

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER) AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

Sr. No.	ITA No.	Appellant	A.Y.	Respondent
1.	312/Mum/2022	Abhiman Gems Pvt. Ltd., 316, Panchratna Opera House, Mumbai-400004.	2015-16	ACIT, CC-1(3), Pratishtha Bhavan, Mumbai-400020.
	PAN No.	AAJCA 1413 D		
2.	330/Mum/2022	Ankita Exports, 3-M, Ambhika Darshan, Moti Kadiya Sheri, Surat, Gujarat-395 003.		
	PAN No.	AAFFA 6854 K		
3.	344/Mum/2022	Lunkaran Kothari, 204, Sapna Apartment, Jadda Kadhi, Mahidharpura, Surat-395 003.		
	PAN No.	ABQPK 7967 H		
4.	349/Mum/2022	Amit Diamonds, 202-B, Krishna Apartments, Kansara Sheri, Mahidharpura, Surat, Gujarat-395 003.		
	PAN No.	AAPFA 0768 G		
5.	351/Mum/2022	Laxmi Trading Company, 104, Jaishree Harikrishna Comp., Dalgiya Sheri, Mahindharpura, Surat, Gujarat-395 003.		
	PAN No.	AAEFL 1528 N		
6.	354/Mum/2022	Lavapal R Singh, 204, Sapna Apartment, Jadda Khadi, Mahadipur, Surat, Gujarat-395 003.		
	PAN No.	CVEPS 0399 P		
7.	361/Mum/2022	Little Diam, 204, Sapna Apartment, Jadda Khadi, Mahadipur, Surat, Gujarat-395 003.		
	PAN No.	AABFL 1469 R		



Assessee by : Mr. Suchek Anchaliya &
Mr. Tushar Nagori

Revenue by : Mr. Manoj Sinha, DR

Date of Hearing : 03/08/2022
Date of pronouncement : 26/08/2022

ORDER

PER BENCH

These captioned appeals by the respective assessee(s) are directed against separate orders passed by the Ld. Commissioner of Income Tax (Appeals)-47, Mumbai [in short 'the Ld. CIT(A)'] for relevant assessment year. As common grounds have been raised in these appeals, same were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts. In view of identically worded grounds raised in these appeals, for brevity, grounds of appeal in the case of ITA No. 312/Mum/2022 (Abhiman Gems Pvt. Ltd.) are only reproduced as under:

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 u/s 147 of the Act have not been fulfilled.

2. *On the fact and circumstances of the case and in law the Ld. CIT (A) erred in confirming the addition of alleged commission income arising out of alleged bogus unsecured loans, bogus purchases and bogus sales amounting to Rs. 17,52,678/- on protective basis without appreciating the fact that the same amount has been substantively added in the case of Shri Bhanwarlal Jain, thereby making the same addition in the hands of two assesseees leading to double taxation.*
3. *On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming addition of Rs. 47,88,101/- (being 7.40% of Rs. 6,47,04,070/-), on estimation basis, by treating genuine turnover of the appellant as bogus sales.*
4. *On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the addition of alleged commission income arising out of alleged bogus unsecured loans, bogus sales and bogus purchases and also confirming the addition of gross profit, on estimation basis, of a percentage of the total turnover, without appreciating the fact that both such additions cannot co exist together.*
5. *On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming addition of alleged commission income arising out of alleged bogus unsecured loans, bogus sales and bogus purchases, without appreciating the fact that for the very same assessee for previous assessment years, being A.Y. 2012-13 to A.Y. 2014-15, the Ld. CIT(A) has deleted*



the protective addition of alleged commission income, thereby not following the principal of consistency.

6. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in changing protective addition of commission income on alleged bogus sales to substantive addition on the incorrect presumption that the same was not considered in the order of the Hon'ble ITAT in the case of Shri Bhanwarlal Jain.*
7. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in changing protective addition to substantive addition without issuing any show cause notice or opportunity of being heard to the appellant, which is in violation of section 251(2) of the Income Tax Act, 1961 and in violation of the principles of natural justice.*
8. *On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in confirming the addition made by Id. AO, without providing any opportunity of cross examination, without any corroborative evidence and without providing copy of statements relied upon.*

2. Before us, the Ld. Counsel of the assessee a filed tabular chart of the summary of the additions made by the Assessing Officer and income enhanced by the Ld. CIT(A) in all the captioned appeals. For ready reference, the said chart is reproduced as under:



Tabular Summary of additions made by the Ld. AO & CIT(Appeal):

