

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

**आयकर अपील सं./ITA No.460/SRT/2019**

**Assessment Year: (2009-10)**

**(Physical Court Hearing)**

The ITO, Ward-2(3)(7), Surat.	<b>Vs.</b>	Arvind Soni, Prop. of M/s. Balajee Diamond, B-3, 701, Nakshara Platinum, Opp. Mathura Nagari, Palanpur Gam, Surat - 395003.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BFMPS0796F</b>		
<b>(Revenue)/(Appellant)</b>		<b>(Assessee)/(Respondent)</b>

**आयकर अपील सं./ITA No.165/SRT/2021**

**Assessment Year: (2009-10)**

**(Physical Court Hearing)**

Arvindkumar Soni, B-3, 701, Nakshara Platinum, Opp. Mathura Nagari, Planpur Gam, Surat-395003.	<b>Vs.</b>	The ITO, Ward-2(3)(7), Surat.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BFMPS0796F</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

**Cross Objection. No.14/SRT/2021**

**[Arising out of ITA No. 460/SRT/2019**

**Assessment Year: (2009-10)**

**(Physical Court Hearing)**

The ITO, Ward-2(3)(7), Surat.	<b>Vs.</b>	Arvind Soni, Prop. of M/s. Balajee Diamond, B-3, 701, Nakshara Platinum, Opp. Mathura Nagari, Palanpur Gam, Surat - 395003
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BFMPS0796F</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	Shri Prakash G. Jhunjhunwala, CA with Shri Anand R. Chourasia, CA
<b>Respondent by</b>	Shri H. P. Meena, CIT(DR)
<b>Date of Hearing</b>	01/07/2022
<b>Date of Pronouncement</b>	25/07/2022

**आदेश / ORDER**

**PER DR. A. L. SAINI, AM:**

Captioned Cross appeals filed by the Revenue and Assessee and Cross Objection filed by assessee, all pertaining to Assessment Year (AY) 2009-10, are directed against the common order passed by the Learned Commissioner of Income Tax (Appeals)-1, Surat [in short “the Id. CIT(A)”] in Appeal No. CIT(A),-1/10129/2015-16, dated 23.07.2019, which in turn arise out of an assessment order passed by the Assessing Officer under section 143(3) r.w.s 147 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 18.03.2015.

2. At the outset, Learned Counsel informs the Bench that assessee does not wish to press the appeal number in ITA No.165/SRT/2021 for AY.2009-10, therefore, we dismiss the said appeal, as not pressed.

3. First, we shall take assessee’s Cross Objection, in Co. No.14/SRT/2021 for AY.2009-10, wherein the grounds of appeal raised by assessee are as follows:

*1.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in sustaining the validity of notice u/s 148, being issued by Ld. AO in absence of fresh tangible material, independent application of mind and without having reason to believe of escapement of income and without obtaining the valid approval u/s 151 of the Act.*

*2.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition on estimating the suppressed profit @ 5% of Rs.77,13,105/- on purchase of traded goods (diamonds) made from 2 suppliers of Rs.15,42,62,091/-.*

*3.0 The Ld. CIT(A), before confirming the disallowance of purchase of Rs.77,13,105/- @ 5% of disputed purchase, erred in not considering understated vital facts, being;*

*a) The entire addition had been made only on the basis of information received from the Sales Tax department;*

*b) The exhaustive documentary evidences such as purchase bills, confirmations, stock tally, stock register, corresponding sale bills and bank statements had been filed on record;*

c) *The entire payments had been made through banking channel by A/c payee cheques;*

d) *The statement of 3<sup>rd</sup> parties recorded by Sales Tax department at back of the appellant without allowing an opportunity of cross examination is erroneous;*

e) *The books of accounts of the assessee had not been rejected u/s 145(3) of the Act.*

4.0 *Without prejudice, a prayer is made to adopt the concept of real income and restrict the addition @ 1% of alleged non-genuine purchase at Rs. 15,42,620/- (1% of Rs. 15,42,62,091/-) since normal profits corresponding to disputed purchase had been offered to tax.*

