

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

**BEFORE SHRI AMIT SHUKLA, JM, &
SHRI S. RIFAUR RAHMAN, AM**

1. आयकरअपीलसं./ I.T.A. No. 384/Mum/2022
(निर्धारणवर्ष / Assessment Year: 2015-16)

Mehul Gems Private Limited, 204, Vaibhav Chambers, Main Road, Rughnathpur, Surat-395003	<u>बनाम/</u> Vs.	ACIT CC-1(3) M. K. Road, Churchgate Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAGCM9256M		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

&

2. आयकरअपीलसं./ I.T.A. No. 387/Mum/2022
(निर्धारणवर्ष / Assessment Year: 2015-16)

M/s Mukti Exports, 407, Devratna Apartment, Main Road, Rampura, Surat-395003	<u>बनाम/</u> Vs.	ACIT CC-1(3) Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN No. AASFM00005D		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Suchek Anchaliya & Tushar Nagori, Ld. ARs
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Mahita Nair, Ld. DR
सुनवाईकीतारीख/ Date of Hearing	:	07.07.2022
घोषणाकीतारीख / Date of Pronouncement	:	19.07.2022

आदेश / O R D E R

Per Amit Shukla, Judicial Member:

The aforesaid appeals have been filed by the above named different assessee's, against separate impugned orders passed by Ld. CIT(A)-47, Mumbai for the quantum of assessment passed u/s 143(3) r.w.s. 147, both for the AY 2015-16.

2. Since the grounds raised and the issues involved in both the appeals are identical arising out of similar set of facts and findings, therefore the same were heard together and are being disposed of by way of this consolidated order.

3. As a lead case, we are taking ITA No. 384/Mum/2022 in the case of M/s Mehul Gems Pvt. Ltd. and our findings given in this appeal will apply mutatis mutandis in other appeal also. The grounds of appeal raised by the assessee which is almost identical in other appeal except variation in the figures, are reproduced hereunder:-

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. 18,34,727/- 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. 1,11,24,620/- (being 10.14% of Rs. 10,97,10,2537-), 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.*

9. *The appellant craves to add, alter, classify, reclassify, delete or modify any of the above grounds of appeal and requests to*

consider each of the above grounds without prejudice to one another.

4. In short, assessee has challenged:-

Firstly, validity of reopening u/s 147.

Secondly, protective addition on account of alleged undisclosed commission income earned by the assessee by providing accommodation entries in the form of purchase bills and loans and imports on behalf of Shri Bhanwarlal Jain and the same income was assessed in the hand of Shri Bhanwarlal Jain on substantive basis.

Thirdly, addition on account of gross profit by taking 10.14% of total turnover on account of alleged low profit shown by the assessee in comparison with gross profit shown by the other entity and

Fourthly, Ld. CIT (A) has erred in changing a small part of protective addition on account of sales without issuing any show cause notice or opportunity of being heard to the assessee.

5. The brief facts of the case are that, assessee has filed original return of income on 05.10.2015 declaring total income at Rs. 87,230/- which was duly processed u/s 143(3). Thereafter, the case was reopened u/s 147 on issuance of notice u/s 148 after recording the following reasons:-

"A search and seizure action under section 132 of the Income Tax Act, 1961 was carried out by the Investigation Wing, Mumbai on 03/10/2013 in the case of the Bhanwarlal Jain Group.

During the course of search, Shri Bhanwarlal Jain in his statement recorded under section 132(4) on 11/10/2013 had categorically admitted that he is engaged in issuing accommodation entries to others for bogus loans/sales/import through 70 concerns operated and managed by him.

Further all the dummy directors/partners/proprietors, which are actually employees of Bhanwarlal Jain, have also explained /admitted the modus operandi of giving accommodation entries of purchase and loans and advances through the 70 dummy concerns to various beneficiaries.

The evidences collected and documents seized during the course of search and post search assessments conclusively proved this fact and the assessment was completed u/s 153A r.w.s 143(3) of the Income Tax Act, 1961 after making addition on account of unaccounted cash commission income received on accommodation

entries provided to various beneficiaries on a protective basis in the hands of the entities as mentioned above. 'The substantive assessments on this issue has been made in the hands of Shri Bhanwarlal Jain, wherein addition of the same amount of unaccounted cash commission income on accommodation entries have been made for A.Y.2008-09 to A.Y.2014-15.

Further, during the course of assessment proceedings of A.Y.2015-16 in the case of following' concerns of Bhanwarlal Jain Group, namely-M/s Prime Star, M/s Pushpak Gems, M/s- Pankaj Exports, -M/s Milan and Co. and M/s Rare Diamonds Pvt. Ltd, and after independent verification, it has been found that the factual matrix and the nature of activities including those of the inter connected entities have remained identical to that which existed during the search operation.

The following concern of Bhanwarlal Jain Group have engaged in issuing accommodation entries of bogus loans and advances, purchases and sales in A.Y. 2015-16, which is as under:

Sr. No.	Name of Assessee	PAN	Amount of Purchases (Rs.)	Commission on Purchases @ 0.075% (Rs.)	Amount of Sales (Rs.)	Commission on Sales @ 0.075% (Rs.)	Amount of Loans/ advances (Rs.)	Commission on Loans/Advances @2.4% (Rs.)	Total Amount of bogus commission (Rs.)
1.	MEHUL GEMS PRIVATE LIMITED	AAGCM 9256M	108214760	81161	109710253	82282	78130949	1875142	2038586

In the block assessment orders, during A- Y.2008-09 -to A. Y.2014-15, while quantifying the undisclosed commission income; various percentages have been applied on the total amount of imports, bogus unsecured loans and bogus purchases by the AO. On Import amount, a one-time percentage of 0.275% has been applied, on bogus purchases, 0.075% has been applied and in the case of bogus unsecured loans, a percentage of 2.4% has been applied for quantification of the undisclosed cash commission income.

