

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.516/SRT/2019

निर्धारणवर्ष/Assessment Year: (2008-09)

(Physical Court Hearing)

Anjana Exports, 1, Kohinoor Society, Opp. GK Chambers, Varachha Road, Surat-395006.	Vs.	The DCIT, Circle-3(3), Surat.
(Appellant)		(Respondent)
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AADFA0943R		

आयकर अपील सं./ITA No.536/SRT/2019

निर्धारणवर्ष/Assessment Year: (2008-09)

(Physical Court Hearing)

The DCIT, Circle-3(3), Surat.	Vs.	Anjana Exports, 1, Kohinoor Society, Opp. GK Chambers, Varachha Road, Surat-395006.
(Appellant)/(Revenue)		(Respondent)/(Assessee)
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AADFA0943R		

Assessee by	Shri Rasesh Shah, CA
Respondent by	Shri Ashok B. Koli, CIT-DR
Date of Hearing	12/10/2022
Date of Pronouncement	14 /11/2022

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned cross appeals filed by the Assessee and Revenue, pertaining to Assessment Year (AY) 2008-09, are directed against the common order passed by the Learned Commissioner of Income Tax (Appeals), [in short “the Id. CIT(A)”], which in turn arise out of an assessment order passed by Assessing Officer under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”).

2. Since, the issues involved in all the appeals are common and identical; therefore, these appeals have been heard together and are being disposed of by this consolidated order. For the sake of convenience, the grounds as well as the facts narrated in ITA No.536/SRT/2019 for assessment year 2008-09, have been taken into consideration for deciding the above appeals *en masse*.

3. Grounds of appeal raised by the Revenue in lead case in ITA No.536/SRT/2019 for AY.2008-09, are as follows:

“1. Whether on facts and in law the ld. CIT(A) was justified in partly allowing the appeal of the assessee and estimating disallowance at Rs.65,96,755/- being @ 5% of Rs.13,19,35,109/-, despite of the fact the AO has made the addition of Rs.13,19,35,109/-, where the purchases made by the assessee of Rs.13,19,35,109/- were proved to be unverifiable and bogus?”

2. Whether on the facts and in law the Ld. CIT(A) was justified on relying upon the case of M/s Mayank Diamonds Pvt. Ltd. which is different and distinct from the facts of the case of the present assessee.

3. On the facts and circumstances of the case and in Law, the Ld. CIT(A) ought to have upheld the order of the A.O. It is, therefore, prayed that the order of the Ld. CIT(A) may be set aside and that of the A.O. may be restored.”

4. Brief facts *qua* the issue are that assessee firm has filed its return of income for AY.2008-09 on 26.09.2008 declaring total income of Rs.2,93,10,645/-. The assessment under section 143(3) of the Act was finalized on 29.12.2010 determining total income at Rs.4,01,92,610/-. The assessee preferred appeal before the CIT(A), Surat and after giving the effect to the CIT(A), Surat's order dated 20.06.2011 the total income was restricted to Rs.2,95,10,645/-. Further, the Hon'ble ITAT, Ahmedabad upheld the order of the CIT(A), Surat. The case was re-opened by issuance of Notice u/s.148 of the Act, dated 26.03.2015 after recording reasons for re-opening and obtaining approval u/s.151(1) of the Act. The notice u/s.148 of the Act was served upon the assessee on 27.03.2015. In response to the notice the assessee vide his letter dated 30.03.2016, received in this office on 08.04.2016 requested to treat the original return filed to be treated as return of income in response to the notice u/s 148 of the Act. The reasons recorded for the re-opening the assessment was supplied to the assessee. The assessee raised objections against the reasons for

re-opening assessment vide letter dated 09.12.2015 were disposed by passing a speaking order dated 11.01.2016 which was duly served upon the assessee. Further, notice u/s 142(1) of the Act was issued on 17.02.2016. In response to the above notices assessee appeared before the assessing officer.

5. In turn the assessee filed a civil application SCA/2493 of 2016 before the Hon'ble Gujarat High Court, Ahmedabad against the speaking order passed by the A.O. for disposing the objections raised by the assessee and issuance of notice u/s.148 of the Act. The civil application of the assessee was admitted by the Hon'ble High Court and granted interim relief to the assessee vide order dated 16.02.2016, directing the respondent (Deputy Commissioner of Income tax) to not proceed further pursuant to the notice dated 26.03.2015 issued u/s.148 of the Income tax Act, 1961. The hon'ble High Court of Gujarat vide its order dated 13/06/2016 permitted the assessee to withdraw the petition. The order was dispatched by the Hon'ble High Court vide dispatch No.DD-SCA/20160115331/201G on 227-26/2016 and received by AO on 29/06/2016. The investigation wing, Mumbai conducted search on Shri Bhanwarlal Jain and Rajesh Bhanwarlal Jain on 03.12.2013, covered certain name sake/dummy directors/proprietors of various concerns that were being actually managed, controlled and operated by Shri Bhanwarlal Jain, Shri Rajesh Bhanwarlal Jain and Shri Manish Bhanwarlal Jain under section 132 and 131 of the Income tax Act, 1961. During the course of search it was found that all name sake/dummy directors/ partners/ proprietors of various concerns belong to the native place of Bhanwarlal Jain & family in Rajasthan and have either known Bhanwarlal Jain personally or through their families. In their respective statements recorded, they have admitted that they were made directors, partners and proprietors of various concerns at the direction of Bhanwarlal Jain & Family which were eventually being managed and controlled by the later. All the concerns in which these employees are shown as directors/partners/ proprietors are operating either from 316 Panchratna, Opera House, 210 Panchratna, Opera House and 105, Panchratna, Opera House which is in the name of Bhanwarlal

Jain, Rajesh Bhanwarlal Jain, Manish Bhanwarlal Jain, other family members of Bhanwarlal Jain, Rajesh Bhanwarlal Jain, Manish Bhanwarlal Jain or concerns in which Bhanwarlal Jain and his family members are proprietor/ partner/ director. Certain documents were also seized which contain names of different concerns along with the names of the directors, partners and proprietors shown in these concerns, PAN No's, bank account No's and Jotting made in same handwriting. If these concerns were actually being operated by the different persons who are shown as directors, partners and proprietors, then all the documents pertaining to the business affairs of these concerns would not have been found at one place. The consolidated jottings in same handwriting indicate that these concerns are related to one persons/group. Also the books of accounts of all these concerns are maintained in one register and on one computer. This further proves that all these concerns are managed and controlled by one person/group. In their respective statements recorded u/s. 132(4) and 131 of the IT. Act 1961, all the employees have accepted and admitted that they are merely dummy director/partner/proprietors of various concerns whose affairs are managed and controlled by Bhanwarlal Jain along with Rajesh Bhanwarlal Jain and that they work on the direction of Bhanwarlal Jain.

6. The statements of all these employees were confronted to Bhanwarlal Jain. In his statement recorded u/s.132(4) of the Act on 11.10.2013, Bhanwarlal Jain has admitted that he manages and controls the business affairs of all concerns in which the persons who are his employees are shown as Directors, partners and proprietors and that these concerns were bogus entities floated by him only for the purpose of providing bogus accommodation entries in the barge of sales bills/purchase bills/unsecured loans, etc. and that no other business activity has been carried out by these entities. During the course of search, evidences were found and 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 purchases 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. On the basis of statements given by Shri Bhanwarlal Jain and also the dummy partners/directors/proprietors of various entities of this group, and further investigation carried out by the Investigation Wing, Mumbai revealed that actual importers of Rough Diamonds import part of their diamond requirement through benami entities operated by Shri Bhanwarlal Jain and family, which ensures benefit of suppression of turnover, profits and capital requirement of the former. The consignments are sent on credit by the suppliers in the names of these benami entities at the instance of the actual importers and on receipt of the imported consignment from customs, through CHA, the consignment is handed over to the actual importer and the bogus stock is entered in the books of the benami entities and the same is not recorded in the books of actual importer. These benami entities of Shri Bhanwarlal Jain group thereafter issue bogus sale bills against the bogus stock. From the details and evidences made available through the above referred letter dated 13.03.2014 of the Director of Income tax (Investigation), Mumbai, it was noted that the following entities of Shri Bhanwarlal Jain Group have given accommodation entries of bogus sales to the assessee as under during F.Y.2007-08 relevant to A.Y.2008-09.

<i>Sr.No.</i>	<i>Name of the party</i>	<i>PAN</i>	<i>Amount (Rs.)</i>
1	<i>Impex Gems</i>	<i>AHNPJ4936G</i>	<i>4,01,06,535/-</i>
2	<i>Jewel Diam</i>	<i>ABUPV3494J</i>	<i>3,89,94,773/-</i>
3	<i>Jewel Diam</i>	<i>ABUPV3494J</i>	<i>1,52,23,021/-</i>
4	<i>Little Diam</i>	<i>AABFL1469R</i>	<i>2,26,10,000/-</i>
5	<i>Meridian Gems</i>	<i>AAQFM7140P</i>	<i>1,50,00,780/-</i>
	<i>Total</i>		<i>13,19,35,109/-</i>

7. During the course of recording of statements under section 132(4) by the Investigation Wing, Mumbai, Shri Bhanwarlal Jain had accepted floating bogus entities only for the purposes of providing sales/purchase/ unsecured loan accommodation entries. In a specific query to Q.No.24, Shri Bhanwarlal Jain had accepted that he was managing nearly 70 entities, a comprehensive list of which was provided by him. It was further accepted by him that he along with the son

and other family members has been operating and managing these concerns. As per the list of such entities provided by him it is seen that the above mentioned entities were being managed by Shri Bhanwarlal Jain and his family but for the purposes of showing that these operated as separate entities, several bogus partners/proprietor have been roped in to show that they were running the said bogus entities. It has further been reported that the Investigation wing of income tax department, Mumbai had also recorded the statement of above said partners/proprietors during the course of which they had accepted that they were not really doing any business and on the other way they were only facilitating bogus bills of sales and the overall affairs of their entities were been managed by Shri Bhanwarlal Jain and his group consisting of his family members. Since the evidential and material facts found during the course of search and survey operations carried out in the case in Shri Bhanwarlal Jain Group prove giving of above mentioned accommodation sales entries, it is prima facie apparent that the assessee have utilized such bogus purchases to suppress profit for the year to that extent. There is no other prudent use of bogus purchase bills. The report of Investigation Wing, Mumbai with enclosures contains specific information in respect of entities who have availed accommodation entries in the nature of purchase bill/unsecured loans. This list also include the name of the entities discussed above, who were flotted and managed by Shri Bhanwarlal Jain group, mainly for the purpose of providing accommodation entries to prospective seekers of such accommodation entries in the form of bills/unsecured loans. In this case, on the basis of the report by the Investigation wing, as referred to above, the assessee has taken accommodation entries from the above said entry providers, without actually conducting any business of purchase for which such bill was given by the said entry providers since they have themselves as well as by Shri Bhanwarlal Jain Group have accepted that they have only provided such accommodation entries through bills of sales.

8. Though the case of the assessee was completed u/s. 143(3) of the Act on 29.12.2010 on the basis material facts available before him at the time of

completion of assessment proceedings, and the information that the bills of purchases have also included such bogus bills of purchases was not available with the A.O. at that point of time, since the search and survey operation in the case of Shri Bhanwarlal Jain Group has also commenced on 03.12.2013 at the report of the Investigation Wing, Mumbai on such bogus entry providers after completing their investigation has been received by AO on 25.03.2014 i.e. after more than 3 years of completion of the assessment proceedings. As such, the information provided by the investigation Wing, is a new piece of information which was not available before the A.O., at the time of completion of assessment proceedings. In the view of the above findings of Investigation Wing, Mumbai that such entity was not found to be operating from above address, it was clear that the above accommodation entries availed by the assessee has been only for the purpose of suppressing taxable income. In view of the above, the A.O had reason to believe that the income chargeable to tax has escaped assessment within the meaning of the Section 147 of the Act. In view of the findings of the investigation Wing that such entities were not found to be operating from above address and also to confirm the genuineness of the purchases made by the assessee, Notices u/s. 133(6) of the Act dated 05.08.2016 were issued and Inspector of this circle was deputed to visit the above address and serve the notices. The inspector visited to all the address of the above parties but no party could be traced out and the notices served. The inspector submitted his report which is reproduced as under:

“As directed by you to serve following notice under section 143(3) of the IT Act in the case of M/s Anjana Exports. I have been visited on 10.08.2016 at address give on notices and found as under:

Sr.No.	Address as per Notice	Status Report
1	M/s. Jewel Diam, 204, Sapana Appartment, Mahidharpura	During the inquiry it is found that the premises is closed since long. On inquiry from local person it is gathered that, this premises remains close since long and there is no such jewel Diam was running its business from this premises ever.
2.	M/s. Impex Gems, 11 Shakti Chambers, Raghunathpura Main Road, Surat	During the inquiry it is found that there is no office number of 11 is available at the premises of Shakti Chambers. On inquiry from local person of said chamber, he feigned ignorance about Impex Gems.
3.	M/s. Little Diam, 204, Sapana Appartment, Mahidharpura, Surat	During the inquiry it is found that the premises is closed since long. On inquiry from local person it is gathered that, this premises remains close since long and there is no such Little Diam was running its business from this premises ever.
4.	M/s. Meridian Gems, 304, Kohinoor Complex, Chowky Sheri, Sayedpura, Surat	During the inquiry it is found that there is no such Kohinoor Complex is available at Chowki Sheri, Sayedpura, Surat

In order to give natural justice to the assessee and before proceeding further, a show cause notice dated 12.08,2016 was issued to the assessee which was sent through email/speed post and required him to furnish the details called for on 17.08.2016 from the above parties and also to produce the parties for verification of the transaction. In response to the above show cause notice, neither the assessee nor his representative appeared or furnished any reply. Giving another opportunity again the show cause notice dated 22.08.2016 was sent to the assessee through email and speed post. Then after, assessing officer, taking into account information available on record, made addition of Rs.13,19,35,109/-.

9. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) who has partly deleted the addition made by Assessing Officer. During the appellate proceedings, the assessing officer rejected the ground raised by the assessee challenging the reopening of assessment under section 147 of the Act. On merits, Id CIT(A) restricted the addition at the rate of 5% of bogus purchases observing as follows:

“6.2.15. In view of the above facts and discussion, it is evident and clear that the so called transactions through banking channels of purchase made from the concern of Bhanwarlal Jain and others was a make believe arrangement through a series of transfers of unaccounted funds through multi layering to give it a look of a genuine transaction. The very facts remains that the whole arrangement of providing the bogus accommodation entries were established beyond doubt during the search proceedings as no evidence of any sales purchase of diamonds was found neither any stocks of the diamonds was found.

These evidences when confronted were admitted u/s 132(4) of the Act by Bhanwarlal Jain and others himself. The Income Tax proceedings are not governed by the strict rules of evidences and are not required to prove the impossible. In the decision of the Hon'ble ITAT Bench, Surat in the case of Deputy Commissioner of Income Tax Circle 2(2) vs J. B. Brothers, Surat vide ITA No. 3661/Ahd/2015 & Co. No. 22/Ahd/2016 AY 2007-08 date of order 06.04.2018 and M/s Delux Diamonds, Surat Vs. Income Tax Officer, Ward 1(3)(1), Surat vide ITA No. 1396/Ahd/2017 AY 2007-08 date of order 11.4.2018, restricted the addition to 5% of bogus purchases. Therefore, in the light of above facts and circumstances and considering the gross profit rate of 5% as the average rate of the industry and following the judicial pronouncement by the Co-ordinate Bench of Tribunals and the decision of Hon'ble Jurisdictional Gujarat High Court in the case of Mayank Diamond Pvt. Ltd. v ITO (Tax Appeal No. 200 of 2003) dated 17.11.2014; the addition is restricted to 5% of bogus purchases. The circumstantial evidences itself show that the purchases amounting to Rs.13,19,35,109/- were not genuine and therefore the AO is being directed to recalculate addition made by the AO @5% of the bogus purchases is upheld and the ground of appeal is partly allowed.”

10. Aggrieved by the order of ld. CIT(A), the Revenue is in appeal before us.
11. The Learned Departmental Representative (Ld. DR) for the Revenue, argued that objection raised by Ld. Counsel for the assessee, regarding the assumption of jurisdiction of AO by issuance of notice u/s 148 of the Act, is devoid of merits and facts. Section 147 authorizes and permits an Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that the said income for any assessment year has escaped assessment. The expression 'escaped assessment' clearly connotes a very basic postulate that the income for a particular assessment year went unnoticed by the Assessing Officer and because of it not being noticed by him for any reason, it escaped assessment. The meaning of the expression 'escaped assessment' is so simple and straight that it does not leave anyone in doubt that power under section 147 could be invoked by the Assessing Officer if it is a case of escape of assessment of income for a particular year. The provisions of section 147 require that the Assessing Officer should have 'reason to believe' that any income chargeable to tax has escaped assessment. Thus, ld DR stated that reasons recorded by the assessing officer are valid reasons thus reopening of assessment should be upheld.

12. On merits, Id DR stated that decision of the Ld. CIT(A) is not acceptable considering the fact that Id CIT(A) has mentioned in order that the assessee has made purchases somewhere else, but have obtained bills from impugned suppliers and estimated gross profit @ 5% of unverifiable purchase. Further, restricting the disallowance to the 5% of the impugned purchase is not acceptable as the assessee failed to establish that any actual purchase was done, even from any other party. Therefore, Id DR prays, the Bench that addition made by the assessing officer may be upheld.

13. Shri Rasesh Shah, Learned Counsel for the assessee, pleads that report of the DDIT (Inv.) cannot constitute a reason to believe within the meaning of section 147 of the Act. The Id Counsel further submitted that reopening of assessment is bad in law. He took us through the paper book page no.48 wherein the reasons recorded, were placed and contended that the reopening is bad in law, therefore, the same may be quashed.

14. On merits, Id Counsel argued that restricting the disallowance to 5% of the impugned purchases, by Id CIT(A), is not acceptable, as the assessee provided bills, vouchers, stock details etc., therefore entire addition made by AO may be deleted.

15. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. We have also gone through the reasons recorded by the assessing officer and having gone through the entire gamut of facts and circumstances, we are of considered opinion that not only there existed new information with the AO from the credible sources, but also that he has applied his mind and recorded the conclusion that the purchases claimed were non-genuine and therefore bogus, (clearly meaning that what was disclosed was false and untruthful). The Hon'ble Supreme Court in the case of Phul Chand Bajrang Lal and another vs. ITO 203 ITR 456, was considering the question of reassessment beyond the period of four years in the case of an assessee firm; and had held that in case of acquiring fresh

information specific in nature and reliable, relating to the concluded assessment, which went to falsify the statement made by the assessee at the time of original assessment and, therefore, he would be permitted under the law to draw fresh inference from such facts and material. The Court also went to an extent of saying that there are two distinct and different situations where the transaction itself, on the basis of subsequent information is found to be bogus transaction and in such event, mere disclosure of the transaction cannot be said to be true and full disclosure and the Income-tax Officer would have jurisdiction to reopen the concluded assessment. It would be apt to quote some observations of the Apex Court in the case of Phul Chand Bajrang Lal (supra), which read as under:

"...one has to look to the purpose and intent of the provisions. One of the purposes of Section 147 appears to be to ensure that a party cannot get away by willfully making a false or untrue statement at the time of original assessment and when that falsity comes to notice to turn around and say 'you accepted my lie, now your hands are tied and you can do nothing'. It would, be travesty of justice to allow the assessee that latitude."

16. The Hon'ble Gujarat High Court in the case of Dishman Pharmaceuticals and Chemicals Ltd. vs. DCIT (OSD), Ahmedabad (2012) 346 ITR 228 (Guj) has summed up the requirements of the law, in such circumstances and has held that:

"There is no set format in which such reasons must be recorded. It is not the language but the contents of such recorded reasons which assumes importance. In other words, a mere statement that the Assessing Officer had reason to believe that certain income has escaped assessment and such escapement of income was on account of non-filing of the return by the assessee or failure on his part to disclose fully and truly all material facts necessary for assessment would not be conclusive. Nor, absence of any such statement would be fatal if on the basis of reasons recorded, it can be culled out that there were sufficient grounds for the Assessing Officer to hold such beliefs."

17. A three Judges bench of Hon'ble Gujarat High Court in the case of A.L.A. Firm v. CIT, 189 (1991) ITR 285, after an elaborate discussion of the subject opined that the jurisdiction of the Income Tax Officer to reassess income arises if he has in consequence of specific and relevant information coming into his possession subsequent to the previous concluded assessment, reason to believe, that income chargeable to tax and had escaped assessment. It was held that even if the information be such that it could have been obtained by the I.T.O. during

the previous assessment proceedings by conducting an investigation or an enquiry but was not in fact so obtained, it would not affect the jurisdiction of the Income Tax Officer to initiate reassessment proceedings, if the twin conditions prescribed under Section 147 of the Act are satisfied. As observed earlier not only there existed new information with the AO from the credible sources, but also he had applied his mind and recorded the conclusion that the purchases claimed were non-genuine and therefore bogus, (clearly meaning that what was disclosed was false and untruthful). The requirements of section 147 r.w.s. 148 have clearly been met; and the reopening is held justified and legal. Therefore, we dismiss the ground No.1 raised by the assessee in ITA No.516/SRT/2019 (assessee's appeal).

18. Now, coming to the merits of the case, we note that in case of Rajendra Jain/Dharmchand Jain cases, the Co-ordinate Bench of Surat has sustained the addition at the rate of 6% of bogus purchases. Therefore, we note that these appeals are squarely covered by the judgment of this Tribunal in the case of Pankaj K. Choudhary, in ITA No.1152/AHD/2017 for AY.2007-08, wherein the Tribunal held as follows:

“12. We have heard the submission of ld.CIT-DR for the Revenue and the ld. Authorised Representative (AR) of the assessee. We have also gone through the various documentary evidences furnished by assessee. The ld. CIT-DR for the Revenue supported the order of AO. The ld. CIT-DR submits that Investigation Wing, Mumbai made a search on Bhanwarlal Jain Group. During the search and after search, the Investigation Wing made a thorough investigation and concluded that Bhanwarlal Jain Group and his associates including his sons were indulging in managing about 70 benami concerns. The benami concerns were engaged in providing accommodation entries. The assessee is one of the beneficiaries of such accommodation entries. In the transaction of accommodation entries, the documentary evidences are created in such a way, so that the bogus transaction is looks like genuine transaction. In bogus transaction, the fabricated evidences are always maintained perfectly. The assessee has obtained accommodation entry only to inflate the expenses and to reduce the ultimate profit. No stocks of diamonds were found at the time of search on Bhanwarlal Jain Group. The assessee has shown a very meagre gross profit (GP) @ 0.78% and not net profit (NP) at 0.02%. The ld. CIT(A) restricted the addition to the extent of 12.5% which is on the lower side. The ld. CIT-DR for the revenue prayed that disallowance made by the AO may be upheld or in alternative submitted that it may restricted at least @ 25%, keeping in view that the NP declared by the assessee is extremely on lower side.

13. On the validity of reopening, the ld.CIT-DR for the revenue submits that the AO received credible information about the accommodation entry provided by Bhanwarlal Jain Group. The assessee is one of the beneficiaries, who had availed accommodation entries from such hawala trader. At the time of recording reasons, the mere suspicious about the accommodation entry is sufficient as held by Hon'ble jurisdictional High Court in various cases. To support his submissions, the ld.CIT-DR relied upon the decision;

- *Pushpak Bullion (P) Ltd Vs DCIT [2017] 85 taxmann.com 84(Gujarat High Court),*
- *Peass Industrial Engineers (P) Ltd Vs DCIT [2016] 73 taxmann.com 185 (Gujarat High Court),*
- *ITO Vs Purushttom Dass Bangur [1997] 90 Taxman 541 (SC) and*
- *Mayank Diamond Private Limited (2014) (11) TMI 812 (Gujarat High Court).*
- *AGR Investment Vs Additional Commissioner 197 Taxman 177 (Delhi) and*
- *Chuharmal Vs CIT [1998] 38 Taxman 190 (SC).*

14. On the other hand, the ld.AR of the assessee submits that he has challenged the validity of reopening as well as restricting the addition to the extent of 12.50% of the alleged bogus purchases. The ld.AR of the assessee submits during the assessment, the AO has not made any independent investigation. The AO reopened the case of the assessee on the basis of third party information without making any preliminary investigation. The AO received vague information about providing accommodation entry by Bhanwarlal Jain Group. No specific information about the accommodation entry obtained by assessee was received by AO. There is no live link between the reasons recorded qua the assessee. Therefore, the re-opening is invalid and all subsequent action is liable to be set aside.

15. On account of additions of bogus purchases, the ld.AR submits that in the original assessment, the assessee filed its complete details of purchases to prove the genuineness of expenses. The AO accepted the same in the assessment order passed under section 143(3) on 10.03.2009. During re-assessment, the assessee again furnished complete details about the genuineness of purchases. The assessee filed confirmation purchases invoices, accounts of the parties, bank statement of assessee showing transaction to the banking channel. The AO has not made any comment on the documentary evidence furnished by assessee. The AO solely relied upon the statement of third party and the report of Investigation Wing. The report of wing and the statement of Bhanwarlal Jain were not provided to the assessee. The AO has not disputed the sales of assessee. No sale is possible in absence of purchase. The books of accounts were not rejected. The AO made the disallowance of entire purchases. The assessing officer not provided cross examination of the alleged hawala dealers. The disallowances sustained by the Ld. CIT(A) @ 12.5% of the impugned purchases, is on higher side and deserve to be deleted in total. The ld.AR of the assessee submits that entire purchases shown by assessee are genuine. In without prejudice and alternative submissions, the Ld. AR for the assessee

submits that in alternative submission, the disallowance may be sustained on reasonable basis. To support his various submission, the ld.AR for the assessee is relied upon case laws:

1	<i>M/s Andaman Timber industries Vs Commissioner of Central Excise, CIVIL APPEAL NO. 4228 OF 2006 (Supreme Court)</i>
2	<i>CIT vs. Indrajit Singh Suri [2013] 33 taxmann.com 281 (Gujarat)</i>
3	<i>Albers Diamonds Pvt. Ltd. Vs ITO 1(1)(1), Surat I.T.A. No.776 &1180/AHD/2017</i>
4	<i>The PCIT-5 vs. M/s. Shodiman Investments Pvt. Ltd. TTANO. 1297 OF 2015 (Bombay High Court)</i>
5	<i>Shilpi Jewellers Pvt. Ltd. vs. Union of India & Ors. WRIT PETITION NO. 3540 OF 2018 (Bombay High Court)</i>
6	<i>CIT in Vs. Mohmed Juned Dadani 355 ITR 172 (Gujarat)</i>
7	<i>Micro Inks Pvt. Ltd. Vs. ACIT [2017] 79 taxmann.com 153 (Gujarat)</i>
8	<i>Shakti Karnawat Vs. ITO - 2(3)(8), Surat ITA 1504/Ahd/2017 and 1381 /Ahd/2017</i>
9	<i>Asian Paints Ltd. Vs. DCIT, [2008] 296 ITR 90 (Bombay)</i>
10	<i>PCIT, Surat 1 Vs. Tejua Rohit kumar Kapadia [2018] 94 taxmann.com 325 (SC)</i>
11	<i>The PCIT-17 vs. M/s Mohommad Haji Adam & Co. ITA NO. 1004 OF 2016(Bombay High Court)</i>
12	<i>Pankaj Kanwarlal Jain HUF Vs. ITO 2(3)(8) Surat ITA.No.269/SRT/2017</i>

16. In the rejoinder submissions the ld. CIT-DR for the revenue submits that that rigour of the rules of evidence contained in the Evidence Act is not applicable before the tax authorities. It was submitted that the ratio of various case laws relied by the ld. AR for the assessee is not applicable on the facts of the present cases. The ratio of decision of Hon'ble Gujarat High Court in *Mayank Diamond Private Limited (supra)* is directly applicable on the facts of the present case.

17. We have considered the submissions of the parties and have gone through the order of the lower authorities. We have also deliberated on each and every case laws relied by both the parties. We have also examined the financial statement of all the assessee(s) consisting of computation of income and audit report. We have also gone through the documentary evidences furnished in all cases. Ground No.1 in assessee's appeal relates to the validity of reopening. The ld AR for the assessee vehemently argued that the AO reopened the case of the assessee on the basis of third party information, and without making any preliminary investigation, which was vague about the alleged accommodation entry by Bhanwarlal Jain Group. And that there was no specific information about the accommodation entry availed by the assessee. There is no live link between the reasons recorded qua the assessee. We find that the assessee has raised objection against the validity of the reopening before the AO. The

objections of the assessee was duly disposed by AO in his order dated 09.02.2015. The assessee raised ground of appeal before ld CIT(A) while assailing the order of AO on reopening. The ld CIT(A) while considering the ground of appeal against the reopening held that the AO has received report from investigation wing Mumbai, which indicate that the assessee is beneficiary of the accommodation entry operators. The accommodation entry provider admitted before investigation wing that he has given such entry to various persons; based on such report the AO has reason to believe that the income of the assessee has escaped assessment and thus the action of AO in reopening is justified.

18. We find that the Hon'ble Jurisdictional High Court in Peass Industrial Engineers (P) Ltd Vs DCIT (supra) while considering the validity of similar notice of reopening, which was also issued on the basis of information of investigation wing that they have searched a person who is engaged in providing accommodation entries, held that where after scrutiny assessment the assessing officer received information from the investigation wing that well known entry operators of the country provided bogus entries to various beneficiaries, and assessee was one of such beneficiary, assessing officer was justified in re-opening assessment. Further similar view was taken by Hon'ble Jurisdictional High Court in Pushpak Bullion (P) Ltd Vs DCIT (supra). Therefore, respectfully following the order of Hon'ble High Court, we find that the assessing officer validly assumed the jurisdiction for making re-opening under section 147 on the basis of information of investigation wing Mumbai. So far as other submissions of the ld AR for the assessee that there is no live link of the reasons recorded, we find that the Hon'ble Jurisdictional High Court in Peass Industrial Engineers (P) Ltd clearly held that when assessing officer received information from the investigation wing that two well known entry operators of the country provided bogus entries to various beneficiaries, and assessee was one of such beneficiary, assessing officer was justified. Hence, the ground No. 1 in assessee's appeal is dismissed.

19. Ground No. 2 in assessee's appeal and the grounds of appeal raised by the revenue are interconnected, which relates to restricting the disallowance of bogus purchases to the extent of 12.5%. The AO made of 100% of purchases shown from the hawala dealers/ entry provider namely Bhanwarlal Jain. We find that the AO while making additions of 100%, of disputed purchases solely relied on the report of the investigation wing Mumbai. No independent investigation was carried by the AO. The AO has not disputed the sale of the assessee. The AO made no comment on the evidences furnished by the assessee. We further find that ld CIT(A), while considering the submissions of the assessee accepted the lapses on the part of the AO and noted that no sale is possible in absence of purchases. The Books of the assessee was not rejected by the AO. The ld CIT(A) on further examination of the facts and various legal submissions find that Ahmedabad Tribunal in Bholanath Poly Fab Private Limited (supra) held that in the such cases the addition of bogus purchases was sustained to the extent of 12%, on the observation that the assessee may have made purchases from elsewhere and obtained the bills from impugned supplier to inflate Gross Profit Rate. The ld CIT(A) by considering the overall facts, concluded that the 100% disallowance of purchase is not justified. We also find

that the ld.CIT(A) also considered the decision of jurisdictional High Court in *Mayank Diamonds Pvt. Ltd. (supra)* and compared the fact of the present case with the facts in *Mayank Diamonds Pvt Ltd (supra)* and noted that assessee in that case was also engaged in the trading of polished diamonds. The ld CIT(A) noted that in that case the AO made disallowance of entire bogus purchase and on first appeal before CIT(A) the disallowances were maintained. However, the Tribunal gave partial relief to the assessee directing to sustain the addition @12% of such bogus purchases. And on further appeal, the Hon'ble High Court sustained Gross Profit Rate @ 5% being average rate of profit in industry.

20. Now adverting to the facts of the present case, the ld.CIT(A) held that in some other similar cases; though he had sustain 5% of Gross Profit Rate, considering the fact that where Gross Profit shown by those assessee's are more than 5%. However, in the present case, the assessee has merely shown Gross Profit Rate only at 0.78% of turnover, accordingly, the ld. CIT(A) was of the view that disallowance of 12.5% of impugned purchases/bogus purchases would be reasonable to meet the end of justice.

21. We have seen that during the financial year under consideration the assessee has shown total turnover of Rs. 66,09,62,458/-. The assessee has shown Gross Profit @ .78% and net Profit @ .02% (page 11 of paper Book). The assessee while filing the return of income has declared taxable income of Rs.1,81,840/- only. We are conscious of the facts that dispute before us is only with regard of the disputed purchases of Rs, 4.34 Crore, which was shown to have purchased from the entity managed by Bhanwarlal Jain Group. During the search action on Bhanwarlal Jain no stock of goods/ material was found to the investigation party. Bhanwarlal Jain while filing return of income has offered commission income (entry provider). Before us, the ld CIT-DR for the revenue vehemently submitted that the ratio of decision of Hon'ble Gujarat High Court in *Mayank Diamond Private Limited (supra)* is directly applicable on the facts of the present case. We find that in *Mayank Diamonds the Hon'ble High Court* restricted the additions to 5% of GP. We have seen that in *Mayank Diamonds P Ltd (supra)*, the assessee had declared GP @ 1.03% on turnover of Rs. 1.86 Crore. The disputed transaction in the said case was Rs. 1.68 Crore. However, in the present case the assessee has declared the GP @ 0.78%. It is settled law that under Income-tax, the tax authorities are not entitled to tax the entire transaction, but only the income component of the disputed transaction, to prevent the possibility of revenue leakage. Therefore, considering overall facts and circumstances of the present case, we are of the view that disallowances @ 6% of impugned purchases / disputed purchases would be sufficient to meet the possibility of revenue leakage. In the result the ground No. 2 of appeal raised by the assessee is partly allowed and the grounds of appeal raised by revenue are dismissed.

22. In the result the appeal of revenue is dismissed and the appeal of the assessee is partly allowed.”

19. Since the issue is squarely covered by the decision of the Co-ordinate Bench in the case of Pankaj K. Chaudhary (supra) and there is no change in facts

and law and Revenue is unable to produce any material to controvert the aforesaid findings of the Co-ordinate Bench (supra). We find no reason to interfere in the above said order of Co-ordinate Bench, therefore respectfully following the binding judgment of Co-ordinate Bench in the case of Pankaj K. Chaudhary (supra), we dismiss the appeals of the assesseees and we allow the appeals of the Revenue partly.

20. In the result, appeal filed by the assessee (in ITA No.516/SRT/2019) is dismissed and appeal filed by the Revenue (in ITA No.536/SRT/2019) is partly allowed.

Registry is directed to place one copy of this order in all appeals folder / case file(s).

Order is pronounced on 14/11/2022 by placing the result on the Notice Board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूरत /Surat

दिनांक/ Date: 14/11/2022

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// True Copy //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat