

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "D", MUMBAI  
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

**ITA No. 3617/Mum/2018 (A.Y. 2012-13)**

ITO, Ward-25(2)(3),  
C-10, R.No. 504, 5<sup>th</sup> Floor,  
Pratyakshkar Bhavan, BKC,  
Bandra, Mumbai-400051.

..... Appellant

Vs.

Mr. Denish Harilal Shah  
Flat No. 101, 1<sup>st</sup> Floor, Paan Villa,  
Sarojini Road, Vile Parle (W),  
Mumbai-400057

**PAN: AWGPS3773C**

..... Respondent

**C.O. No. 48/Mum/2020 in ITA No. 3617/Mum/2018 (A.Y. 2012-13)**

Mr. Denish Harilal Shah  
Flat No. 101, 1<sup>st</sup> Floor, Paan Villa,  
Sarojini Road, Vile Parle (W),  
Mumbai-400057

**PAN: AWGPS3773C**

..... Appellant

Vs.

ITO, Ward-25(2)(3),  
C-10, R.No. 504, 5<sup>th</sup> Floor,  
Pratyakshkar Bhavan, BKC,  
Bandra, Mumbai-400051.

..... Respondent

Appellant/Assessee by : Sh. Bharat Kumar

Respondent/Respondent by : Sh. Mahita Nair

Date of hearing : 30/06/2022  
Date of pronouncement : 16/09/2022

ORDER

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

This appeal by the Revenue and cross objection by the assessee are directed against the order of Ld. Commissioner of Income Tax (Appeals)-37, Mumbai [hereinafter referred to as the ['Ld. CIT(A)'] vide order dated 27.03.2018 for the Assessment Year (AY) 2012-13. Firstly, we are taking ITA No. 3717/Mum/2018 for A.Y. 2012-13 as lead case. The Revenue 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) has erred in deleting the addition of Rs.8, 60, 33,182/- on account of bogus purchases.*
- 2. On the facts and in the circumstances of the case and in Law, the Ld CIT (A) erred in not considering that the addition was made on the basis of information received from the DGIT (Inv), Mumbai, with regard to bogus purchases made by the assessee that all the concerns controlled and managed by Shri Rajendra Jain and his group are not doing any real trading in diamonds but indulged in paper transactions only.*
- 3. On the facts and in the circumstances of the case and in Law, the Ld CIT(A) has erred in not considering that the hawala dealers have admitted before the Investigation wing the modus operandi followed by the above group by the key persons of the group in their statements recorded on oath.*
- 4. On the facts and in the circumstances of the case and in Law, the Ld CIT (A) has erred in not considering that the assessee could not prove the genuineness of the parties during the course of assessment proceedings.*
- 5. On the facts and in the circumstances of the case and in Law, the Ld.CIT (A) has erred in estimating the profit at 3% on the total alleged bogus purchases from hawala dealers.*

6. *On the facts and in the circumstances of the case and in Law, the Ld CIT (A) has erred in not appreciating the decision of the Hon'ble Supreme Court in the case of NK. Proteins Ltd. Vs. DCIT (2017-TIOL-23-SC-IT) dated 16.01.2017 wherein the Hon'ble Apex Court confirmed the decision of the High Court for addition of entire income on account of bogus purchases.*

7. *The appellant prays that the order of Ld CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored."*

2. The assessee in his C.O. has raised the following grounds of appeal:

	Grounds of cross-objections	Tax effect relating to each Ground of cross-objection (see note below)
1.	On the facts and circumstances in case in Law, Ld. CIT (A) erred in confirming reopening of the case which is bad in Law.	
2.	On the facts and circumstances in case in Law, Ld. A.O. erred reopening of the case on the basis of approval received u/s 151 which is taken mechanically and without application of Mind.	
3.	On the facts and circumstances in case in Law, Ld. CIT (A) erred in confirming addition on account of alleged bogus purchases.	13,94,800/-
	Total tax effect (see note below)	13,94,880/-

3. Brief facts of the case are that the assessee is an individual engaged in the business of Diamond Trading filed his return of income on 21.08.2012 declaring total income at Rs. 18,58,260/-. The return of income was processed under section 143(1) of the Act. Thereafter, an information received from the office of DGIT (Inv.), Mumbai about various parties involved as hawala dealers involved as issuer of bogus purchase bills to various assesses of Mumbai to suppress the profit. Names of the parties involved in issuing the bills and beneficiaries also

confirmed by the sales tax authorities of states. The details of bills and parties from whom bills have been taken are as under:

Name of the bills provider	PAN of the bill provider	AY	Amount (Rs.)
Kriya Impex Pvt.Ltd.	AADCK1926B	2012-13	99,06,252/-
Avi Exports	ABIPJ5587A	2012-13	77,62,500/-
Karnawat Impex Pvt. Ltd.	AADCK1927A	2012-13	2,51,92,282/-
Arihant Exports	AFLPP5405N	2012-13	2,35,85,142/-
Sun Diam	ABAFS0852K	2012-13	1,20,51,256/-
			<b>7,84,97,432/-</b>

3. Based on above information a notice u/s 148 of the Act was issued to the assessee on 27-03-2017. In response to the said notice assessee vide letter dated 06-04-2017 requested to treat the original return filed as a return in response to notice u/s 148. During the year under consideration assessee was engaged in the business of Diamond Trading. Assessee further filed details as per letter dated 09.10.2017 that there is some difference in the figure of purchase amount, the difference is as under:

*"1. Kriya Impex Pvt. Ltd.: The purchase amount Rs. 99,06,252/- is completely matched.*

*2. Avi Exports: as per your records the purchase amt. 77,62,500/- and whereas our books of accounts shows Rs. 8291175 which is mismatched. We would like to say that your good-selves by oversight mistake not added purchase amount Rs. 5,28,675/- with Rs. 77,62,500/-.*

*3. Karnawat Impex Pvt. Ltd.: The purchase amount Rs. 2,51,92,282/- is completely matched.*

*4. Arihant Exports: As per your records the purchase amount Rs. 2,35,85,142/- and whereas our books of accounts shows Rs. 31489750/- which is mismatched. We would like to say that your good-selves by oversight mistake not added purchase amount Rs. 79,04,608/- with Rs. 2,35,85,142/-.*

*5. Sun Diam: As per your records the purchase amount Rs. 1,20,51,256/- and whereas our books of accounts shows Rs. 1,38,14,543/- which is mismatched. We would like to say that your good-selves by oversight mistake not added purchase amount Rs. 17,63,287/- with Rs. 1,20,51,256/-."*

4. During the course of assessment proceedings notice u/s 133(6) were issued to the parties involved in issuing the bills to the assessee. But none of the party came forward in response to notice u/s 133(6). Then A.O asked the assessee to produce the parties for verification but assessee also expressed his inability to produce those parties. During the assessment proceedings assessee has merely furnished ledger accounts and invoices of the relevant purchase. Despite of specific query from A.O about delivery challans and details of transportation, assessee failed to produce the same. In addition to above the defaulter parties confessed before the sales tax authorities that they are in the business of issuing bills without actually selling any materials. In view of this A.O treated these transactions of purchase as in-genuine and applying the decision in the case of M/s Kachwala Gems vs. JCIT (2006) 206 CTR (SC).

5. Being aggrieved with the order of A.O Revenue preferred an appeal before the Ld. CIT (A)-37, Mumbai (NFAC). Ld. CIT (A) also endorsed the views of A.O and dismissed the appeal of assessee.

6. Against this order of Ld. CIT (A) assessee preferred an appeal before us. we have gone through the order of the A.O, order of the Ld. CIT(A) and arguments and submissions of the assessee emanating out of various orders and paper-book submitted by the assessee. Following facts are being emerged out of above in the mattes as under:

- a) Assessee case was assessed u/s 147 based on inputs received from state sales tax department and DGIT (Inv.), Mumbai ;
- b) Parties involved in issuing bogus purchase bills, confessed about their modus operandi before the state sales tax authorities
- c) Assessee was not able to produce any evidence about actual delivery of goods from these alleged parties.
- d) Department hadn't challenged the books of accounts and specifically the sales of the assessee.

7. In view of the above facts we can reasonably observe that assessee had made purchases in cash to avoid burden of indirect taxes. To introduce these transactions in regular books of accounts he entered into the bogus purchase transactions with alleged parties. We confirm the findings of A.O treating these transactions as bogus purchase bills but we further relied on the decisions of Hon'ble jurisdictional high court in there following pronouncements as under.