The CIT (A), in the Appellate proceedings of the block period has worked out the unaccounted cash commission income on local purchases made by the group concerns at a 'percentage of 0.02.% and 0.075%-on sales and accordingly, enhanced the total income of the assessee.- Thus, the Ld.CIT (A) has also confirmed the additions made by the: Assessing officer.

Thus, based on the above mentioned percentages, the undisclosed cash commission income has been worked out in the case of the assessee for A.Y.2015-16. It has been proved beyond doubt that the above entity is not carrying out any genuine business of trading in diamond but is solely used for giving accommodation entries by Bhanwarlal Jain and family and the above entity is only an associate. Hence, the commission income earned by the entity mentioned above has to be added in A.Y.2015-16 and has thus escaped-assessment within the meaning of section 147 of the Income Tax Act, 1961, which is attributable to failure on the part of

the Assessee to make full and true disclosure in the Return of Income.

*In view of the above facts and various evidences garnered during the course of assessment proceedings as discussed above and after independent enquiry, the under signed has reason to believe that income exceeding **Rs.20,38,586/-** (More than one lac) has escaped the assessment in the case for A.Y.2015-16. Accordingly, sanction u/s 151(2) of the Income Tax Act, 1961 of the Additional Commissioner, Range-1, Mumbai, is sought to issue- notice -u/s- 148 of the Income Tax Act, 1961, invoking the provisions of Section 147 of The Income Tax Act, 1961, to assess such escaped income.*

6. In response to the notice, assessee filed return of income on 25.10.18 declaring the same income. After getting the reasons recorded, assessee raised objections before the AO on various counts which has been rejected by the AO. Thus, the background for reopening the case was search and seizure action u/s 132 in the case of Shri Bhanwarlal Jain who was found to be involved in controlling 70 entities from providing accommodation entries for bogus sales, purchases and loans. The AO noted that assessee is one of the entities controlled by Shri Bhanwarlal Jain and in the block assessment orders passed u/s 153A r.w.s. 143(3) was the AY 2008-09 to 2014-15 in the case of assessee addition was made as

protective addition. AO has further noted that assessee is in the business of trading in diamond and the affairs of the assessee are managed by Shri Bhanwarlal Jain through his dummy directors /partners /proprietors. He also noted that almost all the activities of the relevant assessment year are identical to the block period. He also noted the following facts:-

7. In this context, it is pertinent to recapitulate the facts revealed during the search and seizure action in the case of Shri Bhanwarlal Jain and his associates. It has been clearly revealed by the circumstantial evidences and other material facts, found and seized during the course of search that the Assessee is also an entity of the said group and has been de-facto controlled and managed by Shri Bhanwarlal Jain. The circumstances and factual outcome during the instant proceedings give a clear indication that nothing has changed-from that what was revealed by the search and recorded in the proceedings u/s-143(3) r.w.s. 153A of the Income Tax Act, 1961. It is not a coincidence that almost all entities of this Group viz. Prime Star, Pushpak Gems, Pankaj Exports, and many other identified in the search and seizure operations, find a common pattern of response, presentation of accounts, common auditors, common Authorised Representative, common inter-connected transacting entities and identical nature of businesses. The factual matrix and the nature of activities including those of the

inter-connected entities have remained identical to that which existed during the search operations.

8. *xxxx*

9. *The facts of the case have remained unaltered and same as in preceding years. The major issues which are pertinent are as discussed hereunder:*

9.1 *It is a fact that during the course of search Shri Bhanwarlal Jain has very categorically admitted in his statement recorded u/s, 132(4) on 1-10-2013 that he is engaged in issuing accommodation entries for bogus loans/bogus sales/purchases through 70 concerns operated and managed by him which includes the assessee.*

9.2 *Statements u/s 132(4) were also recorded of all employees cum associates of Shri Bhanwarlal Jain namely Mr, Ritesh Siroya, Mr. Rohit Birawat, Mr, Lunkaran Khotari, Mr. Basant Jain, Mr, ShwiyashLabchand Jain, Mr. Mahavir M Jain and Gautam NarotraalKumot/Jain who assisted and abetted Shri. Bhawaraial Jain in the business of providing accommodation/bogus entries.*

9.3 *in their respective statements: recorded during the course of Search/Survey the above employees cum associates have also accepted that although the benami concerns are in their names the concerns were actually controlled and managed by Shri Bhawnrlal M, Jain and his son Shri Rajesh Jain and they are mere dummy directors/partners/proprietors in various concerns. They have also*

very categorically admitted in their respective Statements u/s 132(4)/131 that through various benami proprietary/partnership concerns/companies in their name, Shri Bhanwarlal Jain group are engaged in the business of providing accommodation entries to various beneficiaries.