Sr. No	Name of the Appellant	Addition made by Ld. AO in the Assessment Order		Enhancement made by CIT(A)
		Estimation of Commission income added on a protective basis	Estimation of Gross Profit on Total Turnover of the appellant.	Substantive addition made by CIT(A) on commission on sales
1	Abhiman Gems Private Limited (312/Mum/2022)	17,52,678/-	47,88,101/- (7.4% of 6,47,04,070)	48,528/- (0.075% of 6,47,04,070)
2	Ankita Exports (330/Mum/2022)	7,44,622/-	2,08,26,097/- (10.32% of 20,18,03,272)	1,51,352/- (0.075% of 20,18,03,272)
3	Lunkaran Kothari (344/Mum/2022)	12,38,564/-	4,25,26,330/- (10.55% of 403,03,93,176)	3,02,319/- (0.075% of 40,30,93,176)
4	Amit Diamonds (349/Mum/2022)	26,69,552/-	3,36,39,096/- (9.84% of 34,18,60,736)	2,56,395/- (0.075% of 34,18,60,736)
5	Laxmi Trading Company (351/Mum/2022)	20,59,799/-	2,51,02,502/- (10.8% of 3,78,43,052)	1,74,322/- (0.075% of 23,24,30,571)
6	Lavpal R. Singh (354/Mum/2022)	12,86,263/-	1,43,37,667/- (9.84% of 14,57,07,995)	1,09,280/- (0.075% of 14,57,07,995)
7	Little Diam (361/Mum/2022)	23,63,133/-	1,21,40,419/- (10.25% of 11,84,43,114)	88,832/- (0.075% of 11,84,43,114)

3. We have heard rival submissions of the parties. The Ld. Counsel submitted that all the issues raised in grounds are covered by the decision of the Tribunal in the case of another concern and



M/s Rare Diamonds P. Ltd., which is also a concern controlled by Sh. Bhanwarlal Jain. The Ld. DR fairly agreed that issue are covered in favour of the assessee. In the grounds raised three additions have been agitated by the assessee.

3.1 The first addition agitated, is in respect of estimation of the commission income on issuing bogus accommodation entry bills. This addition has been made by the Assessing Officer on protective basis holding that assessee concerned was operated by Shri Bhanwarlal Jain for issuing accommodation entry bills and substantive addition has been made in the case of Sh. Bhanwarlal Jain. The Ld. CIT(A) however, has upheld the protective nature of the addition. Before us, the Ld. Counsel of the assessee submitted that Tribunal has upheld the substantive addition in the case of Shri Bhanwarlal Jain and therefore protective addition in the case of the assessee cannot survive.



3.1 The Ld. Counsel relied on the decision of the Tribunal in the case of **Rare Diamonds Pvt. Ltd. in ITA No. 313/Mum/2022** wherein the assessee was also one of the concerned controlled by Shri Bhanwarlal Jain and used for issuing accommodation entry bills. The Tribunal (supra) in said case has deleted the protective addition observing as under :

“12. The Ld. CIT(A) has summarized the factual conclusions in para 8.3 of the impugned order. Ld. CIT(A) has also noted that for the commission income added on protective basis in the case of the assessee for such period from Assessment Year 2007-08 to AY 2014-15 has been deleted by the concerned first appellate authority following the decision of the Tribunal in the case of Sh. Bhanwarlal Jain. Despite fully aware of the fact, the Ld. CIT(A) in the instant case has upheld the addition on the reasoning that the Income-tax department has not accepted the percentage estimated by the Tribunal in the case of Sh. Bhanwarlal Jain, and further appeal has been preferred. The Ld. CIT(A) has ignored that he, being a appellate authority, is required to follow the decision of the higher appellate forum irrespective whether the department has preferred appeal again the same, unless the decision of that appellate forum has been stayed by the higher appellate forum. The Ld CIT(A) cannot confirm an addition on protective basis. He is required to decided the issue either way and cannot proceed with keeping an addition on substantive in one case and protective in other case that too even after a finding of the higher appellate forum i.e. ITAT. We accordingly, reject this



approach of the Ld CIT(A) and set aside his finding on the issue on dispute. Respectfully following the finding of the ITAT in the case of Sh. Bhanwarlal Jain (Which has been extracted above), the protective addition made in the case of the assessee in respect of commission income from accommodation entries is deleted. The relevant grounds of the Appeal are accordingly allowed.”

3.2 The issue-in-dispute being identical, respectfully following the finding of the Tribunal (supra), the addition for estimation of the income of the commission on protective basis is deleted in all the appeals before us.

4. The second addition agitated by the assessee(s) in the appeal(s) is in respect of estimation of the gross profit on total turnover of the assessee. The facts qua the issue-in-dispute are that the Assessing Officer on one hand held that the assessee is bogus concern of Shri Bhanwarlal Jain utilized for issuing accommodation entry bills and therefore he added the commission income on protective basis for issuing such accommodation entry bills. Whereas, on the other hand, the Assessing Officer has made addition for the gross profit on the basis of the transactions of purchase and



sales recorded in books of account, treating the same as real trading activity. The assessee has contested that the Assessing Officer is not justified in simultaneously making addition for the commission income on protective basis as well as estimating gross profit on the transaction of purchase and sales recorded in the books of account. The Ld. Counsel relied on the decision of the Tribunal in the case of Rare Diamonds Pvt. Ltd. (supra) where such addition on the gross profit rate has been deleted. The relevant finding of the Tribunal (supra) is reproduced as under:

“17. From the impugned order of the Ld. CIT(A), we find that in one para he is treating the books of accounts and other details of quantitative tally in respect of trading activity as self-serving documents, devoid of truth and genuineness and therefore cannot be relied upon. On the other hand, he is confirming the gross profit rate addition made by the Assessing Officer for the said trading activity. The Ld. CIT(A) cannot give both the finding that assessee was engaged in providing accommodation entry and being simultaneously was engaged in trading activity. We find that tribunal in the case of Sh. Bhanwarlal Jain (supra) has given a specific finding that 70 associate concerns of Sh. Bhanwarlal Jain were engaged in providing only accommodation entry and no real business was carried, which was recorded in their books of accounts. The assessee also being one of the concern out of those 70 concerns, the Ld. CIT(A) has correctly



rejected the claim of the assessee in para 11.1 that it was engaged in any trading activity. Once it is held, that assessee was not engaged in any trading activity, there is no justification for making any addition for low gross profit rate in such trading activity. The finding of the Ld. CIT(A) in para 11.3 are accordingly set aside. The ground No. 3 and 4 (partly), of the appeal of the assessee are accordingly allowed.”

4.1 The facts of cases before us before us being identical to the facts of the case of Rare Diamonds Pvt. Ltd. (supra), therefore, respectfully following the finding of the Tribunal, the addition made on the basis of the estimation of the gross profit in the appeals before us are deleted.

5. The third addition agitated by the assessee(s) in the appeal(s) is in respect of enhancement made by the Ld. CIT(A) in commission on sales that too on substantive basis. Before us, the Ld. Counsel of the assessee submitted that the Ld. CIT(A) has made this addition on the wrong presumption that such addition was left by the Assessing Officer while estimating the commission income on protective basis. The Ld. Counsel submitted that the Assessing Officer has duly considered the said estimation of commission on protective basis.



The Ld. Counsel further submitted that identical issue has been deleted by the Tribunal in the case of Rare Diamonds Pvt. Ltd. (supra). The relevant finding of the Tribunal is reproduced as under:

“20. We are of the opinion that when the Tribunal in the case of Sh. Bhanwar Lal Jain (supra) has considered the commission from accommodation entry on substantive basis, any addition if not considered in respect of such commission entry, same can only be made in the hand of Sh. Bhanwarlal Jain. When it is evident that after the finding of the Tribunal in the case of Sh. Bhanwarlal Jain, no addition can be made on protective basis in the case of the assessee, there is no question of further enhancement of said commission income from accommodation entry and that too on substantive basis. The enhancing of such commission income from accommodation entries of bogus sales is without any reasoning and totally unjustified. We reject this action of Ld. CIT(A).”

6. Further, the Ld. Counsel has also challenged enhancement of income by the Ld. CIT(A) on the ground that no show cause notice was issued to the assessee(s) before enhancing the said income, which is in violation of provisions of section 251(2) of the Act. This issue has already been adjudicated by the Tribunal in the case of Rare Diamond Pvt. Ltd. (supra). The relevant finding of the Tribunal is reproduced as under:



“22. The Ld. Counsel further submitted that Ld. CIT(A) has enhanced the commission income without providing any show cause notice to the assessee, which is in violation of the section 251(2) of the Act. The relevant part of the provision is reproduced as under:

251(2). The [Commissioner (Appeals) shall not enhanced an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

23. In the impugned order there is no mention of any opportunity provided to the assessee by way of issue show cause notice, before making the addition and therefore this addition is unsustainable on the ground of violation provision of section 251(2) of the Act also.

24. Accordingly the ground No. 6 and 7 of the appeal are also allowed.”

6.1 In view of the above, additions made by the Assessing Officer as well as income enhanced by the Ld. CIT(A) are deleted. The relevant grounds raised by the assessee in the respective appeals are accordingly allowed.

7. In the result, these appeals of the assessee are allowed.

Order pronounced in the open Court in 26/08/2022.

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

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**



Mumbai;
Dated: 26/08/2022
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,
(Sr. Private Secretary)
ITAT, Mumbai