*The appellant craves leave to add, amend, alter, and/or withdraw any of the grounds of appeal at the time of hearing.”*

4. The relevant material facts, as culled out from the material on record, are as follows. Assessee before us is an individual and filed his return of income on 27/09/2009, declaring total income of Rs.3,56,590/-. In assessee's case, Assessment u/s 143(3) of the I.T. was passed on 11.01.2011 determining total income at Rs.4,72,450/-. As per the information received from Vat Department, Mumbai, the assessee's case was re-opened u/s 147 of the I.T. Act. The said information contains details of accommodation entries of bogus purchases, sales, unsecured loan share capital etc. received from VAT Department. In this case the assessee had entered into transaction of Rs.15,42,62,091/- consists of purchases from two parties namely Kotsons Impex Private Ltd of Rs.8,68,35,840/-, and Shri Jalaram Enterprise of Rs.6,74,26,251/- during the F.Y. 2008-09, which is reported as bogus purchases/accommodation entries. The said transactions are included in the Profit & Loss account and are showing incorrect profit. Intimation has been received from the DGIT(INV), Ahmedabad, vide letter dated 08.03.2014 in respect of bogus bills of purchases taken by the assessee. It has come to light that the assessee has received bogus bills of purchases to the tune of Rs.15,42,62,091/-. From the above facts, the assessing officer observed that it is clear that accommodation entries of Rs.15,42,62,091/- is used by the assessee in his books of account and his return of income to suppress his taxable income. Accordingly, notice u/s 148 of the Income

Tax Act, 1961 was issued on 27/03/2014 and was duly served upon the assessee on 29.03.2014.

5. The assessee is engaged in the business of trading of rough and polished diamond and gold jewellery. A summons u/s 131 of the Income Tax Act was also issued on 22.01.2015 and duly served upon the assessee. Thereafter, a show cause notice issued to the assessee on 19.02.2015, wherein the assessee was asked to show cause as to why the bogus purchase entry of Rs.15,42,62, 091/- should not be disallowed and added to the total income of the assessee. In response assessee filed written submission vide letter dated 26/2/2015. The assessing officer after considering the submission of the assessee held that assessee has made bogus purchases from Kotons Impex Pvt. Ltd. and Shri Jalaram Enterprise during the year and accordingly, the amount of Rs.15,42,62,091/- as bogus purchase, from Kotons Impex and Jalaram Enterprise was added to the total income of the assessee.

6. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) who has dismissed the appeal of the assessee holding the reassessment proceedings as valid. Aggrieved by the order of the Id. CIT(A), the Assessee is in cross objection before us.

7. Shri Prakash G. Jhunjhunwala, Ld. Counsel for the assessee contended that reassessment has been initiated within the four years from the date of completion of the original assessment. He pointed out that reason to believe that income has escaped assessment has not been framed by the Assessing Officer with tangible material. The Ld. Counsel further pointed out that reopening is only based on the general information, in the reasons recorded, the Assessing Officer, did not mention the nature of transaction and the parties from whom the transaction have been done. Therefore, the entire reasons recorded were on account of borrowed satisfaction. The reasons should be linked with the tangible material which can suggest that income has escaped assessment. Therefore, based on these facts, the Ld. Counsel relied on the judgment of Hon'ble Gujarat High Court in the case of Surani Steel Tubes Ltd., 136 Taxmann.com 139 (Guj. HC).

8. Learned DR for the Revenue argued that Assessing Officer has recorded valid reasons for reopening the assessee's case, based on the information received from Investigation Wing. To support his arguments, Ld. DR relied on the judgment of Hon'ble Gujarat High Court in the case of Peass International Engineering (P.) Ltd., 76 taxmann.com 106 (Guj.).

9. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. We have gone through the reasons recorded by the Assessing Officer and noted that these reasons were recorded by the Assessing Officer, based on the information received from the investigation wing. The Assessing Officer has been taken information received from the investigation wing as a lead to come to a conclusion that income in the assessee's case has escaped assessment. Thus, considering the aforesaid facts and circumstances of the case, we are of the considered view that it cannot be said that there is no reason to believe that the income chargeable to tax has escaped assessment because such exercise of reopening has been made only after due inquiries. We note that Hon'ble Gujarat High Court in the case of Peass Industrial Engineers (P.) Ltd. Vs. Dy. CIT [2016] 76 taxmann.com 106 (Guj.), has held as under:

*"9. On the basis of aforesaid proposition laid by series of decisions, we are of the opinion that when the Authority is armed with the tangible material in the form of specific information received by the Investigation Wing, Ahmedabad is thoroughly justified in issuing a notice for reassessment. It is revealed from the said additional material available on hand a reasonable belief is formed by the Assessing Authority that income of the petitioner has escaped assessment and therefore, once the reasonable belief is formulated by the Authority on the basis of cogent tangible material, the Authority is not expected to conclude at this stage the issue finally or to ascertain the fact by evidence or conclusion, we are of the opinion that function of the assessing authority at this stage is to administer the statute and what is required at this stage is a reason to believe and not establish fact of escapement of income and therefore, looking to the scope of section 147 as also sections 148 to 152 of the Act, even if scrutiny assessment has been undertaken, if substantial new material is found in the form of information on the basis of which the assessing authority can form a belief that the income of the petitioner has escaped assessment, it is always open for the assessing authority to reopen assessment. From the reasons which are recorded, it clearly emerges that the petitioner is the beneficiary of those entries by Kayan brothers, who are well known entry operators across the country and this fact has been unearthed on account of the information*

*received by DGIT Investigation Branch and therefore, it cannot be said in any way that even if four years have been passed, it is not open for the Authority to reopen the assessment. In the present case, there was independent application of mind on behalf of the assessing authority in arriving at the conclusion that income had escaped assessment and therefore, the contentions raised by the petitioner are devoid of merits. Dealing with the contentions of the petitioner that the information received from DGIT, Investigation Branch, Ahmedabad, can never be said to be additional information. We are of the opinion that the information which has been received is on 26-3-2015 from the DGIT, Investigation Branch, Ahmedabad, whereby it has been revealed that present petitioner is also the beneficiaries of those Kayan brothers, who are in the activity of entry operation throughout the country and therefore, it cannot be said that this is not justifiable material to form a reason to belief by the Authority and therefore, this being a case, the Authority is justified in issuing notice under section 148 of the Act to reopen the assessment and therefore, the challenge contained in the petition being devoid of merits, same deserves to be dismissed. As we found that for the exercise of power of reopening of assessment after a period of 4 years, a proper procedure is observed by the Authority, specific approval has been obtained from the competent Authority and upon perusal of original file, we have satisfied ourselves that the approval has been accorded in a proper manner by the competent Authority and since the notice is issued based upon substantial compliance of statutory provision, the Authority has acted well within the bounds of his powers and the Authority has issued notice. We found that the order which has been passed of rejecting the objections raised by the petitioner is also a well reasoned order passed after due exercise of jurisdiction and therefore, same is not, therefore, required to be interfered with."*

10. From the above judgment of the Hon`ble Gujarat High Court in the case of Peass Industrial Engineers (P.) Ltd(supra), it is vivid that function of the assessing authority at the stage of recording reasons is to administer the statute and what is required is a reason to believe and not to establish fact of escapement of income and therefore, looking to the scope of section 147 as also sections 148 to 152 of the Act, even if scrutiny assessment has been undertaken, if substantial new material is found in the form of information on the basis of which the assessing authority can form a belief that the income of the assessee has escaped assessment, it is always open for the assessing authority to reopen the assessment. Therefore, based on these facts and circumstances, we do not find any infirmity in the reasons recorded by Assessing Officer, hence the Cross Objection No.1 raised by the assessee is dismissed.

11. Other grounds raised by the assessee in cross objection, that is, ground Nos. 2, 3 and 4 is covered against the assessee by the decision of the Co-ordinate Bench in the case of Pankaj K. Chaudhary (in ITA No.1152/AHD/2017 for AY.2007-08). The findings of the Co-ordinate Bench are reproduced in subsequent para of this

order. Therefore, we dismiss ground Nos. 2, 3 and 4 raised by the assessee in cross objections.

