

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &
SHRI GAGAN GOYAL, AM**

आयकरअपीलसं./ I.T.A. No. 3675, 3676, 3677 & 3678/Mum/2018
(निर्धारणवर्ष / Assessment Years: 2006-07, 2007-08, 2008-09 &
2009-10)

M/s Rosy Blue (India) Pvt. Ltd. 1608/09, Prasad Chambers, Opera House, Mumbai-400 004	बनाम/ Vs.	DCIT Cen. Cir-46, [now DCIT- CC - 8(3)], R. No. 659, 6 th floor, Aayakar Bhavan, Churchgate, Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN No. AACCR2413B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थीकीओरसे/ Appellant by	:	Shri Nitesh Joshi & Shri P. P. Bhandari, Ld. ARs
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri R. M. Madhvi, Ld. DR
सुनवाईकीतारीख/ Date of Hearing	:	27.06.2022
घोषणाकीतारीख / Date of Pronouncement	:	14.07.2022

आदेश / O R D E R

Per AMIT SHUKLA, Judicial Member:

The aforesaid appeals have been filed by the assessee against the separate impugned order of even date 26.03.2018, passed by Ld. CIT (Appeals)-50, Mumbai for the quantum of assessment

passed u/s 143(3) r.w.s. 153A for the AYs 2006-07, 2007-08, 2008-09 & 2009-10.

2. Since the grounds raised as well as issues involved in all the appeals are common and are arising identical set of facts, therefore the same were heard together and disposed of by way of this consolidated order.

3. In AY 2006-07, assessee has raised the following grounds:-

1. The learned Commissioner of Income-tax (Appeals) erred in upholding the additions of Rs. 2,75,44,694/- made on account of Labour Charges and Bogus Purchases in the assessment proceedings under section 153 A of the Act.

It is submitted that the Appellant had been assessed for the year under consideration and that no proceedings were pending as on the date of search. No addition can be made to the assessed income other than the income determined on the basis of incriminating documents/evidence found during the course of search. Implunged addition made in the proceedings under section 153A of the Act is without jurisdiction and bad in law.

2. The learned Commissioner of Income-tax (Appeals) erred in upholding the addition of Rs. 2,73,76,892/- made on account of labour charges paid to following parties:

	Rs.
1. M/s. Kamal Diamonds	1,18,15,767
2. M/s. S.R. Diamonds	24,77,128
3. M/s. Vishala Diamonds	1,30,83,997
TOTAL	2,73,76,892

It is submitted that the appellant had furnished full and complete details of labour charges paid to above referred parties. The expenditure is incurred wholly and exclusively for the purpose of business of the appellant as such no disallowance is called for.

4. Apart from that, assessee has raised following as additional grounds, which reads as under:-

The learned Commissioner of Income-tax (Appeals) erred in holding that the purchase made from M/s. Vitrag Jewels is 'accommodation entry' and thereby disallowing Rs. 1,67,802/- being 5% of amount of Purchase of Rs. 33,56,044/-.

It is submitted that appellant had purchased diamonds from the aforesaid party in normal course of business and the goods purchased were duly sold by the appellant. It is further submitted that the appellant had furnished full and complete details of purchases from these parties and there is no reason for the learned Commissioner of Income-tax (Appeals) to hold that these are accommodation entries.

5. The brief facts of the case are that, Assessee Company is engaged in the business of manufacturing and exporting of rough and polished diamond. The return of income for AY 2006-07 was filed on 30.11.2006, declaring total income of Rs. 33,04,50,393/-.

Thereafter the assessment was completed u/s 143(3) assessing the total income of Rs. 38,65,85,460/-. Against the said order, assessee has filed the appeal before Ld. CIT(A) who granted part relief; and thereafter, both the parties had filed the appeal before the Tribunal which has been disposed of vide order dated 30.07.2010.

6. Thereafter, a search and seizure action was carried out u/s 132 on 25.08.2011 at the residence of the Directors and business premises of Assessee Company. Consequently, notice u/s 153A was issued on 11.12.2012 and in response, assessee has filed the return of income on 31.01.2013 declaring total income of Rs. 33,25,00,166/-.

7. The additions which has been challenged before us is with regard to unapproved purchases based on peak calculation of Rs. 33,56,044/-; and addition of Rs. 2,73,76,892/- being payment to three labour contractors.

8. The issues for adjudication before us are, firstly, whether the above addition falls within the scope of assessment u/s 153A, i.e., whether the aforesaid additions are based on any incriminating material or seized document found during the course of search; and

secondly, whether on merits, such additions or disallowances are sustainable.

9. As noted above, assessment for the AY 2006-07 was already completed and had attained finality on the date of search, i.e., 25.08.2011 and therefore, in terms of second proviso to section 153A, it is to be reckoned as 'unabated assessment'. And in case of unabated assessment, addition if any which can be made within the scope of assessment u/s 153A, has to be based on incriminating material found during the course of search.

10. In so far as the addition on account of purchases are concerned, the AO has noted that information was received from the Investigation Wing, Mumbai that in the case of Rajendra Jain Group and other groups, a search and seizure action was carried on 03/10/2013, wherein it was found that certain concerns belonging to such group are engaged in providing accommodation entries in the nature of bogus sales. The AO noted that the assessee company has booked purchases from the following companies:-

<i>S.NO.</i>	<i>NAME OF THE COMPANIES</i>	<i>GROUP</i>
1.	<i>Daksh Diamonds</i>	<i>Bhanwarlal Jain Group</i>
2.	<i>Mohit Enterprises</i>	
3.	<i>Mukti Exports</i>	
4.	<i>Nice Diamonds</i>	
5.	<i>Sun Diam</i>	<i>Rajendra Jain Group</i>
6.	<i>Aadi Impex</i>	
7.	<i>Vitraag Jewels</i>	
8.	<i>AVI exports</i>	
9.	<i>Moulimani Impex Pvt. Ltd.</i>	
10.	<i>Nayan Gems</i>	<i>Sanjay Choudhary Group</i>
11.	<i>Kangan Jewels Pvt. Ltd.</i>	<i>Dharmichand Group</i>

11. The AO has mentioned in his order that he issued notice u/s 133(6) to few of the purchase parties at the address provided by the assessee and the said party did not respond to the said notice. He then asked the assessee to establish the genuineness of the payment made for the purchases. In response, assessee filed a

detail reply which has been incorporated at page no. 9 & 10 of assessment order, same are reproduced as under:-

'Rosy Blue India Pvt. Ltd is engaged in the business of cutting and polishing rough diamonds and export of cut and polished diamonds. We are the sight holder of diamond Trading Co Ltd UK since 1979. We have our own manufacturing facilities at Kandivali, Mumbai and at Indore, MP. In addition to this we have a team of freelance artisans doing cutting and polishing of rough diamonds mainly for our company. Our turn over is in the range of 2,500 Crores to 3,000 Crores comprising mainly of exports all over the world. In order to meet market requirements we do purchase cut and polished diamonds from local market. These purchases are mainly carried through brokers. We confirm that we had purchased cut and polished diamonds from the parties listed in your above referred notice. All transactions with these parties are genuine and cannot be alleged as bogus mere on the statement of a person. We are not aware under what circumstance and coercion the persons referred to in your notice have made statements based on which you have concluded that our purchases from these parties are bogus or non genuine. It will be necessary to re-examine these parties to bring the truth on record, whether it was their purchases which were bogus or the sales to us.

We reiterate that all our purchases from these parties are genuine and real in as much as we had received cut and polished diamonds which have been sold in international/local markets.

These transactions can be verified from the stock records regularly maintained by us. All purchases were duly recorded in these books of account. We have maintained and regular books of account which have been audited by an independent firm of chartered accountants. We have made sales out of these purchases which are duly confirmed by the entries in regular books of account All payments for these purchases were made by account payee cheques drawn on national banks. We have maintained full and complete records of purchases and sale of cut and polished diamonds. Complete quantity tally of purchases and sale are on record. In order to substantiate transactions with these parties we are enclosing herewith the following further documents/details.

- 1. Ledger accounts of parties referred to in your notice*
- 2. Purchase invoices confirming purchases of cut and polished diamonds*
- 3. Name, Address and PAN of the broker to these transactions*
- 4. Bank statements reflecting payments made for the purchases*
- 5. Extracts of Stock records to substantiate receipt of goods and corresponding sales*
- 6. Our sales invoice with relevant bank statements confirming receipt of sale proceeds into our bank accounts*
- 7. Statement giving details of Cut and Polished diamonds purchased from alleged parties together with its subsequent movement with reference to sales*

In view of the above facts it is submitted that the all transactions from alleged parties are genuine and cannot be treated as bogus. Without prejudiced to our submissions it is submitted that goods received under purchases from above referred parties were sold and the entire sale proceeds have been duly accounted for and included in the taxable income in respective years, disallowance if any shall be restricted to peak amount involved. A statement giving invoice wise details of purchases together with details of each payment mad against these purchases is enclosed which is self explanatory.'

12. Ld. AO despite noting that assessee is maintaining day to day stock register and all invoices of purchases and sales are recorded, however since parties are non-existent, therefore these are not genuine purchase. He held that assessee might have taken accommodation entries from the bogus parties wherein goods have not been received from the parties from whom it has shown purchased and assessee has not produced any material to substantiate the same, therefore, it is not verifiable. After referring various judgments, he held that additions should be made in respect of peak amount of investment made out of accounted money by the assessee for purchase of the material from the bogus parties. The peak calculation was made on the following basis:-

a) Cash has been paid on date on which the bogus purchase bill has been entered in the books of accounts;

b) Cash has been received back by the assessee on the date on which the cheque has been issued by it to bogus parties.

c) Ledger accounts of all the above mentioned hawala parties have been merged to work out the actual cash receipt or payment made by the assessee on day to day basis.

The working of peak calculation are as under:-

<i>ROSY BLUE (INDIA) PVT LTD</i>		
<i>Summary of Year wise Peak Credit</i>		
<i>Period</i>	<i>Purchases</i>	
<i>2006-07</i>	<i>33,56,044</i>	<i>33,56,044/-</i>
<i>2007-08</i>	<i>73,74,298</i>	<i>40,18,254/-</i>
<i>2008-09</i>	<i>35,29,709</i>	<i>-</i>
<i>2009-10</i>	<i>70,81,256</i>	<i>-</i>
<i>2010-11</i>	<i>334,07,103</i>	<i>2,60,32,805/-</i>
<i>2011-12</i>	<i>166,69,752</i>	<i>-</i>
	<i>Total</i>	<i>3,34,07,103/-</i>

Accordingly, an amount of Rs 33,56,044/- was added back to the total income of the assessee.