9.4 Thus, the evidences collected and documents seized during the course of search conclusively proved that Shri Bhanwarlal Jain and his son Rajesh Bhanwarlal Jain through a web of benami concerns (including the assessee managed and controlled by both of them, are engaged in business of importing on behalf of others and providing accommodation entries for bogus loans/sales/purchase etc. to various beneficiaries.

9.5 It is not only on the basis of statement of Shri Bhanwarlai Jain, concluded that the assessee is a benami entity which is managed and controlled by Shri Bhanwarlal Jain Group, but the other corroborative and circumstantial evidences garnered by the Investigation wing Mumbai during the course of search proceeding and post search enquiries which led the department to conclude that the assessee is a dummy entity being used for providing accommodation entries by the Bhanwarlal Jain Group.

7. Thereafter, AO noted that from the statement of Shri Bhanwarlal Jain it is clearly discernable that, he is also controlling and managing the affairs of the assessee which is engaged in the

business of giving accommodation entries to various beneficiaries and also observed as under:-

9.8 As regards the contention raised in the objections filed that Shri Bhanwarial Jain is a third party and the allegation of assessee being engaged in providing accommodation entry and earning commission income thereof based on the findings in the search proceedings on Bhanwarial Jain Group is based on surmises, it is important to note that the assessee is having similar features/financial highlights which the other 69 benami concerns managed and controlled by Bhanwarial Jain are having i.e. not engaged in any genuine business. These characteristics are reproduced hereunder for the sake of ready reference :-

> High Turn over

> Major portion of assets in the balance sheet comprise of Loan & Advances, Debtors and Investments (in shares etc.). These assets almost match the figures of their Business Creditors.

> The advance tax payments or self assessment tax payments are NIL, despite their Turn over running in to Several Crores.

> Almost the entire TDS deducted (by the Builders) on the interest payable against their "Loans and Advances" is claimed as Refund

9.9 From the above discussion it is proved beyond any shadow of doubt that Shri Bhanwarlal Jain along with his sons Rajesh

Bhanwarlal Jain manages and controls above benami concerns as listed in the statement which includes the assessee.

8. Thereafter, AO made detail discussion on types of accommodation entries given by Shri Bhanwarlal Jain group and held that these are of **benami concerns** including the assessee who are not carrying out any genuine business of trading in diamond, but are being solely used for giving accommodation entries by Shri Bhanwarlal Jain and family. Thus, he held that all the loan parties mentioned in the regular books of accounts of these 70 entities are benami concerns of Shri Bhanwarlal Jain.

9. Ld. AO had worked out the total undisclosed income in the following manner:-

<i>Sr. No.</i>	<i>Nature of accommodation entry</i>	<i>Amount of commission discussed above</i>
1	<i>Accommodation of Bogus Unsecured loan (on proportionate basis on Rs.78130949/- @ 2.4% p.a)</i>	<i>Rs. 1875142/-</i>
2	<i>Accommodation of Bogus Purchases (0.75% of Rs. 108214760/-)</i>	<i>Rs. 81161/-</i>
3	<i>Accommodation of Bogus Sales (0.075% of Rs. 109710253/-)</i>	<i>Rs. 82282/-</i>
4	<i>Total commission</i>	<i>Rs. 203858/-</i>
5	<i>Less: 10% of total commission as discussed above</i>	<i>Rs. 2,03,858/-</i>
6	<i>Undisclosed commission income</i>	<i>Rs. 18,34,727/-</i>

10. AO made protective addition of this commission income on the ground that already the same commission has been added on substantive basis in the case of Shri Bhanwarlal Jain for the same AY 2015-16. Thus, the addition has been made purely on protective basis.

11. Thereafter, AO without prejudice and alternatively had proceeded to estimate the gross profit after calling for various documents which has been incorporated by him at page no. 15 of the assessment order and observed that there was no proper compliance or any detail which was submitted nor assessee responded to summon u/s 131, accordingly proceeded to make best judgment assessment and made estimation of gross profit in the following manner:-

13.3 As mentioned above, the assessee has shown a huge turnover of Rs. 10,97,10,253/-. However, the assessee has failed to submit the transaction wise details as called for vide notice u/s 142(1) of the IT Act dated 04/11/2019. Furthermore, the assessee has also failed to submit any information regarding the purchases, corresponding payments made for purchases, the effect of such purchases in the stock maintained, sales made, receipt of sales proceeds and the corresponding effect in tire stock register. Thus,

the assessee has not submitted any detail in respect of the items of its P&L account including expenses debited. Hence, it is evident that the profit and income as declared by the assessee in its P&L account is not substantiated by supporting documentary evidence and the same is hereby rejected in absence of the details of expense, stock, etc.

13.4 In view of the above, the income of the assessee is estimated as a percentage turnover. The case records of the entities of Bhanwarlal Jain group available in this office have been perused. It is observed that all the group entities have claimed to be in the business of trading in diamonds. Furthermore, as discussed earlier, all the entities are following same modus operandis, As the whole group has claimed to be in the same business of Diamond trading, the business is being conducted in identical circumstance and environment, the gross profit involved should be more or less similar. The gross profit percentage of a few of the entities for AY 2014-15 were perused and the same is reproduced hereunder:-

<i>Sr. No.</i>	<i>Name</i>	<i>GP for AY 2014-15</i>
<i>1.</i>	<i>Shri Riteshsiroya</i>	<i>13.70</i>
<i>2.</i>	<i>M/s Meridian Jewellery Pvt. Ltd.</i>	<i>11.35</i>
<i>3.</i>	<i>M/s Meridian Gems</i>	<i>11.00</i>
<i>4.</i>	<i>M/s Little Dam</i>	<i>10.29</i>