12. In the result, Cross objection no.14/SRT/2021, is dismissed.

13. Now, coming the Revenue's appeal in ITA No. 460/SRT/2019 for AY.2009-10. The facts of the assessee's case have been already narrated by us in para no.4 and 5 of this order, therefore, we do not repeat them. We note that assessing officer made addition at the rate of 100% of bogus purchases, on appeal, Id. CIT(A) restricted the addition @ 5% of bogus purchases observing as follows:

*“8.2.9 In the instant appeal, there is no such adverse finding as in the case of N K Proteins (supra). The facts in instant appeal are identical to Gangani Impex (supra) and the cases decided by the jurisdictional ITAT (supra). In view of this, respectfully following jurisdictional ITAT, the disallowance is restricted to 5%. The AR has furnished orders Hon'ble ITAT Mumbai, Delhi and Kolkata wherein, an identical circumstances 85 factual matrix involving the same accommodation entry providers the entire disallowance made by Ld. AO was deleted (Sanghvi Export International Ltd. ITA No. 3305, 3375/Mum/2017 dt 21.08.2018, Karamchandra Rubber Industries ITA No.6599/Del/2014 12.02.2018 M/s Vaman International Pvt. ITA 1040 85 1041 /M/2017 dtd 27.09.2017, Fancy wear ITA No. 1596/M/2016 dtd. 20.09.2017, Suraj Jewells Co. ITA No.1581/Kol/2016 dtd 05.05.2017). The AR also furnished copies of order of CIT(A) Valsad in the case of (1) Sahjanand Export CIT(A)/vls/236/2016-17 dtd. 24.08.2017, (2) Rushabh International No. CIT(A)/vls/102/2016-17 dt. 14.02.2018, which in the disallowances is restricted to 2% of impugned purchases. However, since I have already taken a view of disallowing 5% of purchases and since it is confirmed by Hon'ble jurisdictional ITAT, Surat Bench as discussed in para above; the above decisions of ITAT Mumbai/ Kolkata are not followed*

*8.4 In view of above discussion the disallowance is restricted to 5% of the impugned purchases as under.*

A.Y.	Unverified purchases	Disallowance confirmed
2009-10	Rs.15,42,62,091/-	Rs.77,13,105/-

**8. In the result the appeal is partly allowed.”**

14. Aggrieved, the Revenue is in appeal before us. Learned DR for the Revenue argued that it is a matter of bogus purchases therefore addition made by the assessing officer should be sustained. On the other hand, Id Counsel contended that assessee submitted bills, vouchers, and transactions are through banking channel therefore entire addition should be deleted. We have heard both the parties and note that issue under consideration is squarely covered by the judgment of the Co-

ordinate Bench of ITAT Surat, in the case of Pankaj K. Chaudhary (in ITA No.1152/AHD/2017 for AY.2007-08), wherein it was held as follows:

*“12. We have heard the submission of ld.CIT-DR for the Revenue and the ld. Authorised Representative (AR) of the assessee. We have also gone through the various documentary evidences furnished by assessee. The ld. CIT-DR for the Revenue supported the order of AO. The ld. CIT-DR submits that Investigation Wing, Mumbai made a search on Bhanwarlal Jain Group. During the search and after search, the Investigation Wing made a thorough investigation and concluded that Bhanwarlal Jain Group and his associates including his sons were indulging in managing about 70 benami concerns. The benami concerns were engaged in providing accommodation entries. The assessee is one of the beneficiaries of such accommodation entries. In the transaction of accommodation entries, the documentary evidences are created in such a way, so that the bogus transaction is looks like genuine transaction. In bogus transaction, the fabricated evidences are always maintained perfectly. The assessee has obtained accommodation entry only to inflate the expenses and to reduce the ultimate profit. No stocks of diamonds were found at the time of search on Bhanwarlal Jain Group. The assessee has shown a very meagre gross profit (GP) @ 0.78% and not net profit (NP) at 0.02%. The ld. CIT(A) restricted the addition to the extent of 12.5% which is on the lower side. The ld. CIT-DR for the revenue prayed that disallowance made by the AO may be upheld or in alternative submitted that it may restricted at least @ 25%, keeping in view that the NP declared by the assessee is extremely on lower side.*

*13. On the validity of reopening, the ld.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. 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 ld.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),*
- *ITO Vs Purushttom Dass Bangur [1997] 90 Taxman 541 (SC) and*
- *Mayank Diamond Private Limited (2014) (11) TMI 812 (Gujarat High Court).*
- *AGR Investment Vs Additional Commissioner 197 Taxman 177 (Delhi) and*
- *Chuharmal Vs CIT [1998] 38 Taxman 190 (SC).*

*14. On the other hand, the ld.AR of the assessee submits that he has challenged the validity of reopening as well as restricting the addition to the extent of 12.50% of the alleged bogus purchases. The ld.AR of the assessee submits during the assessment, the AO has not made any independent investigation. 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. Therefore, the re-opening is invalid and all subsequent action is liable to be set aside.

15. On account of additions of bogus purchases, the ld.AR submits that in the original assessment, the assessee filed its complete details of purchases to prove the genuineness of expenses. The AO accepted the same in the assessment order passed under section 143(3) on 10.03.2009. During re-assessment, the assessee again furnished complete details about the genuineness of purchases. The assessee filed confirmation purchases invoices, accounts of the parties, bank statement of assessee showing transaction to the banking channel. The AO has not made any comment on the documentary evidence furnished by assessee. The AO solely relied upon the statement of third party and the report of Investigation Wing. The report of wing and the statement of Bhanwarlal Jain were not provided to the assessee. The AO has not disputed the sales of assessee. No sale is possible in absence of purchase. The books of accounts were not rejected. The AO made the disallowance of entire purchases. The assessing officer not provided cross examination of the alleged hawala dealers. The disallowances sustained by the Ld. CIT(A) @ 12.5% of the impugned purchases, is on higher side and deserve to be deleted in total. The ld.AR of the assessee submits that entire purchases shown by assessee are genuine. In without prejudice and alternative submissions, the Ld. AR for the assessee submits that in alternative submission, the disallowance may be sustained on reasonable basis. To support his various submission, the ld.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	Shilpi Jewellers 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 Rohit kumar 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

16. In the rejoinder submissions the ld. CIT-DR for the revenue submits that that rigour of the rules of evidence contained in the Evidence Act is not applicable before the tax authorities. It was submitted that the ratio of various case laws relied

by the ld. AR for the assessee is not applicable on the facts of the present cases. The ratio of decision of Hon'ble Gujarat High Court in *Mayank Diamond Private Limited (supra)* is directly applicable on the facts of the present case.

17. We have considered the submissions of the parties and have gone through the order of the lower authorities. We have also deliberated on each and every case laws relied by both the parties. We have also examined the financial statement of all the assessee(s) consisting of computation of income and audit report. We have also gone through the documentary evidences furnished in all cases. Ground No.1 in assessee's appeal relates to the validity of reopening. The ld AR for the assessee vehemently argued that the AO reopened the case of the assessee on the basis of third party information, and without making any preliminary investigation, which was vague about the alleged accommodation entry by Bhanwarlal Jain Group. And that there was no specific information about the accommodation entry availed by the assessee. There is no live link between the reasons recorded qua the assessee. We find that the assessee has raised objection against the validity of the reopening before the AO. The objections of the assessee was duly disposed by AO in his order dated 09.02.2015. The assessee raised ground of appeal before ld CIT(A) while assailing the order of AO on reopening. The ld CIT(A) while considering the ground of appeal against the reopening held that the AO has received report from investigation wing Mumbai, which indicate that the assessee is beneficiary of the accommodation entry operators. The accommodation entry provider admitted before investigation wing that he has given such entry to various persons; based on such report the AO has reason to believe that the income of the assessee has escaped assessment and thus the action of AO in reopening is justified.