13. In so far as disallowance made on account of labour charges, AO observed that during the course of search, certain blank cheques signed by the authorized signatories of Yash Enterprises, Divya Enterprises, Om Sai Enterprises, Shree Sai Baba Enterprises, S.V. Diamonds, Vishal Diamonds, Kamal Diamonds and S.R. Diamonds were found. Even blank letter heads and seals of these concerns were found at the factory. Mr. Hitesh Mehta, in his statement recorded at the above premise, has also stated that the bills of the above concerns are made from this premise itself and all parties are brokered by one person named Shri Palande. Mr. Hitesh Mehta has also stated that the labour is recruited by Rosy Blue India Private Limited and yet a payment is made to these concerns after deducting TDS. Then the money is withdrawn and salary is given to all the employees. Even, books of all these concerns are maintained at this premise. Thus, AO deduced that it is evident that no contractual services are being rendered by the above mentioned concerns and yet payments are being made to these

concerns without any service being rendered by them. The same has also been seconded by the statement of Mr. Nirav Shah taken during the course of survey on R.B. Cutters Private Limited. He also issued notice u/s 133(6) to the above mentioned 8 parties which according to him returned 'Unserved'. The assessee company had not made any transaction with Yash Enterprises, Divya Enterprises, Om Sai Enterprises, Shree Sai Baba Enterprises and S.V. Diamonds. The following payments have been made to the other three proprietary firms on account of labour charges:-

Sr. No.	Name. of the Party	A.Y.	Amount (In Rs.)
1.	Kamal Diamonds	2006-07	1,18,15,767/-
2.	S.R. Diamonds	2006-07	24,77,128/-
3.	Vishala Diamonds	2006-07	1,30,83,997/-
		Total	2,73,76,892/-

Thus, Ld. AO held that assessee has not discharge his onus and accordingly, disallowed the claim of disallowance of Rs. 2,73,76,892/-.

14. Ld. CIT (A) has confirmed the addition as made by the AO on both counts.

15. Before us, Ld. Counsel for the assessee submitted that assessee is engaged in the business of procuring rough diamonds mainly from abroad, cutting and polishing them and then selling the same predominantly in the export market. For the purposes of cutting and polishing the diamonds, the assessee engages the services of labour through various contractors. Considering the safety and security of its raw material and finished goods, the labour engaged through the labour contractors have to work from the assessee's premises, and in the present case, from the factory premises at Kandivali. Total payment to such labour contractors during the year was Rs. 45,28,61,9387-. Out of this, the AO was satisfied with all payments except for payment to three parties aggregating to Rs. 2,73,76,892/-. He pointed out from page 17 of volume-II of the Paper book to a statement of yield from production and labour charges per carat for the period from assessment years 2003-04 to 2009-10 (i.e., 3 years before and after the relevant year). During this period, the labour charges per carat ranged from Rs.

459.13 per carat to Rs.794.90 per carat, with the lowest for the year under consideration i.e., Rs. 459.13 per carat. He submitted that, in all the other years entire payment to labour contractors has been accepted and there has been no disallowance of any part thereof.

16. Ld. Counsel further submitted that in the course of search at the assessee's premises, the investigating team found blank letterheads and blank signed cheques of the above-referred labour contractors. Based thereon, statement of Mr. Nirav Shah was recorded on 25.08.2011 and Mr. Hitesh Mehta on 26.08.2011. The relevant question insofar as the statement of Mr. Nirav Shah is concerned is Question-10 appearing at Page 3 of Paper book, Volume-II. Similarly, the relevant Question in the statement of Mr. Hitesh Mehta is Question-10 at Page 127 of Paper book, Volume-I, Part-I. A bare perusal of both the statements will confirm that the labour coordinator was Shri Palande. The labour bills used to be prepared on the letterhead of these concerns which used to be subsequently signed by the contractor. The blank signed cheque obtained by the Assessee from the labour contractor was used to issue instructions *"to the bank to credit the same in the salary*

account of the employees." This fact stands confirmed in the aforesaid statement of Mr. Nirav Shah & Mr. Hitesh Mehta and forms part of the search material. Therefore, the Assessee would first make payment of labour charges after deduction of TDS to the bank account of the labour contractor and based on the cheque of the labour contractor, amounts would be transferred from his account directly to the employees account by the bank. Therefore, there was no involvement of cash at any stage and this is also not the case of the Revenue. Neither there is any dispute on the availing of services through the labour contractor nor has the Revenue alleged at any point of time that the payments from the said bank account were not made to the employee's account. The services of the said labour contractors had been discontinued from 2005-06 i.e., more than five years before the date of search. The aforesaid documents remained in the premises after the discontinuation of the arrangement with the aforesaid parties without any one paying any attention to the same. They were of no relevance after the discontinuance of the arrangement. For a material or information to be regarded as incriminating, he submitted that, it should divulge information which was earlier not available and may have the effect

of increasing the income. In the present case, it is not in dispute that the Assessee has engaged the services of labour contractors for engaging employees for cutting and polishing the diamonds. It is also not the case of the Revenue that the amount deposited in the bank account of the labour contractor has not been used for the purposes of making payments to employees or that cash has been withdrawn from the bank account of labour contractor which has flown back to the Assessee. In fact, in the statement of Mr. Nirav Shah and Mr. Hitesh Mehta recorded in the course of search, both of them have stated that the amount credited into the account of the labour contractor was transferred to the accounts of the concerned employees. This disallowance has been made only during the year under consideration and has been never made either in the past or the later years. On page-17 of Paper-book, Volume-II the Assessee has given a statement of labour charges per carat and yield from production from assessment years 2003-04 to 2009-10. The labour charges per carat for the year under consideration is the least i.e., Rs.459.13 per carat. In view thereof, the said information could not be regarded as incriminating in nature.