It is observed from the above chart that gross profit percentage for AY 2014-15 has varied from 10.29 % to 13.70 %. Thus, a realistic percentage of gross profit in the business, as claimed by the assessee, would be the average of the above mentioned percentages. The average percentage works out to 11.5%. The.

business of the assessee has not changed between AY 2014-15 to AY 2015-16 and most of the conditions have remained unaltered. The meagre gross profit of 1.36% as declared by the assessee for AY 2015-16 is unacceptable. Further, the assessee has also failed to submit any documentary evidence or detail to substantiate such a meagre gross profit. Hence, in view of the above discussion, the gross profit percentage of the assessee for the year under consideration (ie: AY 2015-16) is adopted at 11.5 %. The assessee has declared a GP of 1.36%. Hence, the difference in Gross profit percentage of 10.14% (11.5 – 1.36) is required to be added as income of the assessee for AY 2015-16. Accordingly, an amount of Rs. 1,1,24,620/- (10.42% of 109710253) is hereby added to the total income of the assessee. Penalty proceedings u/s 271(1)(c) of the IT Act are initiated separately for filing of inaccurate particulars of income.

12. Ld. CIT (A) in so far as validity proceedings u/s 147/148 held that AO has recorded the proper reasons and has taken approval in accordance with law and there is no violation of principle of natural justice. He also observed that there was tangible material found during the course of search operation conducted on Shri Bhanwarlal Jain and is revealed that they are carrying out accommodation entries of bogus sales /bogus purchases of 70 concerns operated and managed by them which also included the

assessee. Thereafter, he relied various judgments and confirmed the action of AO.

13. Before the Ld. CIT(A), it was brought on record and to his knowledge that the Tribunal vide order dated 06.08.21 in the case of Shri Bhanwarlal Jain had confirmed the substantive addition. Ld. CIT(A) has noted this fact in para 8.2 and also extracted the relevant findings of the Tribunal. For the sake of ready reference, which are as under:-

8.2 It will not be out of place to mention here that Hon'ble ITAT, B Bench, Mumbai, in the combined order dated 06.08.2021 (ITA No, 98-104, 108-114, 2669, 3509/M/2018) in the case of Bhanwarlal M. Jain, has extensively examined the modus operandi of Bhanwarlal M. Jain and 70 odd associates. The Appellant is one of the 70 associates, as mentioned in the preceding. The relevant findings of the Hon'ble Tribunal are reproduced as below-

"4. We have carefully heard the rival submissions, oral as well as written. We have duly appreciated the factual matrix as enumerated by us in the preceding paragraphs. The judicial pronouncements including our own order in Rajendra P. Jain vs DCIT (ITA Nos.298/Mum/2018 & ors order dated 03/05/2019), as cited before us during the course of hearing has been deliberated upon. We proceed to deal with the issues in the following manner.

5. The first and foremost argument taken before us is that the pen drive as found during the course of search proceedings was planted from outside and the admission thereof was taken forcibly in statement of assessee u/s 132(4). The Ld. AR has impressed upon the idea that the search took place on 03/10/2013 whereas the said pen drive was not inventorized for 6 days. It has been submitted that the same could have been seized or inventorized on 04/10/2013 along with the inventory made for credit cards, bank account and jewellery etc. Further, the seizure of the pen drive was not made part of Panchnama annexure, officially drawn on 04/10/2013 and the admission about the same from his son Shri Rajesh Jain was extracted forcibly.

6 Going by the factual matrix as enumerated in preceding paragraphs, we find that the attitude of the assessee during the course of proceedings was totally non-cooperative. In fact, the assessee remained absent during search proceedings for 3 days. The -summons were not complied with and no explanation was furnished on incriminating material. Pertinently, voluminous hand written estimation sheets have been found at various premises of the assessee. The sheets have been admitted to be in the hand writing of assessee's son -as well as an employee of the assessee. These sheets contain parallel cash accounts. The entries in the estimated sheets were in the nature of square-off transaction wherein cash received from one-party was paid hack to another party through Angadiya Account. The pen drive contained calendar year-wise names of beneficiaries, the amount of cash,

details of brokerage and commission etc. It also contained complete details of Angadiya Account since 2004 in electronic form. The parallel account maintained on the pen-drive pertained to various concerns, 70 to be precise, being managed and controlled by assessee group. The password of the pen drive was cracked with the help of software programmers. After decrypting the data, print outs were taken and matched with the estimation sheets as well as other data gathered during the course of search action from various premises, disclosed as well as secret. The data was found to be Identical. The complete correlation was established between the parallel books of accounts found on the pen drive with books of 70 concerns being managed and controlled by the assessee. It transpired that the daily accounts were first written manually on estimation sheets and thereafter entered into pendrive electronically. So much so, identical pen drive was found from the possession of Shri Rohit Birawat a(CST Terminus who was apprehended by the search team while attempting to flee, from Mumbai to Rajasthan with incriminating material

7. All these facts have been admitted not only by the assessee but also by his son as well as trusted employees in various statements as or) oath u/s 132(4) at various points of time. The statements were recorded in the presence of independent witnesses. The contents of the statement were said to be duly explained to the assessee at the time of recording thereof.

