

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT**

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
Dr. ARJUN LAL SAINI, ACCOUNTANT MEMBER  
(Hearing in Virtual Court)

ITA No. 1519 & 1520/Ahd /2017 (AY 2007-08 & 2008-09)

I.T.O., Ward 3(3)(1), Room No. 418, 4 <sup>th</sup> Floor,AyakarBhavan, Majura Gate, Suart-395001.	Vs	Anil Ghanshyambhai Kumawat, Prop. of Kumawat Exports, 126, Sardar Complex, Mini Bazar, Varachha Road, Surat-395003. <b>PAN : ARNPK 7859 D</b>
Appellant / Revenue		Respondent / assessee

ITA No. 1383 & 1384/Ahd/2017 (AY 2007-08 & 2008-09)

Anil G. Kumawat, Prop. of Kumawat Exports, 126, Sardar Complex, Mini Bazar, Varachha Road, Surat-395003. <b>PAN : ARNPK 7859 D</b>	Vs	I.T.O., Ward 3(3)(1), Surat.
Appellant / Revenue		Respondent / assessee

ITA No. 245 & 246/Srt/2017 (AY 2008-09 & 2009-10)

Mohit P. Kawadiya, 144, ShreejiAwas, Mini Bazar, Varachha Road, Surat-395007. <b>PAN : APGPP 2554 R</b>	Vs	I.T.O., Ward 3(3)(3), Surat.
Appellant / Revenue		Respondent / assessee

ITA No. 229 & 226/Srt/2017 (AY 2008-09 & 2009-10)

I.T.O., Ward 3(3)(3), Surat.	Vs	Mohit Pukhraj Kawadiya, 144, ShreejiAwas, Mini Bazar, Varachha Road, Surat. <b>PAN : APGPP 2554 R</b>
Appellant / Revenue		Respondent / assessee

ITA No. 1392/Ahd/2017 (AY 2007-08)

Naresh R Pareek, 143, Shreeji Awas, Mini Bazar, Varachha Road, Surat-395003. <b>PAN : ACFPP 2877 H</b>	Vs	I.T.O., Ward 3(3)(3), Surat.
Appellant / Revenue		Respondent / assessee

ITA No. 254/Srt/2017 (AY 2008-09)

Naresh R Pareek, 143, Shreeji Awas, Mini Bazar, Varachha Road, Surat-395003. <b>PAN : ACFPP 2877 H</b>	Vs	I.T.O., Ward 3(3)(3), Surat.
Appellant / Revenue		Respondent / assessee

ITA No. 1390/Ahd/2017 (AY 2007-08)

Sharad Y Jain, 146, ShreejiAwas, Mini Bazar, Varachha Road, Surat-395003. <b>PAN : ACXPJ 4341 G</b>	Vs	I.T.O., Ward 3(3)(4), Surat.
Appellant / Revenue		Respondent / assessee

ITA No. 1521/Ahd/2017 (AY 2007-08)

I.T.O., Ward 3(3)(1), Surat.	Vs	Gyanchand Sugamchand Jain, Prop. of M/s Sanjana Exports, 115, 1 <sup>st</sup> Floor, Sardar Complex, Mini Bazar, Varachha Road, Surat-395003. <b>PAN : ABYPJ 2279 H</b>
Appellant / Revenue		Respondent / assessee

ITA No. 1387/Ahd/2017 (AY 2007-08)

ITA No. 243 & 244/Srt/2017 (AY 2008-09 & 2009-10)

Gyanchand S. Jain, 115, 1 <sup>st</sup> Floor, Sardar Complex, Mini Bazar, Varachha Road, Surat-395003. <b>PAN : ABYPJ 2279 H</b>	Vs	I.T.O., Ward 3(3)(1), Surat.
Appellant / Revenue		Respondent / assessee

ITA No. 225/Srt/2017(AY 2008-09)

I.T.O., Ward 3(3)(3), Surat.	Vs	Manohar Premraj Choradia, 143, ShreejiAwas, Mini Bazar, Varachha Road, Surat-395006. <b>PAN : AAOPC 1738 M</b>
Appellant / Revenue		Respondent / assessee