17. He further submitted that in support of its claim that the labour charges were genuine, the assessee produced before the A.O. and later on also before the CIT(A) the following information.

Reference to documents herein below is from Paper Book Vol. I part

II.

<i>Particulars</i>	<i>S. R. Diamonds</i>	<i>Kamal Diamonds</i>	<i>Vishala Diamonds</i>
<i>Copies of invoices of labour contractors</i>	<i>151 to 158</i>	<i>227 to 236</i>	<i>359 to 369</i>
<i>Debit note raised by the Appellant</i>	<i>185 to 196</i>	<i>256 to 278</i>	<i>377 to 398</i>
<i>Appellant's bank statement reflecting the payment</i>	<i>197 to 206</i>	<i>279 to 309</i>	<i>399 to 425</i>
<i>Bank Statement of labour contractor reflecting receipt</i>	<i>207 to 215</i>	<i>237 to 249</i>	<i>337 to 354</i>

<i>Ledger account</i>	<i>148 to 150</i>	<i>250 to 255</i>	<i>370 to 375</i>
<i>Confirmation of account</i>	<i>147</i>	<i>221 to 222</i>	<i>355</i>
<i>Income-tax return of Labour Contractor</i>	<i>144</i>	<i>216 to 219</i>	<i>310 to 335</i>

18. Ld. Counsel further submitted that the above referred information shows that the concerned labour contractors existed during the relevant period and they have provided the necessary services to the Assessee. Since the business with the aforesaid labour contractors have been discontinued from Financial Year 2005-06, their non-appearance before the AO after a period of 8 years thereafter should not lead to any adverse inference being drawn against the Assessee. The discontinuance of the said labour contractor is before the date of search and is independent of the same.

19. With regard to unapproved purchases, Ld Counsel submitted that assessee had purchased diamonds from Vitrag Jewels of Rs. 33,56,044/-. This is out of total purchases made during the year of

Rs. 704,80,98,296/-. The said purchases are duly supported by purchase invoices (see page 137). Corresponding Export Sales has been accepted. Bank Statement evidencing Payment to said Vitrag Jewels is also at Page 140. On 03.10.2013, that is, after more than two years of the search action on the Assessee, a search and seizure action was carried out on the Rajendra Jain Group of Companies. Based thereon information has been received by the AO from CIT Central-IV and DIT(Investigation)-II around 24.03.2014 in respect of the transactions with Rajendra Jain Group of Companies. Based thereon, the AO initiated enquires with respect to the aforesaid parties only on 25.03.2014 and passed his assessment order on 31.03.2014.

20. He pointed out that, from a bare perusal of the assessment order and the appellate order, it can be seen that, this addition has been made only for the reason that the said party did not respond to the notice issued under section 133(6) of the Act, which fact is incorrect. In this regard he submitted the notice under 133(6) as mentioned in the assessment order was though issued to various parties during the assessment proceedings, but was never issued to

Vitrag Jewels. In fact, the AO came across this information only on 24.03.2014 and he has passed the assessment order on 31.03.2014. He had no occasion to issue any notice to the said party under section 133(6) of the Act. The other parties to whom notices were issued under section 133(6) of the Act have given a satisfactory response and in fact no addition has been made in respect of the same. In view thereof, the said assertion is factually incorrect.

21. He further submitted that no incriminating material in relation to the said purchase has been found during the course of search. In fact, the search on the Assessee is on 25.08.2011 and the said information has come out of search action on the Rajendra Jain Group of Companies on 03.10.2013 which was sent by the DIT (Investigation)-II through the CIT Central-IV, Mumbai to the AO around 24.03.2014. Therefore the said addition in the assessment order passed under section 153A of the Act, is not justified.

22. On the merits of the matter, Ld. Counsel submitted that the Assessee has provided the necessary information by way of purchase invoices, stock records and sale invoices in respect of the

said purchases. The only reason for making the disallowance was that no response was made by the said party to whom the notice was allegedly issued under section 133(6) of the Act. This is despite the fact that no such notice was issued to the aforesaid party. In view thereof, even on merits the said addition is not justified.

23. He further submitted that, assuming without admitting that the aforesaid submissions of the Assessee is not accepted by the Tribunal, then, the Assessee submits that the Tribunal in its case for assessment year 2013-14, has held that the addition on this issue should be restricted to 2.5% of the amount of purchases.

24. On the other hand, Ld. DR strongly relied on the observation made by AO and Ld. CIT(A) and submitted that, once the AO has made inquiry u/s 133(6) and none of the parties have responded or assessee could not produce these parties before the AO, then the addition /disallowance made by AO is justified in law.