8. In the backdrop of such clinching and overwhelming evidences, no substance could be found in the plea that the pen-drive did not belong to the assessee or the same was not found from assessee's premises particularly when the contents of the pen drive completely matched with incriminating material found during the course of search operations. The seizure of the same was duly recorded in the Panchnama which was vouched by independent Panchas. The vital link was established between the pen drive and the estimate sheets as well as the regular books of benami concerns being run by the assessee. Therefore, we do not find any substance in this plea as raised by Ld. AR before us and therefore, we reject the same.

9. So far as the other arguments are concerned, we find that that the assessee was running more than 70 benami concern under name-sake directors / partners / proprietors. These persons were acting as per the direction of the assessee against remuneration. Most of them, in their statement u/s 132(4), made admission of those facts. They also made ion that they assisted / abetted the assesses in the business of providing accommodation entries. Their PAN Cards, IDs, blank signed cheques books etc were found at centralized premises. They were visiting visiting centerlized premises to sign the blank cheque books as per the books of the assessee. All these persons had superficial knowledge about nature of business being conducted by their respective concerns. Further, most of these persons were residing at premises owned by the assessee group. The books of accounts Of all these entities

were being maintained at two premises in a centralized manner. The books were found in the same computer and audited by common Auditor. The auditor admitted to have signed the financial statements as per the directions of Shri Lunkaran Parasmal Kothari without verifying (he books of accounts. This is further fortified by survey action at BKC, Mumbai 28 Shri Bhanwarlal M. Jain wherein more than 30 firms were found to be operating from common premises. All the 70 entities were found to have common features in their respective financial statements. All these factors strongly prove the allegations of the department that all the concerns were being run by the group in a combined manner with a view to provide accommodation entries to various beneficiaries against commission.

10. So far as the retraction of the statement made by the assessee is concerned, we find that the retraction was made after more than 8 months and the same was devoid of any material evidence. The statements were made on oath u/s 132(4) and heavy onus was on assessee to rebut the same with cogent material while retracting the same. However, nothing of that sort as done by the assessee, has been shown before us. Glaring contradictions as well as similarities has been found in the retraction affidavits. As rightly held by lower authorities, the retraction was nothing but mere, after-thought and tutored statement to thwart the process of investigation. The retraction was bereft of any evidence and therefore, the same was to be completely ignored.

11. *The aforesaid factual matrix as well as findings would lead to that all the 70 entities under consideration were being managed and controlled by the assessee group and therefore lower authorities were quite justified in estimating commission income earned by the assessee group from all these benami concerns,*

12. *Accordingly, Ground Nos. 1,2,5,6,7 & 8 of the assessee's appeal stands dismissed. Ground No. 12 stand dismissed since we do not find any violation of principle of natural justice during appellate proceedings,"*

14. Thereafter, Ld. CIT(A) observed that AO has rightly computed the commission which is reasonable. However on the issue of whether the addition should be confirmed on protective basis his relevant observation are reproduced hereunder:-

9.1 The claim of the Appellant that for A.Y. 2007-08 to 2014-15, the CIT(A) has deleted the protective assessment, will not hold good any more after the receipt of the judgment of Hon'ble ITAT in the case of Shri Bhanwarlal M. Jain, where estimation of commission income earned for providing accommodation entries has been upheld.

9.2 On the issue whether the Assessing Officer has correctly made the addition of commission income in the hands of the Appellant "on protective basis", while substantive addition was made in the hands of Shri Bhanwarlal M. Jain, my observation is as under-

9.2.1 The Hon'ble ITAT, vide the above referred order in the case of Shri Bhanwarlal M. Jain, has given part relief in page no. 30 of the order, in the following manner:-

No.	Nature or Transaction	Estimation of the Hon'ble Tribunal in the case of Shri Bhanwarlal M. Jain
1.	Import transaction by Shri Bhanwarlal M. Jain on behalf of others	@ 0.02%
2.	Accommodation entries of Bogus purchases	@ 0.05% instead of 0.075%
3.	Bogus unsecured loan	@ 1% instead of 2.40%
4.	Commission of Local purchases	Nil against 0.02%
5.	Expenses Allowed	@ 25%

9.2.2 As informed, Department has not accepted the above percentage estimated by the Hon'ble ITAT and further appeal is being preferred. Therefore the estimation is not final. Hence, with due respect to the judgment of Hon'ble Tribunal and to keep the issue alive, the undersigned confirms the estimation made by the Assessing Officer, with respect to commission income earned by the appellant on bogus unsecured loan and bogus purchases as well as 10% of commission income for day-to-day expenses as mentioned in the preceding paragraphs, on protective basis.

9.2.3 It is further observed that Commission income earned on Bogus sales does not form part of the Appellate Order of Hon'ble Tribunal. Hence, the estimation of Rs. 82,282/- @ 0.075% on the sales of Rs. 10,97,10,253/- is hereby

confirmed on substantive basis. Thus, Ground of Appeal Nos. 3, 4, 5, 7 and 9 of the present appeal are dismissed.

15. Thus surprisingly, Ld. CIT (A) held that to keep the issue alive he has confirmed the addition made by the AO on protective basis and observed that in so far as bogus sales are concerned, the same is not part of the order of the Tribunal, therefore Rs. 82,282/- @ 0.75 % on the sales of Rs. 10,97,10,253/- was confirmed on substantive basis. In so far as GP ratio is concerned, he has confirmed the action of AO.

16. Before us, Ld. Counsel for the assessee submitted that this issue is covered by the decision of Tribunal in the case of Rose Impex vs. CIT which was one of the group entities in ITA No. 622/Mum/2021 for the AY 2015-16 vide order dated 29.03.2022, wherein Tribunal has deleted the GP addition. In so far as protective addition, the same was deleted by Ld. CIT(A). The relevant observation of Tribunal reads as under:-

8. However, the A.O has made another addition on the ground that gross profit rate declared by the assessee in the year under consideration is too low i.e 1.19% as compared to the gross profit percentage declared by other such concern of the Shri Bhanwarlal

Jain group. The A.O adopted average gross profit rate of 11.5% and made addition for the difference in gross profit rate of 10.31% [11.5 (-) 1.19] and computed addition of rs.2,71,98,014/-. Before us, the ld. Counsel of the assessee has submitted that on one side, on the basis of evidences found during the course of survey/search in the case of Shri Bhanwarlal Jain, the A.O has treated the assessee as not engaged in genuine business of the trading of diamond and held to be accommodation entry provider and assessed on protective basis. Whereas on the other hand, the A.O is making addition treating the business of trading of diamond recorded in books of account as genuine and making addition for low gross profit rate. The ld. CIT(A) has also confirmed this addition to compensate low gross profit rate. The ld. Counsel of the assessee submitted that the Income-Tax authorities cannot blow hot and cold in the same breath. According to him if Income Tax Department has accepted the assessee as controlled and managed by Shri Bhanwarlal Jain for providing accommodation entries, then addition to compensate gross profit rate is not justified. The ld. D.R also could not controvert the fact that the assessee has been held a concern controlled by Shri Bhanwarlal Jain engaged only for providing accommodation entry bills. In our opinion such circumstances, the lower authorities are not justified in sustaining the addition to cover the low gross profit rate on the basis of books of account of the assessee which has not been accepted by the department and percentage commission has been assessed treating the purchase and sales recorded in books of accounts.

Similarly commission income has also been estimated on the unsecured loan advanced by the assessee also. We have noted that in the case of Bhanwarlal Jain, the department has taken stand that accommodation entries have been provided through the assessee concern. The revenue has to take one stand and cannot treat the assessee simultaneously as accommodation entry provider as well as genuine concern engaged in trading of the diamond. In view of the above discussion, we set aside the finding of the ld. CIT(A) on the merit of the addition and direct the A.O to delete the addition of Rs.2,71,98,014/-.

17. On the issue of protective addition on account of commission, Ld. Counsel submitted that once the substantive addition has been made, which has also been noted by Ld. CIT(A), then the said protective addition cannot be sustained.

18. In so far as validity of reopening, Ld. Counsel submitted that here in this case from the perusal of the reasons recorded, it is seen that the proceedings of reopening have been initiated only for making the protective addition which itself show that there is no income escaping the assessment when AO is aware that substantive addition has already been made. In support, he strongly relied the decision of Hon'ble Jurisdictional Bombay High Court in the case of

DHFL Venture Capital Fund vs. ITO WP no. 2966 of 2012 (Bom).

The another important fact pointed out that AO has wrongly observed and noted the reasons recorded that Ld. CIT (A) has confirmed the addition in the block period which in fact is incorrect because Ld. CIT(A) in the block period for AY 2008-09 to 2014-15 vide order dated 30.10.17 had deleted the protective addition in the case of assessee entirely and therefore such wrong assumption of facts itself vitiates the assumption u/s 147. In support, he filed copy of appellate order for the block period in all the assessees'.

19. On merits, Ld. Counsel submitted that Shri Bhanwarlal Jain has retracted from his statement and assessee is genuine concern engaged in the business of trading in diamond and has nothing communication with Shri Bhanwarlal Jain. All the transactions have been done through banking channel and AO without conducting any independent inquiry has presumed and concluded that the assessee is benami concern operated by Shri Bhanwarlal Jain. Further, he submitted that on one hand AO is treating assessee is dummy concern managed and operated by Shri Bhanwarlal Jain and at the same time he estimating the net gross

profit rate. He further submitted that assessee has duly maintained proper books of accounts including purchase register, sales register, stock register, ledgers and Bank Statement and no specific defects or irregularity was found or observed by the auditors. He further submitted that assessee is engaged in the business of trading of diamonds where each piece of diamond has distinct characteristics and value and not comparable with any other piece. Each trader has his own strengths and weakness like risk appetite, financial position, market reputation, source of procurement and supply, etc. Accordingly, Gross Profit margins cannot be compared in diamond trade. He further submitted that even before the Ld. A.O. and the Ld. CIT(A), the assessee had duly submitted the following documentary evidences to substantiate the genuineness of the transaction of purchases, sales, and Loan advances to various parties, which are as under:-

- ITR Acknowledgment for A.Y. 2015-16
- Tax Audit Report, and Annual Report for A.Y. 2015-16
- Copy of Sales Register
- Copy of Purchase Register
- Statement of Loans and Advances
- Bank Statement of appellant

20. Ld. Counsel further submitted that Ld. A.O. has rejected the books of accounts of the assessee by alleging that the assessee did not submit all details without appreciating the fact that the Ld. A.O. cannot reject books of accounts u/s 145(3) of the Act without pointing out any specific defect in the books.

