

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.2052/Mum/2020  
(A.Y. 2007-08)**

Perry Impex Je. 8350, Bharat Diamond Bourse, BKC, Bandra East, Mumbai - 400051	Vs.	ACIT 19(2) 2 <sup>nd</sup> Floor, Matru Mandir, Grant Road, Mumbai - 400007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACFP7866R		
Appellant	..	Respondent

Appellant by :	Himanshu Gandhi
Respondent by :	Shambhu Yadav

Date of Hearing	08.08.2022
Date of Pronouncement	22.08.2022

आदेश / O R D E R

**Per Amarjit Singh (AM):**

The present appeal filed by the assessee is directed against the order passed by the Id. CIT(A)-3, Mumbai, which in turn arises from the order passed by the A.O u/s 143(3) r.w.s 147 of the Act for A.Y.2007-08. The assessee has raised the following grounds before us:

- “1. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming validity of notice u/s 148 dated 25.03.2014 on non existing entity and resulted order passed u/s 143(3) rws. 147 dated 27.03.2015 on non existing entity Le M/s Perry Impex which is bad in law and required to be quash.
2. On the facts and circumstances of the case and law, the Ld CIT(A) erred in confirming reassessment proceeding by issuing notice under section 148 which is bad in law and require to be quashed.

3. *On the facts and circumstances of the case and law, the Ld. CITIA) erred in confirming disallowance of Rs.17,56,566/- being 8% of suspicious purchases amount Rs.2,19,57,078/- by treating the same as non-genuine.*
4. *On the facts and circumstances of the case and law, the Ld CITIA) failed to consider that assessment order was passed without furnishing the material, evidenced and opportunity of cross examination to the appellant. This is gross violation of principal of Audi Alteram Partem rendering the order to be bad in law liable to be quashed.*
5. *Appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.”*

2. The fact in brief is that return of income declaring income of Rs.1,21,85,557/- was filed on 30.10.2007. On the basis of search and survey action carried out in the case of Shri Bhanwarlal Jain & other, the A.O received information from the DGIT (Inv.) Mumbai, that assessee had obtained accommodation entries of purchases from the following two parties:

Sr. No.	Name of the party	Bill Amount (in Rs.)
1.	Kothari & Co.	15157078
2.	Sankhala Exports Pvt. Ltd.	6800000
	Total	21957078

Therefore, the A.O had issued notice u/s 148 of the Act on 25.03.2014 and served on the assessee. A copy of reason recorded was also provided to the assessee. On query the assessee explained that the aforesaid purchases made from the said parties were duly recorded in the books of account and payments towards these purchase were made through account payee cheque. However, the A.O has not agreed with the submission of the assessee and stated that assessee has not provided delivery challans relating to the purchases made from the said parties. However, the A.O stated that it was proved that assessee was actually in possession of the goods and assessee had purchased the goods without bills from the grey market by obtaining benefit of more margin in the

purchasing of goods. Therefore, the A.O opined that the assessee would have earned by purchasing the diamonds from the grey market. Therefore, A.O concluded that such margin would not be more than 8% of the purchase cost debited against Bhanwarlal Jain Group. Accordingly, 8% of the purchases of Rs.2,19,57,078/- which come to Rs.17,56,566/- was added to the total income of the assessee.

3. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has sustained the disallowance made by the A.O.

4. During the course of appellate proceedings before us, the ld. Counsel vehemently contended that A.O disallowed 8% of the purchases which is highly unjustified and that had resulted in impossible gross profit ratio which was not prevailing in the trading business of diamond. The ld. Counsel has placed reliance on the decision of Hon'ble jurisdictional Bombay High Court in the case of PCIT Vs. Mohommad Hazi Adam & Co. in Tax Appeal No. 1004 of 2016, dated 11.02.2019.

On the other hand the ld. D.R supported the order of lower authorities.

5. Heard both the sides and perused the material on record. The assessee was engaged in the business of exporting of diamonds as elaborated above in this order. The A.O has made addition by taking 8% of G.P. margin on the purchases of Rs.2,19,57,078/- made from the entities of Shri Bhanwarlal Jain after treating as bogus purchases on the basis of information received from the search action conducted in the case of Bhanwarlal Jain & Others. It is evident from the finding of the lower authorities that the genuineness of the sales made in corresponding of purchases were not doubted. In effect the A.O at page 3

of the assessment order categorically pointed out that assessee has been benefitted by margin of actually making purchases in the grey market to obtain the bill from the concerns of Bhanwarlal Jain without supplying of goods. These facts were also upheld by the ld. CIT(A) in his finding by sustaining the order of the assessee. We have also gone through the decision of coordinate bench placed in the paper book by the ld. Counsel in the case of Mudra Exim Pvt. Ltd. VS. ITO-5(2)(3) in ITA No. 6971 & 6972/Mum/2018 dated, 06.01.2020. The relevant para of the order is reproduced as under:

- “3. *Shri Himanshu Gandhi appearing on behalf of the assessee submitted that the authorities below have erred in estimating addition of 8% on alleged bogus purchases by the assessee from Bhanwarlal Jain Group concern. The ld. Authorized Representative of the assessee submitted that assessee had furnished tax invoices and bank statements to the lower authorities, however, the documents furnished by the assessee were not taken into consideration. The ld. Authorized Representative for the assessee prayed that if at all addition is to be made it should be restricted only to the extent of the difference in gross profit not disclosed by the assessee on the alleged bogus purchases. The ld. Authorized Representative for the assessee prayed for restoring the issue back to the file of Assessing Officer in the light of decision of Hon'ble Bombay High Court in the case of PCIT vs. Mohammed Haji Adam & Co in Income Tax Appeal No.1004 of 2016 decided on 11/02/2019.*
4. *On the other hand, Shri R. Boopati representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee.*
5. *Both sides heard, orders of lower authorities perused. The assessee is engaged in the business of import and export of diamonds. It is alleged that the assessee has procured bogus bills to the tune of Rs.3,35,06,028/- from M/s. Marc Gems, one of Bhanwarlal Jain Group concern. Consequently, the Assessing Officer estimated gross profit @8% of such alleged bogus purchases. The CIT(A) has upheld the addition made by Assessing Officer. The contention of the assessee is that the addition may be restricted to the extent of difference between actual gross profit and G.P declared on non-genuine purchases from hawala dealers. Taking into consideration entirety of facts, I deem it proper to restore this issue back to the file of Assessing Officer for fresh adjudication in the light of the decision of Hon'ble Jurisdictional High Court in the case of PCIT vs. Mohammed Haji Adam & Co (supra). Needless to say that while deciding the issue afresh, the Assessing Officer shall grant reasonable opportunity of hearing to the assessee, in accordance with law.”*

In the aforesaid decision the coordinate bench of the ITAT, Mumbai on the similar fact and issue as in the case of the assessee after following the decision of Hon'ble Jurisdictional High Court in the case of PCIT Vs. Mohommad Hazi Adam & Co. has restricted the addition to the extent of difference in G.P. not disclosed by the assessee in the alleged purchases. Following the decision of Hon'ble jurisdictional High Court in the case of PCIT Vs. Mohommad Hazi Adam & Co. as referred in the finding of the decision of ITAT, Mumbai as supra, we restore this issue to the file of the A.O for deciding the same de novo in the light of the decision of Hon'ble jurisdictional High Court as referred above after affording adequate opportunity to the assessee. Therefore, this ground of appeal of the assessee is allowed for statistical purposes.

6. Ground No. 3 of the assessee is allowed for statistical purposes.

7. Ground No. 1, 2 & 4 were not discussed during the course of appellate proceedings before us, therefore, the same stand dismissed.

8. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 22.08.2022

Sd/-  
(AMIT SHUKLA)  
JUDICIAL MEMBER

Sd/-  
(AMARJIT SINGH)  
ACCOUNTANT MEMBER

Mumbai,  
Dated 22.08.2022  
PS: Rohit

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,  
सत्यापित प्रति //True Copy//

(Asst. Registrar)  
ITAT, Mumbai