25. We have heard both the parties and perused the relevant findings given in the impugned order as well as material placed on record. In so far as addition on account of unapproved purchases, it has been brought on record that only purchase which is in dispute

is purchases made from Vitrag Jewels of Rs. 33,56,044/-, out of total purchases made during the year of Rs. 704.80 crores. Rest of the parties mentioned in the assessment order, no such purchases has been made, nor has been found from any material coming on record. For proving the genuineness of the purchases, assessee as noted above had filed purchase invoices, corresponding export sales, Bank statement evidencing Payment to Vitrag Jewels, copy of ledger account, extract of stock records to substantiate the goods and corresponding sales, statement giving details of cut and polished diamond purchases, etc. The AO has noted the name of various parties in the assessment order as noted supra. However, nowhere has he given the quantification of purchases from these parties. In fact it has been clarified that out of these parties, assessee had made purchases only with Vitrag Jewels and not from any other parties mentioned in the list. As brought on record, notice u/s 133(6) were sent to the parties from whom assessee had made purchases which has not been disputed and no addition has been made in those cases; and in case of Vitrag Jewels, no notice u/s 133(6) was issued. The AO came to know about this information only on 24.03.2014 and order was passed in 31.03.2014, therefore

he had no occasion to issue the notice to the said party. The entire premise of the AO is coloured by the fact that assessee had made purchases from the entities controlled by Rajendra Jain Group and other accommodation entry provider group. He had not even examined whether assessee had made purchases from any of these parties which has been mentioned at page no. 7 of the assessment order. All other parties to whom notices were issued u/s 133(6) have given their response and no addition has been made by the AO. Thus, the entire premise for making addition has no legs to stand once the purchase made from Vitrage Jewels, AO has not made any enquiry or sent notice u/s 133(6). Once the assessee had filed all the details of purchases, stock register and corresponding sales and the entire transaction are through banking channel and there is no discrepancy found either in the quantity of purchases or sales, then the addition on some hypothetical working peak investment as done by him cannot be sustained. The same is directed to be deleted.

26. Otherwise also, the aforesaid addition is not based on any incriminating documents or material found during the course of

search, *albeit* is has been made on the basis of search conducted after more than 2 years in case of different persons and based on certain information received on 24.03.2014, i.e., in respect of transaction of Rajendra Jain Group of companies. AO has sought to make the impugned addition which cannot be held to be on the basis of any seized or incriminating material found during the course of search of the assessee. Accordingly, the same is outside purview and the addition made u/s 153A is unabated assessment. In view of the judgment of Hon'ble Jurisdictional High Court in the case of **Murli Agro Products Ltd vs. CIT 49 Taxmann.com 172 and CIT vs. All Cargo Global Logistics Ltd. 374 ITR 645**. Thus, on this ground also, the addition cannot be sustained.

27. In so far as disallowance made to the labour contractor, the assessee company which is engaged in the business of procuring rough diamond from abroad, cutting and polishing it and then exporting the same. For cutting and polishing, the assessee company engaged the labours through various contractors which work from the assessee's premises. The total payment made during the year is more than 45.28 crores. Out of this, the AO has doubted

the payment made to three parties (as mentioned in earlier paragraph) aggregating to Rs. 2,73,76,892/-. Before us, Ld. Counsel demonstrated that the labour charges per carat was in consonance with the earlier years and in fact this year, the labour charges was much lower. In so far as the statement of Mr. Nirav Shah and Mr. Hitesh Mehta, they have confirmed that the labour coordinator was Shri Palande and the labour bills were prepared on the letterhead of these concerns which used to be signed by the contractor. It has also been explained that the blank signed cheque obtained by the assessee from the labour contractor was used to issue instructions to the bank to credit the same in the salary account of these labours. Therefore, the assessee first make payment of labour charges after deduction of TDS to the bank account of the labour contractor and based on the cheque of the labour contractor, amounts was transferred from the account of the contractor to the employees account. There is absolutely no dispute that assessee is not availing of services through the labour contractor or the payment from the said bank account was not made to the employee's account. In support of the payment of labour charges, assessee had produced copies of invoices of labour contractors,

Debit note raised by the assessee, assessee's bank statement reflecting the payment, Bank Statement of labour contractor reflecting receipt, Ledger account, Confirmation of account and Income-tax return of Labour Contractor. Once the assessee has produced these documents which has not been rebutted or found any defect or discrepancy, then no adverse inference can be drawn. In so far as no response of these contractors in compliance of notice u/s 133(6), it has been stated that assessee has not used these labour contractor from the subsequent years and therefore, after the expiry of 8 years, the assessee cannot be held responsible for any non-service of notice these parties. Hence this cannot be the basis for disallowing the payments.

28. During the course of hearing, we asked the Ld. Counnsel to clarify, whether assessee had complied with the laws relating to EPF and ESIC in respect of labour contractors which can corroborate the genuineness of the payments made to these labours through labour contractor. In response, it has been stated as under:-

1. This being an old matter (over 16 years) and due to paucity of time, the appellant was able to locate the following records confirming that the Contractors were duly registered with labour authorities and had complied with labour laws including payment of statutory dues such as PF and ESIC:

Kamal Diamond;

1. Payroll Register for February 2006
2. Duly acknowledged letters intimating concerned authorities regarding fulfilment of compliances under respective laws and closure of business:
 - a. Letter dated 11-08-2006 filed with Labour Commissioner
 - b. Letter dated 22-05-2006 filed with Director of Factories,
 - c. Letter dated 12-06-2006 filed with Regional Director, ESIC
 - d. Letter dated 10-06-2006 filed with Labour Welfare Fund
 - e. Letter dated 07-03-2007 filed with Asst. Provident Fund Commissioner
3. Letter filed by the appellant dated 03-08-2006 intimating labour authorities for termination of labour contractors and cancellation of registration obtained under labour laws
4. Profession Tax challans paid during FY 2005-06
5. Profession Tax Assessment Order dated 18-05-2007 (Form VI) for FY 2003-04 to FY 2005-06 accepting the returns filed by the company and cancelling the registration

