by following his earlier order in Gangani Impex (supra) and other case laws referred by him in his order, restricted the addition to the extent of 5% of purchases. In our view, the Id. CIT(A) has granted relief by restricting a reasonable disallowance to avoid the possibility of revenue leakage.

8. Before us, the Id. AR of the assessee vehemently submitted that the purchases shown by the assessee are genuine which are supported by various documentary evidences. We are not convinced with the submission of Id. AR of the assessee, keeping in view the fact that Gautam Jain and his group was indulged in providing accommodation entries without actual delivery of goods. The combination of this Bench while deciding the appeal of Gautam Jain, Rajendra Jain and his other associates, Pankaj Chaudhary and others have already confirmed the addition in their appeal and

confirmed the action of department about treating them as an entry provider. Therefore, we do not find any merit in the grounds of appeal raised by the assessee for seeking further relief and we uphold the order of Id. CIT(A). Hence, all the grounds of appeal, which are basically against restricting the addition of 5% of the disallowances of disputed purchases, are dismissed.

9. In the result, this appeal of assessee is dismissed.

Order pronounced in the open court on 4<sup>th</sup> July, 2022 and result was placed on the notice board.

Sd/-  
**(Dr. ARJUN LAL SAINI)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat, Dated: 04 /07/2022

*\*Ranjan*

Copy to:

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

By order

Sr.Private Secretary, ITAT, Surat