

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

**BEFORE SHRI PAWAN SINGH, JM & DR. A.L.SAINI, AM**

आयकर अपीलसं./ITA No.440/SRT/2019  
(निर्धारणवर्ष / Assessment Year: (2008-09)  
(Virtual Court Hearing)

Dinesh T Gupta No.6/2037, Papadwala Building Bhojabhai Ni Sheri, Mahidarpura, Surat-395003	<b>Vs.</b>	Income Tax Officer, Ward-2(3)(7), Room No. 620, Aaykar Bhawan, Majura Gate, Surat- 395001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AIRPG 8408 P		
<b>(Appellant )</b>		<b>(Respondent)</b>

आयकर अपीलसं./ITA No.441 & 461/SRT/2019  
(निर्धारणवर्ष / Assessment Year: (2013-14)

Dinesh T Gupta No.6/2037, Papadwala Building Bhojabhai Ni Sheri, Mahidarpura, Surat-395003	<b>Vs.</b>	Income Tax Officer, Ward-2(3)(7),Room No. 620, Aaykar Bhawan, Majura Gate, Surat
Income Tax Officer, Ward- 2(30(7), Room No. 414, 4 <sup>th</sup> Floor, Anavil Business Centre, Adajan Harijra Road, Adjan, Surat-35009		Dinesh T Gupta No.6/2037, Papadwala Building, Bhojabhai Ni Sheri,Mahidarpura, Surat-395003
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AIRPG 8408 P		
<b>(Appellant )</b>		<b>(Respondent)</b>

Assessee by : None

Respondent by : Shri H.P.Meena– CIT-DR &  
Shri Vinod Kumar, Sr-DR

सुनवाईकीतारीख/ Date of Hearing : 29/06/2022

घोषणाकीतारीख/Date of Pronouncement: 22/08/2022

**आदेश / ORDER**

**PER DR. A. L. SAINI, ACCOUNTANT MEMBER:**

Captioned cross-appeals filed by the assessee as well as Revenue, pertaining to assessment year 2013-14, and an another appeal filed by assessee pertaining to assessment year 2008-09 are directed against the common order

passed by the Learned Commissioner of Income Tax (Appeals)-2, Surat, [‘CIT(A)’ for short], which in turn arise out of separate assessment orders passed by the Assessing Officer under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short ‘the Act’).

2. None appeared on behalf of the assessee, despite service of notice through registered post with acknowledgement (RPAD) on more than one occasion, therefore, we do not have any option except to hear the submissions of Ld. CIT-DR and decide these appeals, on the basis of material available on record.

3. Since the issue involved in all the appeals are common and identical except variance of amount, therefore these appeals have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity. The grounds as well as facts narrated in ITA No.461/SRT/2019 for assessment year 2013-14, have been taken into consideration for deciding the above appeals *en masse*. The ground of appeal raised by the Revenue in ITA No.461/SRT/2019 are as follows:

*“(i) On the facts and circumstances of the assessee and in Law, the Ld. CIT(A) has erred in restricting the addition made by the AO to the extent of 5% of entire purchase i.e. Rs.5,78,92,000/- on account of bogus purchase.*

*(ii). On the facts and circumstances of the case and in Law, the Ld. CIT(A) has failed to appreciate the fact that the entire purchase from alleged concerns was bogus and it was only to suppress the profit of the beneficiaries which has been duly substantiated by the statement on oath given by the entry provider.*

*(iii) On the facts and circumstances of the case and in Law, the Ld. CIT(A), Surat ought to have upheld the order of the Assessing Officer. It is, therefore, prayed that the order of the Ld. CIT(A)-1, Surat may be set-aside and that of the Assessing Officer’s order may be restored.”*

5. Succinct facts are that assessee is engaged in the trading of diamond in the name & style of M/s Max India Diamond. The assessee filed its return of income declaring total income of Rs.91,210/- for AY 2008-09 and Rs.6,29,430/- for AY 2013-14 respectively. Subsequently case of the assessee was re-opened for AY 2008-09 and notice was issued u/s 148 of the Act. The Assessing Officer completed assessment u/s 143(3) r.w.s. 147 by making addition of Rs.47,77,994/-

for A.Y 2008-09. For assessment year 2013-14, the assessing officer framed scrutiny assessment u/s 143(3) by making addition of Rs.5,78,92,000/-, on account of unexplained purchases. During the year under consideration, the assessee has shown income from trading of diamond in the name & style of M/s Max India Diamond, Prop: Shri Dinesh T Gupta and various proceedings sheet entries have furnished and relevant details which were verified and kept on record. The assessee has furnished details of parties from whom diamonds have been purchased during the year under consideration. On verification of the same, it is found that the following concerns are belongs to Shri Gautam Jain Group and the concerns are found fictitious. The details of concerns are as under:

Sr.No.	Name of entry provider	Amount in Rs. For AY 08-09	Amount in Rs. For A.Y 13-14
1	M/s Rajan Gems [ADVPJ5757F]	47,77,994/-	2,07,72,000/-
2	M/s Khushi Gems Pvt. Ltd.	--	3,71,20,000/-
	Total	47,77,994/-	5,78,92,000/-

Since the purchase of diamonds from above mentioned concerns was found to be non-genuine, therefore Assessing Officer made addition to the tune of Rs.5,78,92,000/-.

6. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before Ld. CIT(A) who has restricted the addition to 5% of bogus purchases, observing as follows:

*“7.3 In the instant appeal, there is no such adverse finding as in the case of J.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 & 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 & 1041/M/2017 dtd 27.9.2017, 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) Sahajanand Export IT(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 no. above; the above decisions of ITAT Mumbai/Kolkata are not followed.*

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

<i>A.Y</i>	<i>Unverified purchases</i>	<i>Disallowance confirmed</i>
<i>2008-09</i>	<i>Rs.47,77,994/-</i>	<i>Rs.2,38,899/-</i>
<i>2013-14</i>	<i>Rs.5,78,92,000/-</i>	<i>Rs.28,94,600/-</i>

7. Aggrieved by the order of Ld. CIT(A) the Revenue as well as assessee are in appeals before this Tribunal.

8. We have heard Learned CIT-DR for the Revenue and perused the material available on record. The Ld. CIT-DR argued that since it is a case of bogus purchases to inflate the expenses and to reduce net taxable profit, therefore the original addition made by the Assessing Officer @ 100% of bogus purchases should be sustained.

10. We note that the issue involved in these cross-appeals are squarely covered by the decision of the Co-ordinate Bench of this Tribunal in case of Pankaj K. Choudhary & others in ITA No.1152/AHD/2017 (AY 2007-08), order dated 27.09.2021, wherein the Tribunal has disallowed @ 6% of bogus purchases, therefore, grounds of appeal raised by the Assessee as well as Revenue are covered by the Decision of the Co-ordinate Bench of this Tribunal, in the case of Pankaj K. Choudhary & others (supra), wherein the Co-ordinate Bench has held as follows:

*“9. On merit, the ld.CIT(A) after discussing the submission of assessee held that AO has not discussed about any details of books of accounts, documents, stock register produced by assessee during the assessment. The AO neither examined nor found any defect in the document to discredit the same. The assessee has produced day to day stock register, details of purchase and sale. The purchases made during the year are sold during the year as seen from the trading account. If the impugned purchases are treated as bogus, then the stock in hand will become negative from 26.06.2006 onwards and no sale is possible in absence of purchases. The AO relied on the statement of Bhanwarlal Jain recorded by Investigation Wing against, copy of purchase bill, copy of bank statement, showing payment, day to day stock register, incoming and outgoing diamonds and daily stock tally, confirmation of the impugned parties from whom the said purchases has been made, thus, the assessee practically furnished all possible evidences in support of his claim for purchases. Moreover all the payment are made by bank account. The*

AO has made no comments about these documentary evidences. On the aforesaid observation, the ld.CIT(A) concluded that assessment order suffer from incomplete investigation, lack of marshalling of all relevant facts and procedural loop holes. Similarly, the ld. CIT(A) also observed that there is no denying circumstances under which statement were made by Bhanwarlal Jain and the elaborate modus-operandi unearthed by Investigation Wing, Mumbai, which has created sufficient suspicion regarding the purchase made by the assessee. The said parties are assessed with Central Circle, Mumbai where they are treated as "entry provider" and assessed accordingly.

10. The ld.CIT(A) after referring the decision of Tribunal in Bholanath Poly Fab Private Limited in ITA No.137/AHD/2009 dated 26.07.2011 wherein the addition was sustained to the extent of 12%. The ld CIT(A) by following the observation of order of Tribunal in Bholanath Poly fab Pvt. Ltd.(supra), the ld.CIT(A) held 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) after considering the overall facts, submissions of the assessee and evidences produced by assessee, concluded that the 100% disallowance of purchase is not justified. The ld.CIT(A) also considered the decision of jurisdictional High Court in Mayank Diamonds Pvt. Ltd. reported in [2014] 11 TMI 812 (Guj) (Tax Appeal No.200 of 2003 dated 07.11.2014). The ld.CIT(A) compared the fact of the present case, with the facts in case of Mayank Diamonds (supra) and noted that assessee in that case was also engaged in the trading of polished diamonds. The AO in said case made disallowance of entire bogus purchase. The ld.CIT(A) dismissed the appeal, however, the Tribunal gave partial relief to the assessee directing and sustained the addition @12%. And on further appeal before Hon'ble High Court, the disallowance was sustained at Gross Profit Rate of 5%, which is average rate of profit in industry. The ld. CIT(A) further held that in some other similar cases though he has sustain 5% of Gross Profit Rate considering the fact that where Gross Profit shown by assessee is 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, hence the disallowance was restricted to 12.5% of the impugned purchase.

11. Aggrieved by the order of ld. CIT(A), both the parties have filed cross appeals. The assessee has challenged the validity of reopening as well as sustaining the addition to the extent of 12.5% only. Likewise, the Revenue has assailed the order for sustaining addition to the extent of 12.5% only. We have noticed that there is typing mistake in the ground no. 2 of revenue's appeal wherein the assessing officer has mentioned the additions of '5%' instead of '12.5%'.

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 PurushttomDassBangur [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.

1	M/s Andaman Timber industries Vs Commissioner of Central Excise, CIVIL APPEAL NO. 4228 OF 2006 (Supreme Court)
2	<b>CIT vs. Indrajit Singh Suri</b> [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	<b>Shakti Karnawat Vs. ITO - 2(3)(8), Surat</b> ITA 1504/Ahd/2017 and 1381 /Ahd/2017
9	Asian Paints Ltd. Vs. DCIT, [2008] 296 ITR 90 (Bombay)

10	<i>PCIT, Surat 1 Vs. Tejuarohitkumar Kapadia [2018] 94 taxmann.com 325 (SC)</i>
11	<i>The PCIT-17 vs. M/s Mohommad Haji Adam &amp; Co. ITA NO. 1004 OF 2016(Bombay High Court)</i>
12	<i>Pankaj Kanwarlal Jain HUF Vs. ITO 2(3)(8) Surat ITA.No.269/SRT/2017</i>

15. *An 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:*

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 @ .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 Id 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."*

11.As, the issue is squarely covered by the decision of the Coordinate Bench, in the case of Pankaj Choudhary (supra), and there is no change in facts and law hence respectfully following the binding precedent, we dismiss assessee`s appeal and allow Revenue`s appeal partly.

12. In the result, appeal of the Revenue (in ITA No.461/SRT/2019, for A.Y. 2013-14) is partly allowed and appeal filed by assessee (in ITA No.441/SRT/2019 for A.Y. 2013-14) is dismissed.

13. Now we shall take assessee`s appeal in ITA No.440/SRT/2019 for A.Y. 2008-09, wherein the grounds of appeal raised by the assessee are as follows:

*"1. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming the action of Assessing Officer in reopening the assessment u/s 147 after issuing notice u/s 148 of the Act and passing the re-assessment order which is bad in law.*

*2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in partly confirming the action of Assessing Officer by sustaining the addition of Rs.2,38,899/- out of total addition of Rs.47,47,994/- on account of bogus purchases.*

*3. It is therefore prayed that assessment framed u/s 143(3) r.w.s.147 of the Act may kindly be quashed and/or addition made by Assessing Officer may please be deleted."*

14. We have heard Ld DR for the Revenue. At the outset, we note that ground No.1 and 3 raised by assessee relate to re-opening of assessment u/s 147 of the Act. We note that Assessing Officer re-opened the assessment by issuing Notice u/s 148 of the Act. We note 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, we dismiss ground nos.1 and 3 raised by the assessee.

15. In ground No.2, the Ld. CIT(A) restricted the addition to Rs.2,38,899/- being 5% of bogus purchases. We note that Co-ordinate Bench of this Tribunal has taken a stand in the case of Pankaj K Choudhary(supra) and disallowed @ 6% of bogus purchases, hence, we dismiss the ground No. 2 raised by assessee.

16. In the result, assessee's appeal is dismissed.

17. In combined result, assessee's appeals ITA No.441 & 440/SRT/2019 are dismissed whereas Revenue's appeal ITA No.461/SRT/2019 is partly allowed, as indicated above.

A copy of the instant common order be placed in the respective case file(s)

Order is pronounced on 22/08/2022 by placing the result on the Notice Board.

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

Surat/दिनांक/ Date: 22/08/2022  
Dkp Outsourcing Sr.P.S.

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

**Copy of the Order forwarded to**

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

By Order

// True Copy //

Assistant Registrar/Sr. PS/PS  
ITAT, Surat