ITA No. 255/Srt/2017(AY 2008-09)

Manoharlal Chordia, 143, ShreejiAwas, Mini Bazar, Varachha Road, Surat-395007. <b>PAN : AAOPC 1738 M</b>	Vs	I.T.O., Ward 3(3)(3), Surat.
Appellant / Revenue		Respondent / assessee

ITA No. 1380/Ahd/2017 (AY 2007-08)

Virendra Kumar Lodha, 143, ShreejiAwas, Mini Bazar, Varachha Road, Surat-395003. <b>PAN : AABPL 9737 E</b>	Vs	I.T.O., Ward 3(3)(5), Surat.
Appellant / Revenue		Respondent / assessee

ITA No. 1498/Ahd/2017 (AY 2007-08)

I.T.O., Ward 3(3)(5), Surat.	Vs	Virendra Kumar Lodha, Prop.- M/s Scope Diamonds, 143, ShreejiAwas, Mini Bazar, Varachha Road, Surat. <b>PAN : AABPL 9737 E</b>
Appellant / Revenue		Respondent / assessee

Assessee by	Shri Suchek Anchalia, CA
Revenue by	Shri H.P. Meena, CIT-DR & Shri Vinod Kumar, Sr.DR
Date of hearing	30/05/2022
Date of pronouncement	18/07/2022

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

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

1. This group of 19 appeals/cross appeals are directed against the separate orders of learned Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A) for the Assessment year (AY) 2007-08 to 2012-13 by different assessee (s). In all the appeals, the facts are almost common, the revenue as well as the assessee has raised common grounds of appeal in different years, except variation of disallowance of disputed purchase. The addition

in all the appeals were made on account of bogus purchases shown from Bhanwar Lal Jain and his group, who were declared as entry provider by the Income Tax Department. Therefore, with the consent of parties, all the appeals were clubbed and heard together and are decided by the consolidated order to avoid the conflicting decision.

2. For appreciation of fact, the fact in case of Anil G Kumawat for AY 2007-08 is treated as lead case. The assessee in his appeal in ITA No. 1383/Ahd/2017 has raised 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 erred in treating the appellant as diamond trader, without appreciating the fact that the appellant is only a commission agent and the purchase and sale was made on behalf of other parties 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. 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 appellant is only a commission agent and the purchase and sale was made on behalf of other parties.*
- 4. The appellant craves leave to add, alter or delete all or modify any or all the above grounds of appeal.*

3. The Revenue in its cross appeal in ITA No. 1519/Ahd/2017 has raised following grounds of appeal:

- “1 On the facts and circumstances of the case and in law, the CIT(A) has erred in restricting the addition made by the AO on account of disallowance of non-genuine purchases from Rs. 6,32,42,748/- to Rs. 3,16,21,374/-*
  - 2. On the facts and circumstances of the case and in law, the CIT(A) has erred in directing to make an addition of 12.5% of unverified purchases which is not as per law. Once purchases are not genuine then either entire such purchases are to be disallowed or books of accounts ought to have been rejected and G.P. estimated.*
  - 3. On the facts and circumstances of the case and in law, the CIT(A) has not considered the fact that case facts of M/s. Mayank Diamonds Pvt. Ltd referred by him are entirely different from this case.*
  - 4. On the facts and circumstances of the case and in law, the CIT(A) has not considered the fact that case facts that A.O. has rightly disallowed 25% of non genuine purchases keeping in view the decision in the case of M/s. Vijay Proteins Ltd. reported in 55 TTJ 76.*
  - 5. On the facts and circumstances of the case and in law, It is therefore, prayed that the order of the Ld.CIT(A) Surat may be set aside to that extent and that of the AO's may be restored to extent.*
4. Brief facts of the case are that the assessee is engaged in trading of diamonds. The assessee filed his return of income for Assessment Year 2007-08 declaring total income at Rs.1,03,375/- on 23/10/2007. The case of assessee was reopened under section 147 of the Income tax Act, 1961 (in short, the Act). Notice under section 148 of the Act was issued on 29/03/2014 and served on the assessee.
5. 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 son Rajesh were operating 70 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 following purchased from the business entity managed by Bhanwarlal Jain and his group:

Name of the entry provider	Amount (in Rs.)
M/s A2 Jewels (AAMFA7751J)	4,58,51,133/-
Daksh Diamonds (AURPS3696K)	8,20,59,531/-
Jewel Diam (ABUPV3494J)	5,44,97,395/-
Kothari & Co. (ABQPK7967H)	6,49,14,929/-
Little Diam (AABFL1469R)	56,48,005/-
Total	25,29,70,993/-

6. On the basis of such information, the Assessing Officer (AO) formed opinion that income of the assessee 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 29.03.2014 after recording reasons of reopening was served on the assessee. The assessee in response to notice under section 148, vide his letter dated 28/04/2014 has stated that the original return of income filed on 23/10/2007 may be treated as return of income filed in response to notice under section 148 of the Act. The reasons of reopening was asked by the assessee. The assessee filed his objections against the reopening. The objection of the assessee was rejected in detailed and speaking order by the assessing officer.

7. 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. 25,29,70,993/- 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 Bhanwarlal 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 such three bogus entities from which the assessee has shown purchase of 25,29,70,993/-. 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.

8. The assessee filed its reply dated 18.03.2015 to the said show cause notice. In the reply, the assessee submitted that he is not aware that in which capacity Bhanwarlal Jain is connected with the parties. The assessee is a commission agent. There is no purchase and sale in assessee's. the bills were issued in the name of assessee for sales of goods by the principal but the goods were sold at the same price and the assessee charged commission which was credited to the profit and loss account. TDS was deducted on the commission by principal. There is no corroborative evidence to prove that the assessee has taken accommodation entry from such concerns. The assessee also filed copy of audited accounts, profits and loss account, balance sheet, copy of contract note of purchase/ sales of goods, debit and credit note of alleged commission and the statement of commission received. The assessee demanded copy of the statement of Bhanwarlal Jain, cross examination of Bhanwarlal Jain.

9. 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 Bhanwarlal Jain Group on 3<sup>rd</sup> Oct, 2013 which resulted in collection of evidences, which conclusive prove that Bhanwarlal Jain Group provided entries of Rs. 25,000/- crore through their 70 benami entities. The Assessing Officer noted that Bhanwarlal Jain was providing bogus entry of unsecure loan and bogus purchase without actual delivery of goods. From the evidences collected from the premises of Bhanwarlal Jain Group, in search action, it was conclusively proved that said group was indulging in providing accommodation entry without actual delivery of goods. No stock of diamonds were found at the time of search except books of account of entries and the blank cheques book signed by the dummy partners, directors of proprietors. The Assessing Officer by relying upon report of investigation wing treated the transaction as bogus and disallowed 25% of aggregate of transaction of 25,29,70,993/-. The assessing officer worked out disallowance of Rs. 6,32,42,748/-.
10. Aggrieved by the addition as well as on reopening under section 147, the assessee filed appeal before CIT(A). Before Id. CIT(A), the assessee reiterated the similar submission on the additions of purchases as made

before Assessing Officer. 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.

11. 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.
12. 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 neither 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 Bhanwarlal 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 Bhanwarlal 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.

13. The Id. CIT(A) by referring the decision of Tribunal in Bholanath Polyfab Pvt. Ltd. in ITA No. 137/AHD/2009 dated 26.07.2011 wherein it was held that in case 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 Id. 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 at 5% in the said case. The Id. CIT(A) after considering the fact that wherein the Gross Profit (G.P) shown by similar cases of more than 5%, the Id. CIT(A) confirmed the addition to the extent of 5%. However in the present case, the assessee has not provided exact Gross Profit (GP) shown by assessee of his turnover. Accordingly, the Id. CIT(A) restricted the disallowance to the extent of 12.5% impugned purchase/disputed purchase. Aggrieved by the addition restricted to 12.5% of the disputed purchases, the assessee as well as revenue both have filed their respective appeal before us. The assessee has challenged the addition of 12.5%, on the other hand the revenue has challenged the order in restricting the addition to the extent of 12.5% and to make it 25% as held by assessing officer.

14. We have heard the submissions of Learned Authorized Representative (Id. AR) for the assessee and Learned-Departmental Representative (Id. 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. The assessment was reopened after four year form the end of relevant assessment year, the permissions as required under section 151 was obtained by the assessing officer from Additional Commissioner, which is not valid and is incurable defect. Further, the first proviso of section 147 can only be invoked where the reopening is byound four years from the end of relevant assessment year and prior assessment is completed under section 143(3). In this case there was no assessment order under section 143(3) the assessing officer invoked first proviso to reopen the case, thus, reopening is based on incorrect satisfaction. The assessment was reopened to verify the purchases. Therefore, the re-opening is invalid and all subsequent action is liable to be set aside.

15. On the other hand, the learned Commissioner of income-tax departmental representative (Id. 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. The assessee has not disputed the fact that the

assessee has not made purchases from the entity, which was owned by entry provider. 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 Id.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),

16. 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 Id 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 and that the reopening was made only to verify the purchases. 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 IdCIT(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.

17. 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 Id 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. The other objection raised by the Id AR of the assessee that no permissions as required under section 151 was obtained by the assessing officer. We find that the Id AR for the assessee raised this objection for the first time, however, no evidence to substantiate such submission is placed on record. Thus, in absence of any proof or evidence that no permission under section 151 was availed by assessing officer before making reopening has substance. Therefore, we do not find any merit in the ground No. 1 of appeal by assessee. Hence, the ground No. 1 in assessee's appeal is dismissed.

18. Ground No. 2 in assessee's and ground No. 1 & 2 in revenues appeal are interconnected relates to the additions on account of bogus purchases. Thus, being considered together. The Id. 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 Bhanwarlal 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 and the assessee was mere commission agent. The assessee provided complete details of purchase in the form of contact notes and sales of goods, ledgers account of expenses, details of commissions received, audited profit and loss account. 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 disallowance of 25% purchases without rejecting books of accounts. The Id. CIT(A) restricted to addition to the extent of 12.5% of the total purchase shown from said disputed parties. The transaction of assessee from all the parties are genuine. The Id. AR prayed for deleting the entire addition. In the alternative submission, the Id. AR of the assessee would submit that to avoid protracted litigation some token disallowance may be made. To support his various submission, the Id.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	ShilpiJewellers 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 Rohitkumar 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

19. On the other hand, Id. CIT-DR for the revenue supported the order of Assessing Officer. The Id. CIT-DR for revenue submits that investigation wing of the department has made full-fledged investigation during the search action on Bhanwarlal Jain and its group. The investigation wing investigated about the beneficiary of accommodation entry provided by Bhanwarlal Jain. The assessee is one of the beneficiaries of such purchases/accommodation entry. No stock of any goods/diamonds was found at the premises of Bhanwarlal Jain. The entire purchases shown by assessee from Bhanwarlal Jain are bogus and liable to disallow to the

extent it was disallowed by assessing officer. The Id. CIT-DR for the revenue submits that no evidence is filed by the assessee to substantiate that he was merely commission agent. No detail of TDS on account is place on record. No confirmation of the principal on whose behalf the assessee was allegedly made sale is filed on record. The Id CIT-DR for the revenue prayed to restore the order of assessing officer.

20. We have considered the submission of both the parties and have gone through the order of lower authorities. No documentary evidences is furnished either by the assessee or by revenue in the form of paper books. We have also deliberated on various case laws relied by Ld. CIT(A) as well as by Ld. AR for the assessee at the time of making his submissions. 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 Bhanwarlal 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 certain evidence to claim that the assessee acted as commission agent. No comment was made by Assessing Officer on the documentary evidence furnished by assessee. The sale 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 to the extent of 25% shown from the various bogus entity/ business concern managed by Bhanwar Lal Jain and his group. The Id. CIT(A) restricted to addition to the extent of 12.5% of the total purchase shown from all parties on the basis of magnitude of benefits derived by the assessee.

21. In our view the profit margin in the trade and business of assessee is ranging from 5% to 7% and the disallowances restricted by the assessing officer are at 12.5% of the disputed/ impugned purchase shown from the entry provider. Considering overall facts and circumstances of the case, we are of the view the disallowance restricted by Ld. CIT(A) is on higher side, keeping in view of the profit margin in the industry. It is settled law that in case of disputed purchases shown from such hawala dealers only the profit element embedded in such transaction, to avoid the possibility of revenue leakage, is to be disallowed, and not the substantial part of the transaction. No doubt the assessee has shown extremely low G.P yet the disallowance at rate of 12.5% is on higher side. This combination in similar cases, wherein the purchases are shown from Bhanwarlal Jain, 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 are partly allowed and the ground No. 1& 2 of the appeal of the revenue is dismissed.

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

23. In ITA No. 1520/Ahd/2017 for A.Y. 2008-09 by Revenue has raised following grounds of appeal (Anil G Kumawat):

- "1 On the facts and circumstances of the case and in law, the CIT(A) has erred in restricting the addition made by the AO on account of disallowance of non-genuine purchases from Rs. 20,08,55,410/- to Rs. 10,04,27,705/-*
- 2. On the facts and circumstances of the case and in law, the CIT(A) has erred in directing to make an addition of 12.5% of unverified purchases which is not as per law. Once purchases are not genuine then either entire such purchases are to be disallowed or books of accounts ought to have been rejected and G.P. estimated.*
- 3. On the facts and circumstances of the case and in law, the CIT(A) has not considered the fact that case facts of M/s. Mayank Diamonds Pvt. Ltd referred by him are entirely different from this case.*
- 4. On the facts and circumstances of the case and in law, the CIT(A) has not considered the fact that case facts that A.O. has rightly disallowed 25% of non genuine purchases keeping in view the decision in the case of M/s. Vijay Proteins Ltd. reported in 55 TTJ 76.*
- 5. On the facts and circumstances of the case and in law, It is therefore, prayed that the order of the Ld.CIT(A) Surat may be set aside to that extent and that of the AO's may be restored to extent.*

24. The assessee (Anil G Kumawat) in its appeal in ITA No. 1384/Ahd/2017 for A.Y. 2008-09 raised 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 erred in treating the appellant as diamond trader, without appreciating the fact that the appellant is only a commission agent and the purchase and sale was made on behalf of other parties 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. *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 appellant is only a commission agent and the purchase and sale was made on behalf of other parties.*
4. *The appellant craves leave to add, alter or delete all or modify any or all the above grounds of appeal.*

25. We find that the assessee as well as revenue has raised similar grounds of appeal as raised in appeal for AY 2007-08, wherein we have restricted the addition of similar bogus/ impugned purchase to the extent of 6% of the disputed purchases. Thus, considering the principal of consistency, the appeal of the assessee is partly allowed and the appeal of the revenue is dismissed with similar direction as contained in para-21 (supra).

26. In the result, the appeal of the assessee is partly allowed and the appeal of the revenue is dismissed.

**Appeal in case of Mohit P Kawadia for AY 2008-09 & 2009-10.**

27. The assessee in his appeals in ITA No. 245 & 246/Srt/2017 for A.Y. 2008-09 & 2009-10 has raised following common 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 treating the appellant as diamond trader, without appreciating the fact that the appellant is only a commission agent and the purchase and sale was made on behalf of other parties 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. *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 appellant is only a commission agent and the purchase and sale was made on behalf of other parties.*
4. *The appellant craves leave to add, alter or delete all or modify any or all the above grounds of appeal.*

28. The revenue in it's appeal in ITA No. 229/Srt/2017 for A.Y. 2008-09 has raised following grounds of appeal;

- “1 *On the facts and circumstances of the case and in law, the CIT(A) has erred in restricting the addition made by the AO on account of disallowance of non-genuine purchases from Rs. 10,55,24,731/- to Rs. 5,27,62,365/-.*
2. *On the facts and circumstances of the case and in law, the CIT(A) has erred in directing to make an addition of 12.5% of unverified purchases which is not as per law. Once purchases are not genuine then either entire such purchases are to be disallowed or books of accounts ought to have been rejected and G.P. estimated.*
3. *Whether on facts and circumstances of the case and in law, the Ld. CIT(A) was justified in restricting the addition made on account of bogus purchases despite of the fact that issue has been settled in favour of the Revenue vide decision of the Hon'ble Apex Court in the case of N.K. Proteins Ltd dated 16.01.2017 in SLP No. 769 of 2017 ?.*
4. *On the facts and circumstances of the case and in law, It is therefore, prayed that the order of the Ld.CIT(A) Surat may be set aside to that extent and that of the AO's may be restored to that extent.*

29. Grounds of revenue's appeal in ITA No. 226/Srt/2017 for A.Y. 2009-10

- "1 On the facts and circumstances of the case and in law, the CIT(A) has erred in restricting the addition made by the AO on account of disallowance of non-genuine purchases from Rs. 13,44,88,700/- to Rs. 6,72,44,350/-.*
- 2. On the facts and circumstances of the case and in law, the CIT(A) has erred in directing to make an addition of 12.5% of unverified purchases which is not as per law. Once purchases are not genuine then either entire such purchases are to be disallowed or books of accounts ought to have been rejected and G.P. estimated.*
- 3. Whether on facts and circumstances of the case and in law, the Ld. CIT(A) was justified in restricting the addition made on account of bogus purchases despite of the fact that issue has been settled in favour of the Revenue vide decision of the Hon'ble Apex Court in the case of N.K. Proteins Ltd dated 16.01.2017 in SLP No. 769 of 2017 ?.*
- 4. On the facts and circumstances of the case and in law, It is therefore, prayed that the order of the Ld.CIT(A) Surat may be set aside to that extent and that of the AO's may be restored to that extent.*

30. We find that the assessee as well as revenue has raised similar grounds of appeal as raised in appeal except variation of figure of disallowance as raised in case of Anil G Kumawat in appeal for AY 2007-08, wherein we have restricted the addition of similar bogus/ impugned purchase to the extent of 6% of the disputed purchases. Thus, considering the principal of consistency, the appeal of the assessee is partly allowed and the appeal of the revenue is dismissed with similar direction as contained in para-21 (supra).

31. In the result, the appeals of the assessee for both years (AY 2008-09 & 2009-10) are partly allowed and the appeals of the revenue for both is dismissed.

**Appeal in case of Naresh R Pareek for AY 2007-08 & 2008-09.**

32. The assessee in his appeal in ITA No. 1392/Ahd/2017 and 254/Srt/2017

has raised following common grounds of appeals;

- "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 treating the appellant as diamond trader, without appreciating the fact that the appellant is only a commission agent and the purchase and sale was made on behalf of other parties 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. 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 appellant is only a commission agent and the purchase and sale was made on behalf of other parties.*
- 4. The appellant craves leave to add, alter or delete all or modify any or all the above grounds of appeal.*

33. We find that the assessee has raised similar grounds of appeal as raised in case of Anil G Kumawat in appeal for AY 2007-08, wherein we have restricted the addition of similar bogus/ impugned purchase to the extent of 6% of the disputed purchases. Thus, considering the principle of consistency, the appeal of the assessee is partly with similar direction as contained in para-21 (supra).

34. In the result, the appeals of the assessee for both years (AY 2007-08 & 2008-09) are partly allowed.

**Appeal in case of Sharad Jain ( 2007-08)**

35. The assessee in his appeal in ITA No. 1390/Ahd/2017 for A.Y. 2007-08

has raised 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 treating the appellant as diamond trader, without appreciating the fact that the appellant is only a commission agent and the purchase and sale was made on behalf of other parties 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. 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 appellant is only a commission agent and the purchase and sale was made on behalf of other parties.*
- 4. The appellant craves leave to add, alter or delete all or modify any or all the above grounds of appeal.*

36. We find that the assessee has raised similar grounds of appeal as raised in case of Anil G Kumawat in appeal for AY 2007-08, wherein we have restricted the addition of similar bogus/ impugned purchase to the extent of 6% of the disputed purchases. Thus, considering the principle of consistency, the appeal of the assessee is partly with similar direction as contained in para-21 (supra).

37. In the result, the appeals of the assessee for years (AY 2007-08) is partly allowed.

**Appeal in case of Gain Chand Jain (AY 2007-08 to 2010) by assessee.**

38. The revenue in its appeal in ITA No. 1521/Ahd/ 2017 for AY 2007-08 has raised following grounds of appeal;

1. *On the facts and circumstances of the case and in law, the CIT(A) has erred in restricting the addition made by the AO on account of disallowance of non-genuine purchases from Rs. 4,88,49,587/- to Rs. 2,44,24,790/-.*
2. *On the facts and circumstances of the case and in law, the CIT(A) has erred in directing to make an addition of 12.5% of unverified purchases which is not as per law. Once purchases are not genuine then either entire such purchases are to be disallowed or books of accounts ought to have been rejected and G.P. estimated.*
3. *On the facts and circumstances of the case and in law, the CIT(A) has not considered the fact that case facts of M/s. Mayank Diamonds Pvt. Ltd referred by him are entirely different from this case.*
4. *On the facts and circumstances of the case and in law, the CIT(A) has not considered the fact that case facts that A.O. has rightly disallowed 25% of non genuine purchases keeping in view the decision in the case of M/s. Vijay Proteins Ltd. reported in 55 TTJ 76.*
5. *On the facts and circumstances of the case and in law, It is therefore, prayed that the order of the Ld.CIT(A) Surat may be set aside to that extent and that of the AO's may be restored to extent.*

39. The assessee in his appeal in ITA No. 1387/Ahd/2017 for A.Y. 2007-08, 243/Srt/2017 for A.Y. 2008-09 and 244/Srt/2017 for A.Y. 2009-10 has raised following common 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 treating the appellant as diamond trader, without appreciating the fact that the appellant is only a commission agent and the purchase and sale was made on behalf of other parties 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. *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 appellant is only a commission agent and the purchase and sale was made on behalf of other parties.*
4. *The appellant craves leave to add, alter or delete all or modify any or all the above grounds of appeal.*

40. We find that the assessee as well as revenue has raised similar grounds of appeal as raised in case of Anil G Kumawat in appeal for AY 2007-08, wherein we have restricted the addition of similar bogus/ impugned purchase to the extent of 6% of the disputed purchases. Thereby partly allowed the appeal of assessee and dismissed the appeal of revenue. Thus, considering the principal of consistency, the appeal of the assessee for all three years is partly and the appeal of revenue in Ay 2007-08 is dismissed with similar direction as contained in para-21 (supra).

41. In the result, the appeals of the assessee for AYs 2007-08 to 2009-10 is partly allowed and appeal of revenue for AY 2007-08 is dismissed.

#### **Appeal in case of Manohar Lal Choradia in AY 2008-09**

42. The revenue in it's appeal in ITA No. 225/Srt/2017 for A.Y. 2008-09 has raised following grounds of appeal;

- “1 *On the facts and circumstances of the case and in law, the CIT(A) has erred in restricting the addition made by the AO on account of disallowance of non-genuine purchases from Rs. 6,78,20,409/- to Rs. 3,39,10,204/-.*
2. *On the facts and circumstances of the case and in law, the CIT(A) has erred in directing to make an addition of 12.5% of unverified purchases which is not as per law. Once purchases are not genuine then either entire such purchases are*

*to be disallowed or books of accounts ought to have been rejected and G.P. estimated.*

3. *Whether on facts and circumstances of the case and in law, the Ld. CIT(A) was justified in restricting the addition made on account of bogus purchases despite of the fact that issue has been settled in favour of the Revenue vide decision of the Hon'ble Apex Court in the case of N.K. Proteins Ltd dated 16.01.2017 in SLP No. 769 of 2017 ?.*
4. *On the facts and circumstances of the case and in law, It is therefore, prayed that the order of the Ld.CIT(A) Surat may be set aside to that extent and that of the AO's may be restored to that extent.*

43. The assessee in his appeal in ITA No. 255/Srt/2017 for A.Y 2008-09 has raised 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 treating the appellant as diamond trader, without appreciating the fact that the appellant is only a commission agent and the purchase and sale was made on behalf of other parties 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. *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 appellant is only a commission agent and the purchase and sale was made on behalf of other parties.*
4. *The appellant craves leave to add, alter or delete all or modify any or all the above grounds of appeal.*

44. We find that the assessee as well as revenue has raised similar grounds of appeal as raised in appeal except variation of figure of disallowance as raised in case of Anil G Kumawat in appeal for AY 2007-08, wherein we have restricted the addition of similar bogus/ impugned purchase to the

extent of 6% of the disputed purchases. Thus, considering the principal of consistency, the appeal of the assessee is partly allowed and the appeal of the revenue is dismissed with similar direction as contained in para-21 (supra).

45. In the result, the appeal of the assessee for AY 2008-09 is are partly allowed and the appeal of the revenue is dismissed.

**Appeal in case of Virendra Kumar Lodha ( Ay 2007-08)**

46. The assessee in his appeal in ITA No. 1380/Ahd/2017 for A.Y 2007-08 has raised 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 treating the appellant as diamond trader, without appreciating the fact that the appellant is only a commission agent and the purchase and sale was made on behalf of other parties 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. 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 appellant is only a commission agent and the purchase and sale was made on behalf of other parties.*
- 4. The appellant craves leave to add, alter or delete all or modify any or all the above grounds of appeal.*

47. Revenue in its cross appeal in ITA No. 1498/Ahd/2017 for A.Y. 2007-08 has raised following grounds of appeal:

- "1 On the facts and circumstances of the case and in law, the CIT(A) has erred in restricting the addition made by the AO on account of disallowance of non-genuine purchases from Rs. 14,35,36,236/- to Rs. 7,17,68,118/-*
- 2. On the facts and circumstances of the case and in law, the CIT(A) has erred in directing to make an addition of 12.5% of unverified purchases which is not as per law. Once purchases are not genuine then either entire such purchases are to be disallowed or books of accounts ought to have been rejected and G.P. estimated.*
- 3. On the facts and circumstances of the case and in law, the CIT(A) has not considered the fact that case facts of M/s. Mayank Diamonds Pvt. Ltd referred by him are entirely different from this case.*
- 4. On the facts and circumstances of the case and in law, the CIT(A) has not considered the fact that case facts that A.O. has rightly disallowed 25% of non genuine purchases keeping in view the decision in the case of M/s. Vijay Proteins Ltd. reported in 55 TTJ 76.*
- 5. On the facts and circumstances of the case and in law, It is therefore, prayed that the order of the Ld.CIT(A) Surat may be set aside to that extent and that of the AO's may be restored to extent.*

48. We find that the assessee as well as revenue has raised similar grounds of appeal as raised in appeal except variation of figure of disallowance as raised in case of Anil G Kumawat in appeal for AY 2007-08, wherein we have restricted the addition of similar bogus/ impugned purchase to the extent of 6% of the disputed purchases. Thus, considering the principal of consistency, the appeal of the assessee is partly allowed and the appeal of the revenue is dismissed with similar direction as contained in para-21 (supra).

49. In the result, the appeal of the assessee for AY 2007-08 is partly allowed and the appeal of the revenue is dismissed.

50. Registry is directed to place one copy of this order in respective files.

Order pronounced on 18/07/2022, in open court and result was placed on notice board.

Sd/-  
**(Dr ARJUN LAL SAINI)**  
**ACCOUNTANT MEMBER**  
Surat, Dated: 18/07/2022

*\*Ranjan*

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

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

By order

Assistant Registrar, ITAT, Surat