

IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, MUMBAI  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 578/Mum/2020

(A.Y: 2007-08)

Mr. Shahzad Ebrahim Zaveri 301/302 Buildage House, 146, Veer Savarkar Marg, Mahim (w), Mumbai - 400016	Vs.	ITO, - 21(3)(3) Piramal Chamber, Lalbaug, Parel, Mumbai - 400012
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAPZ0335M		
Appellant	..	Respondent

Appellant by :	Ms.Dinkle Hariya.AR
Respondent by :	Mr.Pramod Nikalje.DR

Date of Hearing	16.06.2022
Date of Pronouncement	20.06.2022

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The assessee has filed the appeal against the order of the CIT(A)- National Faceless Appeal Centre (NFAC) Delhi passed u/s 143(3) and 250 of the Act. The assessee has raised the following grounds of appeal:

*1. NATURAL JUSTICE*

*1.1 The Learned Commissioner of Income - tax (Appeals) - 33, Mumbai ["Ld. CIT (A)"] erred in not granting proper, sufficient and adequate opportunity of being heard to the Appellant while framing the appellate order.*

1.2 It is submitted that, in the facts and the circumstances of the case, and in law, the appellate order so framed be held as bad and illegal, as:

(i) The same is framed in breach of the principles of natural justice; and

(ii) The same is passed without application of mind to the facts and the submissions brought on record by the Appellant.

WITHOUT PREJUDICE TO THE ABOVE

## 2. REASSESSMENT

2.1 In the facts and the circumstances of the case, and in law, the initiation of the reassessment proceeding and framing the assessment of the Appellant by invoking the provisions of section 147 r.w.s. 148 of the Income tax Act, 1961 ["the Act"] was bad in law, in as much as:

(i) The case of the Appellant did not fall within the parameters laid down by section 147 r.w.s. 148 of the Act;

(ii) The necessary preconditions for initiating and completion thereof were not satisfied.

2.2 It is submitted that in the facts and the circumstances of the and in law, the assessment framed is bad, illegal and void.

3.1 The Ld. CIT (A) erred in confirming the action of the A.O. in making addition to the extent of Rs. 5,00,000/-, being 12.5% of Rs. 40,00,000/- out of total alleged bogus purchases / unexplained expenditure u/s. 69C of the Act.

3.2 It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.

3.3 Without prejudice to the above, assuming - but not admitting - that some addition was called for, it is submitted that the computation of the addition made by the A.O. is not in accordance with the law, is arbitrary and excessive.

LIBERTY

*4. The Appellant craves leave to add, alter, delete or modify all or any the above ground at the time of hearing.*

2. The brief facts of the case are that the assessee is an individual and is engaged in the business of manufacturing and trading of jewellery. The assessee has filed the return of income for the A.Y 2007-08 on 23.10.2007 declaring a total income of Rs. 17,91,040/- and the return of income was processed u/s 143(1) of the Act. As per the information from the office of DGIT(Inv) Mumbai, search and survey action carried out in respect of Shri Praveen Kumar Jain & group who are engaged in providing accommodation entries and the assessee is one of the beneficiary. The assessee has obtained accommodation bills/purchase bills from two parties aggregating to Rs. 40 lakhs. Therefore the A.O. has reason to believe that the income has escaped assessment and issued notice u/s 148 of the Act. In compliance to the notice, the Ld. AR of the assessee filed a letter on 23.10.2007 to treat the return of income filed earlier as due compliance. Further notice u/s 143(2) and 142(1) of the Act are issued. In compliance the Ld. AR of the assessee appeared from time to time and filed the details. The A.O. found that

the assessee is a proprietor of M/s. Minawala Gems engaged in the business of manufacturing of jewellery items and during the year under consideration the assessee has declared gross profit @ 22.35%. The A.O to test check the genuineness of transaction of purchases has issued notice u/s 133(6) of the Act on the both the parties. The parties have responded to the notice and explained the transaction with the information and details. but the A.O. dealt on the various aspects and was not satisfied with the submissions and estimated the profit element GP @22.35% on alleged bogus purchases which worked out to Rs.8,94,000/- and assessed the total income of Rs.26,85,040/- and passed the order u/s 143(3) r.w.s 147 of the Act dated 25.03.2015.

3. Aggrieved by the order the assessee has filed an appeal before the CIT(A). Whereas, the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the AO and has restricted the addition to @12.5% of alleged bogus purchases and partly allowed the assessee appeal. Aggrieved by the CIT(A)order, the assessee has filed an appeal with the Hon'ble Tribunal.

4. At the time of hearing Ld. AR submitted that the CIT(A) has erred in restricting the addition @12.5% irrespective of the fact that the assessee has disclosed higher GP rate and the margin of profits range from 2% to 3%. The contentions of the Ld. AR that if the addition/disallowance is made on estimation, the setoff/adjustment of G P rate to be allowed and substantiated the submissions with the paper book and judicial decisions and prayed for allowing the assessee appeal. Contra, the Ld.DR supported the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. Prima-facie the Ld. AR submitted that the CIT(A) erred in restricting the GP @12.5% which is higher in comparison to the industry standards. The contentions of the Ld.AR that the assessee is already offering the GP rate @ 22.35% in the books of accounts on the genuine and non genuine purchases. Therefore the addition @12.5% will be at higher side. But fact remains that the assessee has accepted the transaction as a bogus transactions. We find the submissions of the Ld. AR are realistic on the aspects of considering the profit

element. We find that the assessee has already offered the profit @ 22.35% on the total purchases and the CIT(A) has restricted the addition @12.5% of alleged bogus purchases which is on higher side considering the nature of business activities. Accordingly, to meet the ends of justice we restrict the addition sustained by the CIT(A) @3% and modify the CIT(A) order and we make it clear that this profit element@3% is applicable to this assessee year only. And we partly allow the grounds of appeal of the assessee.

6. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 20.06.2022.

Sd/-  
(GAGAN GOYAL)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 20.06.2022

KRK, PS

**आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)

ITA No. 578/Mum/2020  
Mr. Shazad Ebrahim Zaveri, Mumbai

- 7 -

4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, Mumbai / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

सत्यापित प्रति //True Copy//

1.

( Asst. Registrar)  
ITAT, Mumbai