- ***[2019] 103 taxmann.com 459 (Bombay) Principal Commissioner of Income-tax-17 v. Mohommad Haji Adam & Co.***

*Section 69C of the Income-tax Act, 1961 - Unexplained expenditure (Bogus purchases) - Assessee was a trader of fabrics - In course of assessment, Assessing Officer noted that certain purchases made by assessee were bogus - He thus added said amount to assessee's taxable income - Tribunal noted that there was no discrepancy between purchases shown by assessee and sales declared - Accordingly, Tribunal restricted addition limited to extent of bringing gross profit rate on purchases at same rate as applied in other genuine purchases – Whether, on facts, no substantial question of law arose from Tribunal's order - Held, yes [Paras 8 and 9][In favour of assessee]*

- ***[2022] 141 taxmann.com 245 (Bombay) Principal Commissioner of Income-tax v. Batliboi Environmental Engineering Ltd.\****

*I. Section 69C of the Income-tax Act, 1961 - Unexplained expenditure (Bogus purchases) - Assessment year 2011-12 - Assessing Officer treated purchases made by assessee as bogus purchases and disallowed in totality - Commissioner (Appeals) directed Assessing*

*Officer to disallow 12.5 per cent of bogus purchases and to add 12.5 per cent of amount of purchases to income of assessee - Tribunal upheld view of Commissioner (Appeals) - Revenue contended before High Court that bogus purchases ought to have been disallowed in totality - It was noted that if factum of sales had been accepted by department then even if it was established that there were bogus purchases, it was not necessary that entire amount of purchases should be added to income of assessee as there could not be a sale without purchase - In instant case sales effected by assessee had been accepted by department - Whether Tribunal was right in upholding view of Commissioner (Appeals) - Held, yes [Para 4] [In favour of assessee]*

8. Taking into consideration the above decisions, the correct way of dealing the bogus purchases issue is to estimate the profit margin on such purchases and not adding the entire amount of such purchases. In view of the same, the issue arrived at is to what would be the margin, one can expect while buying the material from grey market instead of normal course of business from regular dealers. Two aspects need to be taken into consideration in such circumstances. First, these diamonds in the grey market are always cheaper than the diamonds sourced from the genuine. This is because, the genuine dealer would charge his incidental cost including the whole administrative cost while selling the diamond in the market whereas the petty dealers in the grey market do not carry such incidental charges on such sales, wherein they are only looking for a quick profit. Secondly, there is always an element of discount in the case of instant cash purchase.

9. In the light of the above, one has to see in the present case, which is in the line of trading in diamonds, what is the correct profit element embedded in such bogus purchases. In the case of diamond trade, generally the rate of VAT is stated to be charged @ 19% on the purchases made from Mumbai and on the purchases

made under Form 'H' no VAT is levied due to export commitment and purchases made from Surat also there is no VAT levied. Coming to the profit margin in the trade, the task force group for diamond industry, after considering the BAP scheme, recommended presumptive tax for net profit calculated @2% of trading activity and @3% for manufacturing activity or 2.5% across the board. It is also ascertained that the operating profit in case of diamond trading for computation of ALP by the TP wing is consistently in the region of around 1.75% to 3%. In view of the same considering the profit margin in this sector ie, around 2 to 3 percent and the taxes saved is around 1% I am of the considered opinion that if the addition is sustained to the extent of 3% of the purchases made, as the profit element embedded in such purchases from the parties belonging to the Rajendra Jain Group concerns, that will meet the ends of justice.

10. Accordingly, respectfully following the decisions of Hon'ble Jurisdictional High Court, we restricted addition limited to the extent of bringing gross profit rate on purchases at same rate as applied in other genuine purchases. In view of above, we do not see any perversity in the order of Ld. CIT(A) and hence, sustained the order passed by the Ld. CIT(A) on the same terms.

11. In the result, appeal filed by the Revenue is dismissed with the above directions.

**C.O. No. 48/Mum/2020 by assessee**

12. In view of the decision in ITA No.3617/Mum/2018 by the Revenue, the grounds raised by assessee in this C.O. became infructuous, hence, no further adjudication is required.

13. In the result, Cross Objection filed by the assessee is also dismissed.

Order pronounced in the open court on 16<sup>th</sup> day of September, 2022.

Sd/-

(ABY T VARKEY)

JUDICIAL MEMBER

Mumbai, दिनांक / Dated: 16/09/2022

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.

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

BY ORDER,

//True Copy//

(Dy. /Asstt. Registrar)  
ITAT, Mumbai