

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
ITA No. 1981/Mum/2021 (A.Y. 2012-13)

Ratan & Co.

5 – Navyug Sagar, Teen Batti,  
Walkeshwar, Mumbai-400006.

**PAN: AADFR3713J**

..... Appellant

Vs.

ITO-19(3)(1)

Matru Mandir,

Mumbai-400007.

..... Respondent

Appellant by	:	Mr. Suchek Anchaliya
Respondent by	:	None
Date of hearing	:	16/06/2022
Date of pronouncement	:	08/09/2022

ORDER

**PER GAGAN GOYAL, A.M:**

This appeal by the assessee is directed against the order of National Faceless Appeal Centre, Delhi [hereinafter referred to as ['NFAC'] dated 11.09.2021 passed under section 250 of the Income Tax Act, 1961 (hereinafter referred to as ['the Act'] for the Assessment Year (AY) 2012-13. The assessee has raised the following grounds of appeal:

*"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 facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in confirming the addition of entire purchases amounting to Rs. 5,30,530/- by treating the genuine purchases as accommodation entries.*

*3. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in confirming the addition made by Ld. Assessing Officer, without providing any opportunity of cross examination, without any corroborative evidence and without providing copy of statements relied upon, which is against the principle of natural justice.*

*4. 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.”*

2. Brief facts of the case are that assessee has not filed any return of income for A.Y. 2012-13. Concerned A.O. received information from the office of DGIT (Investigation), Mumbai

3. In this case, the information was received from the office of DGIT (Inv.), Mumbai showing certain pieces of information suggesting escapement of income. Thereafter, the case was selected for reassessment u/s 147 of the Act after recording reasons for reopening and obtaining requisite administrative approval. The case was re-opened vide issuance of notice u/s. 148 dated 28.03.2019. The assessee has filed return of income in response to noticed u/s 148 of the IT. Act on 02.05.2019 declaring total income at Rs. NIL/-.

4. The reason for reopening and notices u/s 143(2) & u/s 142(1) alongwith questionnaire were issued on 14.08.2019 and duly served upon the assessee.

5. In response to the above statutory notices/letters, the assessee filed submission/details. The details are perused and placed on record. A search and

survey action were conducted in the case of Shri Bhanwarlal Jain and their Group Concerns. During the course search/survey action, it was revealed that these group concerns were merely providing accommodation entries through various benami concerns operated and managed by them. It was also found that these concerns are indulged into fraudulent transactions of issuing accommodation/hawala entries which purportedly shows transaction of purchase and sale of material and bogus unsecured loans and advances.

6. During the year of consideration there was information from the DGIT (Investigation), Mumbai that assessee had taken accommodation entries from a transactions with Bhanwarlal Jain Group (who are entry/Accommodation bill providers) of Rs.5,30,530/- the details are as under:

Sr.	Name of the hawala entities	Amount involved (in Rs.)
1	Naman Exports (Bhanwarlal Jain Group)	5,30,530/-
	Total	<b>5,30,530/-</b>

7. Before proceeding further, a brief background of the conclusion derived by the Investigation Wing in respect of the modus operandi involved in the Diamond industry for issuance of fake bill is first discussed. The Mumbai Investigation Wing, through some discrete enquiries, came to know about one Syndicate Groups operated by a man namely Shri Bhanwarlal Jain who along with his some trusted men, was exclusively engaged in the business of issuing non genuine purchase bills and also unsecured loan accommodation entries' to various interested parties. It was well established during the search and seizure operation that the concerns managed by Shri Bhanwarlal Jain (henceforth Shri Bhanwarlal Jain Concerns") were all dummy concerns operating solely with the purpose of

facilitation of fraudulent financial transactions which includes providing accommodation entries in the form of unsecured loans to the interest parties, issuing of bogus sale bills to various parties etc. The conclusion drawn by the Investigation Wing is bifurcated in two parts, which is discussed below- The initial part is devoted in establishing the fact that there are almost 70 concerns which were operated as a part of a syndicate run by Shri Bhanwarlal Jain. The second part goes on to prove that this syndicate's operated in unison so as to provide an accommodation entries in the form of bills to the players in diamond market. The assessee's was asked to substantiate the transactions of purchase with impugned entities and show caused as to why said transactions be not treated as bogus transaction.

8. During the course of search, all the registered offices, business premises and residential premises of various dummy directors, partners and proprietors including that of Bhanwarlal Jain, Rajesh Bhanwarlal Jain and Manish Bhanwarlal Jain were covered. At none of these premises, any stock of diamond was found. Any concern which is in genuine business of diamond trade, at a given point of time would at least have some stock of diamond available. However, the fact that none of the 70 concerns had any stock of diamond as on 03/10/2013 i.e. the day when search commenced raises a suspicion with regard to genuineness of business activity of these 70 concerns.

9. During the course of search evidences were found, persons were examined on Oath which established that Bhanwarlal Jain and Family have been using 70 benami concerns to give accommodation entries in the nature of bogus purchase and bogus unsecured loans to various beneficiaries, examination on Oath of

Trusted employees of Bhanwarlal Jain and family revealed the complete modus operandi used by Bhanwarlal Jain for giving such accommodation entries of bogus purchases and loans and advances to various beneficiaries. The assessee was accordingly show caused vide notice dated 11.12.2019 as to why the alleged transactions of accommodation entries of Rs. 5,30,530/- should not be treated as non genuine/unexplained and added to your total income for A.Y 2012-13.

10. No compliance to the above show-cause notice from assessee. Hence, AO made addition of Rs. 5,30,530/-.

11. Being aggrieved with the order of AO, assessee preferred an appeal before the Ld. CIT (A)-30, Mumbai (NFAC). Here also assessee was not succeeded and order of AO was upheld, in turn assessee preferred an appeal before ITAT.

12. We have gone through the order of AO, order of Ld. CIT (A) and Paper Book filed before us on 10.06.2022. We observed that assessee faced similar action in A.Y. 2010-11 also wherein the then Ld. CIT (A)-18, Mumbai dealt with the same issue and we have not found any evidence of further appeal by the assessee against the order of Ld. CIT (A)-18, Mumbai for A.Y. 2010-11.

13. The goods purchased from the above party have been sold and quantitative tally thereof given in the tax audit report u/s 44AB of the Act and the same is perfectly tallied with books of accounts. It is fundamental accounting principal that once the sale is accepted than the purchase cannot be doubted. Reliance is placed in case of G.G. Diamond International v Dy. CIT (2006) 104 TTJ 809 (Mum.) (Trib.) and Balaji Textile Industries (P) Ltd vs. ITO [1994] 49 ITD 177 (Mum.) The quantity details and movement of goods is perfect tallied hence there is no defect

and mismatch in the books of accounts of the assessee. Reliance is placed on ITO, Ward 2(5), Rajkot v. Girish M. Mehta [2007] 105 ITD 585 (Rajkot.). The Ld. AO observed that the appellant has taken bogus purchase bill from accommodation entry providers and made purchases from the undisclosed party in cash. Since the appellant has not purchased any goods in cash, none of the purchase party have confirmed having paid any cash against cheque to the appellant. The Ld. A.O. has not stated from where the goods have been actually purchased by the appellant in cash, therefore presumption of A.O. having purchased the goods in case is incorrect and based on personal opinion of the Ld. A.O. without having any corroborative evidence. The Ld. A.O. failed to bring on record with evidence from where the appellant has purchased the goods in cash as alleged.

14. I have considered the submissions of the appellant and perused the materials available on record. The appellant has requested to delete the impugned addition of Rs. 15,91,200/- made on account of bogus purchases. The appellant has made elaborate submissions as detailed above and the same have been considered carefully. It is an admitted fact that during the course of Search & Seizure action u/s 132 of the Act in the case of Shri Bhanwarlal Jain & Group concerns, the various persons and Shri Bhanwarlal Jain himself had admitted that they are operating and managing various fictitious concerns, who are engaged in providing bogus accommodation entries, without supply of any goods and the above referred party was also included in such concerns. During the course of appellate proceedings, the appellant's Ld. AR could not submit any proof of transportation of goods/diamonds and explained that the diamonds were delivered by hand as per trade practice. In absence of any third party evidences, it cannot be held that the appellant has proved that the goods/materials under

considerations were purchased from the above referred parties and hence the appellant's contentions in this respect are rejected.

15. Now the question arises that in the event of appellant not proving that it had purchased goods/materials from above referred dealer/party, whether entire such bogus purchases can be disallowed. The Assessing Officer has observed that the information was received that such parties were engaged in providing bogus bills and no actual goods or services are delivered by them to their customers and they issued bogus bills after charging small commission. The Assessing Officer has also held that there cannot be any sales/work without purchases being made and hence the Assessing Officer has not doubted the purchases of goods as such and in effect has held that the appellant has inflated such purchases. From the above, it is evident that the Assessing Officer neither has doubted nor has held the purchases under considerations are bogus. The only finding of the Assessing Officer is that the said purchase were not made from the above referred dealer/party, but were purchased from somewhere else, i.e. from open/grey market. Further, the Assessing Officer has not doubted the genuineness of sale/work effected and has taxed the same as such.

16. The facts and circumstances of the case suggests that the appellant had purchased the goods under consideration not from above referred party but from some other suppliers in grey market, may be without bills. Any person indulging in the practice of purchasing the goods from the grey market and obtaining bogus bills of some of the parties would do so for getting some benefits and what would be the magnitude of the benefit would depend upon the facts of the case. Hence, the purchase price mentioned in the alleged sales bills cannot be accepted. The

obvious reason is that the assessee did make purchases but at a lower price so as to increase its overall profits. In these circumstances, the entire amount of alleged bogus purchases cannot be disallowed / added, but only profit element embedded therein needs to be taxed.

17. As the books of account of the assessee were not rejected by the AO and he had accepted the sales of the assessee. The assessee maintained proper books of accounts including purchase register, sales register, stock register, etc. and not a specific defect or irregularity was observed by the AO. But on the other hand, the assessee dealt with an entity of entry provider Mr. Bhanwarlal Jain, this is also not in dispute.

18. In similar facts of the case, the Hon'ble ITAT, Mumbai in the case of Amy Diam Vega Jewellery P Ltd in ITA Nos. 5799, 5880 & 5801/Mum/2016, vide its order dated 28.09.2017 has upheld the order of the CIT(A), who in view of the report of the Task Group for Diamond sector submitted to the Department of Commerce, had reduced the profit margin in such suspicious purchases to 4% as against the estimation of 8% made by the AO. The Hon'ble Tribunal has held as under:

*“We have heard the rival submissions, perused the orders of the authorities below. In this case the assessments were reopened based on the information from the DGIT (Investigations). Mumbai that the assessee is a beneficiary from the entities operated by Shri Bhanwarlal Jain/Shri Praveen Kumar Jain wherein the search took place and it was found that Shri Bhanwarlal Jain/Shri Praveen Kumar Jain were providing only accommodation entries and there were no actual sale transactions and the assessee could not prove the movement of goods from the suppliers to the assessee. In the absence of delivery chalans, proper stock records and based on the depositions of the suppliers that they have provided only accommodation bills, the Assessing Officer has rightly concluded that the assessee has obtained only bogus bills and the assessee might have purchased goods in the gray market.”*

19. Similar finding on the similar facts in assessee's own case were pronounced for A.Y. 2010-11 by the then Ld. CIT (A) and there is no evidence on record before us that assessee has further challenged the decision of Ld. CIT (A). In view of the above and considering the submissions of the assessee with the facts of the case, we are of the considered view that addition made by AO should be restricted upto 4% of the total addition made.

20. We delete the addition made by the AO and restrict the same upto 4% of Rs. 5,30,530/-.

21. In the result, appeal filed by the assessee partly allowed.

Order pronounced in the open court on 8<sup>th</sup> day of September, 2022.

Sd/-  
(PAVAN KUMAR GADALE)  
JUDICIAL MEMBER

Sd/-  
(GAGAN GOYAL)  
ACCOUNTANT MEMBER

Mumbai, दिनांक / Dated: 08/09/2022

SK, Sr.PS

**Copy of the Order forwarded to:**

1. अपीलार्थी / The Appellant ,
2. प्रतिवादी / The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई / DR, ITAT, Mumbai
6. गार्ड फाइल / Guard file.

BY ORDER,

//True Copy//

(Dy. /Asstt. Registrar)  
ITAT, Mumbai