Vishala Diamond:

1. Payroll Register for February 2006

2. Duly acknowledged letters intimating concerned authorities regarding fulfilment of compliances under respective laws and closure of business:

- a. Letter dated 11-08-2006 filed with Labour Commissioner
- b. Letter dated 22-05-2006 filed with Director of Factories,
- c. Letter dated 12-06-2006 filed with Regional Director, ESIC
- d. Letter dated 10-06-2006 filed with Labour Welfare Fund
- e. Letter dated 10-06-2006 filed with Profession Tax Officer
- f. Letter dated 07-03-2007 filed with Asst. Provident Fund Commissioner

3. Letter filed by the appellant dated 03-08-2006 intimating labour authorities for termination of labour contractors and cancellation of registration obtained under labour laws

4. Profession Tax challans paid during FY 2005-06

5. Profession Tax Assessment Order dated 17-08-2007 (Form VI) for FY 2002-03 to FY 2005-06 accepting the returns filed by the company and cancelling the registration.

S.R. Diamonds:

1. Payroll Register for November 2005

2. Duly acknowledged letters intimating concerned authorities regarding fulfilment of compliances under respective laws and closure of business:

- a. Letter dated 11-08-2006 filed with Labour Commissioner
- b. Letter dated 22-05-2006 filed with Director of Factories,
- c. Letter dated 12-06-2006 filed with Regional Director, ESIC
- d. Letter dated 10-06-2006 filed with Labour Welfare Fund

e. Letter dated 10-06-2006 filed with Profession Tax Officer f. Letter dated 07-03-2007 filed with Asst. Provident Fund Commissioner

3. Profession Tax Assessment Order dated 25-05-2007 (Form VI) for FY 2004-05 to FY 2005-06 accepting the returns filed by the company and cancelling the registration

4. ESIC Return (Form 6) and ESIC Challans for FY 2004-05 to FY 2005-06.

29. The aforesaid documents corroborate that these labours had worked for assessee and have been employed by these labour contractors to work for the assessee. And also go to prove the genuineness of the payments to the labourers and thus same cannot be disallowed.

30. Thus, on these facts and circumstances, the payment made to the labour contractors cannot be held to be non-genuine. Accordingly, the addition made by the AO on account of disallowance paid to labour contractor of Rs. 2,73,76,892/- is deleted.

31. In the result, the appeal of the assessee for AY 2006-07 is **allowed.**

32. In AY 2007-08, assessee has raised the following grounds:-

1. *The learned Commissioner of Income-tax (Appeals) erred in upholding the additions aggregating to Rs. 34,10,797/- made on account of legal and professional fees and Bogus Purchases in the assessment proceedings under section 153A of the Act. It is submitted that the Appellant had been assessed for the year under consideration and that no proceedings were pending as on the date of search. No addition can be made to the assessed income other than the income determined on the basis of incriminating documents/evidence found during the course of search. Impugned addition made in the proceedings under section 153A of the Act is without jurisdiction and bad in law.*

2. *The learned Commissioner of Income-tax (Appeals) erred in upholding the disallowance out of Legal & Professional fees paid to Mr. Shreenijin P.V. amounting to Rs. 9,00,000/- and Ms. Soni K.B. amounting to Rs. 9,00,000/- both aggregating to Rs. 18,00,000/- for the services availed.*

It is submitted that the expenditure is incurred wholly and exclusively for the purpose of business of the appellant as such no disallowance is called for.

3. *The appellant reserves the right to add to, alter or amend the Grounds of appeal.*

33. Similarly, in AY 2008-08, assessee has raised the following grounds:-

1. *The learned Commissioner of Income-tax (Appeals) erred in upholding the addition of Rs 6,27,385/- on account of Bogus Purchases made in the assessment proceedings under section 153A of the Act.*

It is submitted that the Appellant had been assessed for the year under consideration and that no proceedings were pending as on the date of search. No addition can be made to the assessed income other than the income determined on the basis of incriminating documents/evidence found during the course of search. Implunged addition made in the proceedings under section 153A of the Act is without jurisdiction and bad in law.

2. *The appellant reserves the right to add to, alter or amend the Grounds of appeal.*

34. In AY 2008-09, assessee has also raised the additional grounds, which are as under:-

1. *The learned Commissioner of Income-tax (Appeals) erred in upholding that the purchases from (i) Sun Diam (ii) Aadi Impex (iii) Vitraag Jewels (iv) Avi Exports are 'accommodation entries.'*

It is submitted that appellant had purchased diamonds from these parties in normal course of business and the goods purchased were duly sold by the appellant. It is further submitted that the appellant had furnished full and complete details of purchases from these parties and there is no reason for the learned

Commissioner of Income-tax (Appeals) to uphold that these are accommodation entries.

Without Prejudice to the above it is submitted that the learned Commissioner of Income-tax (Appeals) erred in enhancing of income by Rs. 6,27,385/- being 5% of amount of Purchases aggregating to Rs. 1,25,47,703/- treating these as accommodation entries.

2. The Learned Commissioner of Income-tax (Appeals) erred in upholding the addition of Rs. 14,00,00,000/- being the income already assessed vide order under section 143(3) of the Act dated 12.08.2011. It is submitted that the total income vide order under Section 143(3) of the Act was computed on "Estimated" basis and as such no further addition/disallowance can be made to such income.

35. Thus, in both the assessment years, one issue is with regard to bogus purchase wherein addition has been made by the AO exactly on the similar grounds and reasoning and for this year, he has made the addition on account of purchase of Rs. 40,18,254/- for AY 2007-08 and Rs. 6,27,385/- for AY 2008-09. Thereafter, Ld. CIT(A) has restricted the disallowance to 5% on amount of bogus purchases at Rs. 1,25,47,703/-. In both the assessment years, AO has noted exactly the same facts wherein he has made same name

of companies to whom he has alleged that assessee has made bogus purchases. The names of these parties are as under:-

<i>S.NO.</i>	<i>NAME OF THE COMPANIES</i>	<i>GROUP</i>
1.	<i>Daksh Diamonds</i>	<i>Bhanwarlal Jain Group</i>
2.	<i>Mohit Enterprises</i>	
3.	<i>Mukti Exports</i>	
4.	<i>Nice Diamonds</i>	
5.	<i>Sun Diam</i>	<i>Rajendra Jain Group</i>
6.	<i>Aadi Impex</i>	
7.	<i>Vitraag Jewels</i>	
8.	<i>AVI exports</i>	
9.	<i>Moulimani Impex Pvt. Ltd.</i>	
10.	<i>Nayan Gems</i>	<i>Sanjay Choudhary Group</i>
11.	<i>Kangan Jewels Pvt. Ltd.</i>	<i>Dharmichand Group</i>

36. However, the AO has given the same reasoning that these parties have not responded the notice issued u/s 133(6). The fact of the matter is that no addition has been made in respect of parties to whom notices u/s 133(6) had been issued by the AO and here in

this case, the addition has been made with respect of the following parties for which assessee had given the following details with reference to documents appearing in paper book:-

Assessment Year 2007-08:-

<i>Name of party</i>	<i>Purchase invoice</i>	<i>Bank statement</i>	<i>Stock records</i>	<i>Sales invoices</i>
<i>Moulimani Impex Pvt. Ltd.</i>	<i>133 to 134</i>	<i>135</i>	<i>161 to 291</i>	<i>292 to 341</i>
<i>Nayan Gems</i>	<i>128 to 131</i>	<i>127</i>		
<i>Nice Diamonds</i>	<i>138 to 154</i>	<i>155 to 160</i>		
<i>Vitrag Jewels</i>	<i>46 to 103</i>	<i>104 to 125</i>		

Assessment Year 2008-09:-

<i>Name of party</i>	<i>Purchase Invoice</i>	<i>Bank Statement</i>	<i>Stock records</i>	<i>Sales Invoices</i>
<i>Adi Impex</i>	<i>71 to 72</i>	<i>73</i>	<i>157 to 270</i>	<i>271 to 288</i>
<i>Avi Exports</i>	<i>75 to 78</i>	<i>79 to 80</i>		
<i>Sun Diam</i>	<i>82 to 85 & 93 to 136</i>	<i>86 to 88 & 137 to 156</i>		
<i>Vitrag Jewels</i>	<i>53 to 57</i>	<i>59 to 69</i>		

37. The AO has completely gone on a very wrong premise to observe that addition is being made, because the parties belong to Rajendra Jain Group and other groups. Here in this case, the information itself was received on 24.03.2014 and the assessment order passed on 31.03.2014. Thus, there was no occasion to send the notice u/s 133(6) to these parties. Whatever observation he has made with respect to notice u/s 133(6) which was made to the other parties with whom purchases has been debited, has been verified and confirmed by the parties on which, no addition has been made by the AO. In so far as genuineness of the purchases of these parties, we find from the perusal of documents enclosed in the paper book clearly establishes the purchases made are genuine and without any inquiry by the AO done, addition cannot be sustained.

38. In any case, assessments for AY 2007-07 and 2008-09 had attained finality during the date of search and there was not pending assessment, therefore no addition could have been made without any incriminating material found during the course of search and the aforesaid addition on account of purchase is not

based on any incriminating documents found during search. Accordingly, the same cannot be sustained on this ground also.

39. Resultantly, the addition on account of purchases for the AY 2007-08 and 2008-09 are directed to be deleted.

40. In AY 2007-08, assessee has raised one additional issue on account of legal and professional fees aggregating to Rs. 18 lakhs paid to Mr. Shreenijin P. V. and Ms. Soni K. B. Assessee has filed the following details before the AO, which are as under:-

<i>Particulars</i>	<i>Mr. Shreenijin P.V.</i>	<i>Ms. Soni K. B.</i>
<i>Agreement</i>	<i>98 to 101</i>	<i>135 to 138</i>
<i>Invoices raised by them</i>	<i>102 to 124</i>	<i>139 to 161</i>
<i>Ledger Account</i>	<i>125 to 126</i>	<i>162 to 163</i>
<i>Appellant's Bank Statement</i>	<i>102 to 124</i>	<i>139 to 161</i>
<i>Form 16 A evidencing IDS</i>	<i>127 to 134</i>	<i>164 to 171</i>

41. AO had made the disallowance on the ground that information has been received from the DCIT, CC-1, Ernakulam that M/s Rosy Blue(I) Ltd. has paid a total amount of Rs. 72 lakhs to Shri P. V. Srr4eenijin and Smt. K. B. Sony during AY 2007-08 to 20010-11 as professional fees paid. The year wise break-up of the payment are as follows:-

AY	2007-08	2008-09	2009-10	2010-11	Total
Amount (in Rs.)	18,00,000/-	24,00,000/-	24,00,000/-	6,00,000/-	72,00,000

42. AO has also referred the statement of Shri Russell Mehta, Director of the assessee company recorded u/s 131 wherein he has stated that the said advocates has not provided any legal services to the company, accordingly he made addition for sum aggregating Rs. 18 lakhs claimed in the profit and loss account. The said addition has also been confirmed by Ld. CIT(A).

43. Ld. Counsel for the assessee submitted that assessee had entered into a retainership agreement for rendering services including drafting agreements/conveyance including verification of title, attending to customs, excise and service tax, IPR, VAT, profession tax, CST, Octroi and other related matters in the state of Kerala, Tamil Nadu, Karnataka and Andhra Pradesh. The Assessee had entered into the said arrangement as it intended to extend the scope of its business to those regions. However, unfortunately, its endeavour was not successful and hence, no substantial services have been rendered by them. However, since the assessee was bound by retainership agreement, it was under an obligation to pay

them. Lastly, the said two advocates are in no way related to the assessee or its promoters.

44. He further submitted that on 28.12.2010, that is almost eight months before the search action being carried out on the assessee on 25.08.2011, statement of its director was recorded under section 133 of the Act wherein, it has been alleged that he has accepted that the said advocates have not provided any legal services to the assessee company. It is only based on the said statement that the expenditure towards the legal and professional fees has been disallowed despite providing the relevant information and material. Disallowance of the said expenditure in the order passed under section 153A of the Act is not permissible because no incriminating material in relation to the said payment has been found in the course of the search. The statement of the director was already available before the search action.

45. On the other hand, Ld. DR strongly relied on the order passed by AO and Ld. CIT(A).

46. After considering the aforesaid submissions and perusal of the material placed on record, we find that there is no dispute that the

above 2 persons were legal professionals with whom assessee had entered into an agreement of retainership for rendering services for which they have raised their invoices and payments have been made through banking channel after deducting TDS. The details of the invoices with regard to both the aforesaid parties have been filed which are not in dispute. Now, whether rendering of the legal services had yielded any result or asking for any proof of any legal advice is immaterial. If there was a proper agreement of retainership for legal advice and for statutory compliances is given to certain professionals for rendering legal services and they have raised the bills and are completely unrelated parties, then disallowance cannot be made on the ground that assessee had not proved any rendering of any legal advice. Assessee has already explained the above reason as to why assessee had sought their engagement. Therefore, such addition is directed to be deleted.

47. In the result, the appeal filed for AY 2007-08 and AY 2008-09 are **allowed**.

48. In the appeal for the AY 2009-10, assessee has challenged the similar disallowances on account of Legal and Professional fees paid

to Mr. Shreenijin P. V. amounting to Rs. 12,00,000/- and Ms. Soni K. B. amounting to Rs. 12,00,000/- both aggregating to Rs. 24,00,000/- for the service availed. Apart from this, assessee has raised following additional grounds:-

The learned Commissioner of Income-tax (Appeals) erred in upholding that the purchases from (i) Nay an Gems (ii) Aadi Impex (iii) Sun Diam are 'accommodation entries.'

It is submitted that appellant had purchased diamonds from these parties in normal course of business and the goods purchased were duly sold by the appellant. It is further submitted that the appellant had furnished full and complete details of purchases from these parties and there is no reason for the learned Commissioner of Income-tax (Appeals) to uphold that these are accommodation entries.

Without Prejudice to the above it is submitted that the learned Commissioner of Income-tax (Appeals) erred in enhancing of income by Rs. 5,79,084/- being 5% of amount of Purchases aggregating to Rs. 1,15,81,684/- treating these as accommodation entries.

49. In so far as issue raised in additional grounds, we find that they are exactly on similar lines and reasoning given by the AO as given in the earlier years as decided above wherein he has worked

out the peak of investment made for the purchases, made from Nayan Gems, Aadi Impex and Sun Diam.

50. Ld. CIT(A) held that entire purchases cannot be added and has applied 5% of GP rate on alleged bogus purchases.

51. Our findings given in the aforesaid appeals will apply mutatis mutandis in this appeal also because here again, no inquiry or notice were sent u/s 133(6) to these parties, because information itself was received on 24.03.2014 and assessment order was passed on 31.03.2014, so there was no occasion to send notices. On the contrary, assessee has given all the relevant documents as given in earlier years and this year also, all the documents relating to purchases as discussed in the earlier part of the order, has been filed. Thus, purchases cannot be held to be non-genuine or bogus. Accordingly, the same is deleted.

52. In so far as issue on legal and professional fees are concerned, the same are based on the same reasoning given by the AO, which we have already deleted the said disallowance as in decided the appeals for AYs 2007-08 and 2008-09. Accordingly, the said disallowance is deleted.

53. In the result, the appeal filed for AY 2009-10 is also **allowed**.

54. In the net result, all the appeals filed by the assessee are **allowed**.

Orders pronounced in the open court on 14th July, 2022.

Sd/-

(Gagan Goyal)

Accountant Member

मुंबई Mumbai; दिनांक Dated : 14/07/2022

Sr.PS. Dhananjay

Sd/-

(Amit Shukla)

Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai