

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'H' BENCH  
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER  
&  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.924/Mum/2022 & 925/Mum/2022  
(Assessment Year :2012-13 & 2014-15)**

Shri H Dinesh & Co., 16, Ground Floor Shreeji Arcade Opp. Prasa Chambers Tata Road, No. 1 & 2 Opera House, Mumbai – 400 004	Vs.	ACIT-19(1) Matru Mandir Tardeo, Mumbai-400 007
<b>PAN/GIR No.AAAFH1309M</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Sanjay Pawaskar
Revenue by	Shri Vivek Anand Ojha
<b>Date of Hearing</b>	<b>26/07/2022</b>
<b>Date of Pronouncement</b>	<b>28/07/2022</b>

**आदेश / O R D E R**

**PER M. BALAGANESH (A.M):**

These appeals in ITA No.924/Mum/2022 & 925/Mum/2022 for A.Y.2012-13 & 2014-15 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-49, Mumbai in appeal No.CIT(A)-30, Mumbai/10486/2017-18 & CIT(A)-30, Mumbai/10556/2017-18 dated 11/03/2022 (Id. CIT(A) in short) against the order of assessment passed u/s.153C r.w.s.143(3)of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 30/12/2017 by the Id. Asst. Commissioner of Income Tax, Circle 19(1), Mumbai (hereinafter referred to as Id. AO).

Identical issues are involved in both the appeals and they are taken up together and disposed of by this common order for the sake of convenience.

2. Though the assessee has raised several grounds of appeal before us, the only effective issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in restricting the disallowance made on account of bogus purchases at 12.5% as against 100% made by the Id. AO in the facts and circumstances of the instant case.

3. We have heard rival submissions and perused the materials available on record. We find that assessee is a partnership firm engaged in trading and processing of diamonds. Pursuant to the search conducted u/s.132 of the Act in the case of one Shri Nashabhai Laxmibhai Dhabhi on 02/11/2015, proceedings u/s.153C of the Act were initiated on the assessee. The validity of assumption of jurisdiction of the Id. AO u/s.153C of the Act is not in challenge before us. In the proceedings u/s.153C of the Act, the Id. AO observed that assessee had made purchases from M/s. Rose Impex and M/s. Little Diam amounting to Rs.33,65,631/- and Rs.33,12,511/- respectively. According to Id. AO, these concerns belong to Bhanwarlal Jain Group. Since assessee has made purchases from the aforesaid two concerns who have been characterised as tainted parties by the Income Tax department, the Id. AO sought to examine the veracity of the purchases made from the aforesaid parties. The assessee submitted the purchase bills of the suppliers wherein the delivery and receipt of goods were acknowledged on the bills itself, invoices of corresponding export sales of polished diamonds, copies of purchase register, sales register, stock register, copies of bank statements of the assessee reflecting the diamonds made to aforesaid suppliers by account payee

cheque, copy of bank statements of the suppliers reflecting the payments received by them from the assessee, confirmation from suppliers that they had supplied the goods to assessee together with PAN Card and ITR acknowledgement, statement showing the details of purchases with corresponding sales, copy of ledger account of Rose Impex and Little Diam as appearing in the books of assessee and copy of full set of export documents before the Id. AO. The Id. AO however, disregarded the entire documentation submitted by the assessee and preceded to disallow 100% value of purchases being bought from tainted parties. The Id. CIT(A) however, appreciated the contentions of the assessee and observed that since the sales made by the assessee is not doubted out of the disputed purchases, only the profit element embedded thereon could be brought to tax. This profit element was estimated to be at 12.5% by the Id. CIT(A) by placing reliance on the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Simit P Sheth reported in 38 taxmann.com 385 among other decisions. Accordingly, the Id. CIT(A) restricted the disallowance at 12.5% of disputed purchases and arrived at the disallowance figure of Rs.8,34,768/-. Aggrieved by this order, the Revenue is in appeal before us and only the assessee has preferred appeal.

3.1. It is not in dispute that the sales made out of disputed purchases were not doubted by the Revenue in the instant case. Hence, we hold that the Id. CIT(A) was duly justified in bringing to tax only the profit element embedded in the value of disputed purchases. However, whether the profit percentage of 12.5% would be justified in respect of assessee engaged in the business of trading of diamonds is an issue to be decided by us herein. In this regard, we find that The report of the task group for diamond sector submitted to Department of Commerce suggested that the net profit that could be derived in the diamond manufacturing ranges

from 1.5% to 4.5% and in trading activity thereof, the profitability range is 1% to 3%. This Tribunal in number of times had placed reliance on the said task force report and had estimated the profit percentage within the aforesaid range. Considering the totality of facts and circumstances and considering the documents submitted by the assessee and also considering the fact that assessee had not proved the veracity of the purchases beyond reasonable doubt in the instant case, we hold that estimation of profit percentage @3% of value of disputed purchases would meet the ends of justice. Accordingly, the grounds raised by the assessee are partly allowed.

**4. In the result, both the appeals of the assessee are partly allowed.**

Order pronounced on 28/07/2022 by way of proper mentioning in the notice board.

**Sd/-**  
**(RAHUL CHAUDHARY)**  
JUDICIAL MEMBER

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 28/07/2022  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)  
**ITAT, Mumbai**