21. He further submitted that Ld. CIT(A) confirmed the same estimated gross profit as calculated by the Ld. A.O. without assigning his own reasoning. The documents submitted before Ld. AO was also submitted before Ld. CIT (A) in form of a paper book. No discrepancies regarding the documents submitted or to say lack of documents submitted were raised by the Ld. CIT(A). The Ld. CIT (A) in fact acknowledged the fact that quantitative details were duly provided under the tax audit report filed u/s 44AB of the Act. He further submitted that Ld. A.O., very conveniently cherry picked 4 concerns out of almost 60 which apparently had the highest GP margins. The comparison was also made by comparing data of AY 2014-15, whereas all the data for AY 2015-16 was duly available with the Ld. A.O. In fact, the Ld. A.O. did not even consider the past years GP of the assessee itself despite the fact that the Ld. A.O. had

himself observed that there was no change in the circumstances from the previous years. Lastly, he submitted that the addition of estimated Gross profit needs be deleted since the commission addition is already made on the same amount and the comparison of Gross profit with other entities was on a prejudicial basis and without considering the Gross Profit declared by the assessee in Audited Financial Report.

22. With regard to addition of Rs. 82,282/- being 0.75% of total sales turnover from protective to substantive basis, he submitted that The Ld. CIT(A) by placing reliance on the order of Hon'ble ITAT Mumbai in the case of **Bhanwarlal Jain ITA No. 2669/Mum/2018** incorrectly concluded that the said order of Bhanwarlal Jain did not consider the addition on account of commission on sales, and accordingly made substantive addition of the same in the hands of the assessee. However, the findings of the Ld. CIT(A) are grossly incorrect. The Hon'ble ITAT has duly considered the addition on account on account of alleged commission on sales in the order of Bhanwarlal Jain in Page no. 30 of the said ITAT order under the point 2 of the table "**Accommodation entries of bogus purchases**

provided by assessee". The Hon'ble ITAT order covers the part of the Commission on Sales and the same is made taxable in the hand of Shri Bhanwarlal Jain. Therefore, the same addition in the hands of the assessee becomes double taxation of the same income and is invalid. Lastly, he submitted that the conversion from protective addition to substantive by the Ld. CIT(A) clearly tantamount to enhancement of income in the hands of the assessee. However, the Ld. CIT(A) did not provide the assessee any opportunity to show cause against such enhancement, which is in **violation of section 251(2)** of the Act and bad in law.

23. On the other hand, Ld. DR strongly relied the order of Ld. CIT(A). In so far as protective addition is concerned and also on the issue of validity of 147, he submitted his written submission, which are as under:-

3) At the outset, it is placed on record that these 7 cases came under the radar due to the search and seizure action carried out on Mr. Bhanwarlal Jain on 03.10.2013. The AR representing these cases had taken Ghanshyam Vashishta - ITA No. 341/Mum/2022 for A.Y. 2015-16 as the lead year, after placing on record the other 6 cases, where, similar views / orders are applicable. In pursuance

to the search action on Shri Bhanwarlal Jain, in his statement recorded on oath u/s. 132(4) on 11.10.2013, where he had confirmed that around 70 concerns have taken accommodation entries in the form of Bogus sales, Bogus purchases, Bogus loans etc. and all the 7 cases are one among those concerns, who have availed of these benefits to defraud the revenue. The orders u/s. 143(3) r.w.s. 147 of the IT Act, 1961 speaks of Non-compliance in all the cases. Similarly, summons issued u/s. 131 by the AO also remained to be complied, which made the AO complete the assessment as per material available on record. The cases were reopened in September, 2018 approximately and concluded in November, 2019, which shows that the assessee had around 14 months to present his status. Thus, the assessee at this juncture cannot hush up the matter of non-compliance, which is an essential requirement for any judicial proceedings.

4) The Id. CIT(A), after considering the submission of the assessee, vide detailed orders numbering 52 pages dated December, 2019 concluded in favour Revenue. The ten grounds of appeal were dismissed as the Ld. CIT(A) was convinced with the comparables taken prior to estimation of Income on the accommodation entries availed by the assessee. The Id. CIT(A) also dwelled into the evidences detected as a result of the action u/s. 132, which, among various things included hand written Notes, pen drives et. and statement recorded u/s. 132(4) of Shri Bhanwarlal Jain, his son, Shri Rohit Birawat etc., where co-relation was established between the parallel books of accounts found on the pen drive vis-

a-vis books of accounts of 70 concerns being managed and controlled by Shri Bhanwarlal Jain. The Auditors too had given their statement on oath that the financial statements were signed as per direction of Shri L.P. Kothari, without verifying the books. Furthermore, the findings are further corroborated by survey u/s. 133A carried out on 30 concerns, which revealed that all the 30 concerns functioned from the same premises. All the above facts come to a conclusion that the intention of all the assessees are misleading and with an ulterior motive of defrauding the Revenue.

5) The block assessment completed u/s. 153A r.w.s. 143(3) for the Block period A.Y. 2008-09 to 2014-15 has also attained finality in favour of Revenue, where the estimation of commission income earned for providing accommodation entries are upheld by the Hon'ble ITAT. On the same lines, the decision of the Ld. CIT(A) in all the seven cases may be upheld or enhanced w.r.t. the Hon'ble Supreme Court ruling in the case of N.K. Proteins Ltd., where there was a search action on the group and the Hon'ble Court has correctly dealt with bogus entries and accommodation entry providers and may be applied in these cases too, so that the fear of the law exist.

6) In the present case, the operator is Shri Bhanwarlal Jain, who is prone to carry out such bogus accommodation entries, when he gets a chance to wriggle out. The law of the land should churn such defaulters to refrain from carrying out such bogus accommodation entries, where the judiciary is asked to carry out an exercise,

where law breakers try to twist the law according to their convenience. In the present case too, Res-judicata comes into play and cannot be applied w.r.t. ITAT's order in some other cases provided by the AR, seeking relief. There is no denial of the fact that all the 70 concerns have been given / availed of accommodation entries. The Delhi High Court ruling in the case of Bhagirath Agarwal Vs. CIT is squarely applicable in this case, where statement u/s. 132(4) given should be taken into account in totality and there should not be any relief provided, when there are such clinching evidences and an acceptance of the of the playmaker Shri Bhanwarlal Jain, accepting his guilt and offence.

7) Considering the above facts, your honours may kindly pass orders, which can set the accommodation entry providers to task, which will ultimately refrain them from carrying out such malpractices in future^/ In one of the latest Penny stock cases viz. M/s. Leena Power, a precedent is set for concerns who were blatantly abusing the law and charging high premium.

DECISION

24. We have heard the rival submissions and perused the relevant findings given in the impugned orders as well as material placed on record. As noted above in this case, already block assessment u/s 153A/143(3) was made for the AY 2008-09 to 2014-14 wherein similar protective addition on account of commission has been

deleted by the Ld. CIT (A) vide his order 30.10.2017. Now for the AY 2015-16, the assessee's case was reopened by the AO, firstly, holding that in the case of search of Shri Bhanwarlal Jain in his statement recorded u/s 132(4) on 11.10.13 had categorically admitted that they are engaged in issuing accommodation entries for bogus loans /bogus sales /bogus imports through 70 concerns operated and controlled by them which included the assessee. Secondly, he also noted that the assessment in this case has been completed u/s 153A r.w.s 143(3) and the addition has been made on protective basis and substantive in the case for AY 2008-09 to 2014-15. **He further noted that Ld. CIT(A) in the block AY 2008-09 has confirmed the addition made by the AO, which fact has completely incorrect because Ld. CIT(A) has deleted the said addition.** Thus, the case has been reopened only for taxing the commission income for getting accommodation entries purely on protective basis. In fact even in the assessment order, AO has made protective addition.

25. From the record, we find that the Tribunal has already taken into consideration of entire turnover of 70 concerns allegedly

controlled and managed by Shri Bhanwarlal Jain for computing the commission income for providing accommodation entries holding that Shri Bhanwarlal Jain was an entry provider who has providing accommodation entries through alleged 70 concerns and the entire commission has been added in his hands on substantive basis. Thus, when substantive addition has been sustained and the case of Shri Bhanwarlal Jain which fact has also been noted by AO, then there is no question of any income escaping assessment in the hands of the assessee. Very premise of reopening the case that income chargeable to tax has escaped assessment is found to be nonexistent because already income has subjected to tax, albeit in the case of different assessee, therefore initiating of re-assessment proceedings for taxing the same income u/s 147 has no legs to stand.

26. Apart from that, the reasons recorded by the AO suffers from incorrect assumption of facts, because he has wrongly noted that Ld. CIT(A) in the block assessment years for AY 2008-09 to 2014-15 has confirmed the additions which as noted above is incorrect, because the same has already been deleted, which matter has

already attained finality. Accordingly, the AO cannot assume jurisdiction u/s 147 to make protective addition once there is no escapement of income and secondly his reasoning is based on wrong assumption of facts. On this ground, we hold that reopening itself is bad in law, and accordingly proceedings u/s 147 is quashed.

27. Since we have already quashed the reopening u/s 147, therefore we are not going into the merits of addition on GP or enhancement made by Ld. CIT (A). We are also not going into the question, whether all these assessees are benami concerns of Shri Bhanwarlal Jain or the Shri Bhanwarlal Jain is the beneficiary owner of these companies or these companies are genuine entities carrying out any genuine business. This aspect, Department or AO has to take call or proceed in any other way as they deemed fit. As of now, the matters concluded by the Tribunal that all the present assesseees' which are in appeal before us, have been held to be bogus/ benami entities.

28. In other appeal of assessee i.e. M/s Mukti Exports for AY 2015-16, assessee has raised exactly the similar grounds, which are 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. 16,97,713/- 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. 1,75,90,707/- (being 8.82% of Rs. 19,94,41,130/-), 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.

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. 2011-12 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.*

9. *The appellant craves to add, alter, classify, reclassify, delete or modify any of the above grounds of appeal and requests to consider each of the above grounds without prejudice to one another.*

29. Thus, since the assessee has raised the similar grounds, and facts are identical and also the findings of AO and CIT(A) are verbatim same, therefore our findings given in the foregoing paragraphs will apply mutatis mutandis in this appeal and accordingly, the reopening u/s 147 is quashed in this appeal also.

30. In the result, both the appeals filed by the different assessees are **allowed** in terms as indicated above.

Orders pronounced in the open court on 19th July, 2022.

Sd/-
(S. Rifaur Rahman)

Accountant Member

Sd/-
(Amit Shukla)

Judicial Member

मुंबई Mumbai;दिनांक Dated : 19.07.2022

Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ **ITAT, Mumbai**

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