18. We find that the Hon'ble Jurisdictional High Court in *Peass Industrial Engineers (P) Ltd Vs DCIT (supra)* while considering the validity of similar notice of reopening, which was also issued on the basis of information of investigation wing that they have searched a person who is engaged in providing accommodation entries, held that where after scrutiny assessment the assessing officer received information from the investigation wing that well known entry operators of the country provided bogus entries to various beneficiaries, and assessee was one of such beneficiary, assessing officer was justified in re-opening assessment. Further similar view was taken by Hon'ble Jurisdictional High Court in *Pushpak Bullion (P) Ltd Vs DCIT (supra)*. Therefore, respectfully following the order of Hon'ble High Court, we find that the assessing officer validly assumed the jurisdiction for making re-opening under section 147 on the basis of information of investigation wing Mumbai. So far as other submissions of the ld AR for the assessee that there is no live link of the reasons recorded, we find that the Hon'ble Jurisdictional High Court in *Peass Industrial Engineers (P) Ltd* clearly held that when assessing officer received information from the investigation wing that two well known entry operators of the country provided bogus entries to various beneficiaries, and assessee was one of such beneficiary, assessing officer was justified. Hence, the ground No. 1 in assessee's appeal is dismissed.

19. Ground No. 2 in assessee's appeal and the grounds of appeal raised by the revenue are interconnected, which relates to restricting the disallowance of bogus purchases to the extent of 12.5%. The AO made of 100% of purchases shown from the hawala dealers/ entry provider namely Bhanwarlal Jain. We find that the AO while making additions of 100%, of disputed purchases solely relied on the report

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

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

21. We have seen that during the financial year under consideration the assessee has shown total turnover of Rs. 66,09,62,458/-. The assessee has shown Gross Profit @ .78% and net Profit @ 0.02% (page 11 of paper Book). The assessee while filing the return of income has declared taxable income of Rs.1,81,840/- only. We are conscious of the facts that dispute before us is only with regard of the disputed purchases of Rs, 4.34 Crore, which was shown to have purchased from the entity managed by Bhanwarlal Jain Group. During the search action on Bhanwarlal Jain no stock of goods/ material was found to the investigation party. Bhanwarlal Jain while filing return of income has offered commission income (entry provider). Before us, the ld CIT-DR for the revenue vehemently submitted that the ratio of decision of Hon'ble Gujarat High Court in Mayank Diamond Private Limited (supra) is directly applicable on the facts of the present case. We find that in Mayank Diamonds the Hon'ble High Court restricted the additions to 5% of GP. We have seen that in Mayank Diamonds P Ltd (supra), the assessee had declared GP @ 1.03% on turnover of Rs. 1.86 Crore. The disputed transaction in the said case was Rs. 1.68 Crore. However, in the present case the assessee has declared the GP @ 0.78%. It is settled law that under Income-tax, the tax authorities are not entitled to tax the entire transaction, but only the income component of the disputed transaction, to prevent the possibility of revenue leakage. Therefore, considering overall facts and circumstances of the present case, we are of the view that disallowances @ 6% of impugned purchases / disputed purchases would be

*sufficient to meet the possibility of revenue leakage. In the result the ground No. 2 of appeal raised by the assessee is partly allowed and the grounds of appeal raised by revenue are dismissed.*

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

15. As the issue is squarely covered by the judgment of Co-ordinate Bench in the case of Pankaj K. Chaudhary (supra) and there is no change in facts and law and the Ld. DR for the Revenue has failed to controvert the findings of the Co-ordinate Bench. We note that Co-ordinate Bench has sustained the addition @ 6% of bogus purchases, therefore, respectfully following the binding precedent, we partly allow the appeal of the Revenue.

16. In the result, appeal filed by the Revenue (in ITA No.460/SRT/2019) is partly allowed whereas the appeal filed by the assessee (ITA No.165/SRT/2021) is dismissed, as not pressed and Cross Objection (Co. No.14/SRT/2021) is also dismissed.

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

Order is pronounced in the open court on 25/07/2022 by placing the result on the Notice Board as per Rule 34(5) of the Income Tax (Appellate Tribunal) Rule 1963.

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

सूरत /Surat

दिनांक/ Date: 25/07/2022

SAMANTA

**Copy of the Order forwarded to**

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

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

By Order

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