

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT "SMC" BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

आ.अ.सं./ITA No.26/SRT/2022 (AY 2012-13)

(Hearing in physical Court)

Chirag Gems C-602, Diamond World, Mini Bazar Varachha Road, Surat- 395006 PAN No: AACFC 1075 H	Vs	Income Tax Officer, Ward-3(3)(5), Surat, Aaykar Bhawan, Majura Gate, Opp New Civil Hospital, Surat
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से /Assessee by	Shri Sapnesh R Sheth, C.A
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
सुनवाई की तारीख/Date of hearing	28.12.2022
उद्घोषणा की तारीख/Date of pronouncement	28.12.2022

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi [for short to as "Ld.NFAC/CIT(A)"] dated 26.10.2021 for assessment year 2012-13, which in turn arises out 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') dated 16.11.2019. The assessee has raised the following grounds of appeal:-

"1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) National Faceless Appeal Centre has erred in confirming the action of Assessing Officer in reopening assessment by issuing notice u/s 148 of the I.T. Act, 1961.

2. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre has erred in confirming the action of Assessing Officer in making addition of Rs.17,50,000/- for alleged bogus purchase.

3. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

2. Brief facts of the case are that for assessment year 2012-13, the case of assessee was reopened on the basis of information received from DDIT(Inv.), Mumbai, that a search and seizure action was carried out under section 132 of the Act on group concerns of Shri Bhanwarlal Jain Group on 03.10.2014. During the search action, it was found that Shri Bhanwarlal Jain and his associates were operating and managing 70 benami concerns in the name of his employees or relatives through which they were providing accommodation entries of unsecured loans and sale or bogus purchase to various beneficiaries. It was also found during the survey action that one of the beneficiary of such non-genuine purchase transactions of Rs.17.50 lakh from Nice Diamonds during financial year 2011-12. On the basis of such information of DDIT(Inv.) Mumbai, the Assessing Officer recorded reasons of reopening by taking view that income of assessee to the extent of Rs.17.50 lakh as

escaped from the year under consideration i.e. 2012-13. Notice under section 148 dated 31.03.2019 was served upon the assessee. The assessee in response to notice under section 148 filed its return of income on 03.09.2019 declaring income at Rs.1,80,820/-. The Assessing Officer after serving this statutory notice under section 143(2) r.w.s. 142(1) proceeded for re-assessment. The Assessing Officer after recording the *modus operandi* on operation of hawala operator noted that assessee has shown purchases from one of the concern managed through Shri Bhanwarlal Jain Group company. The Assessing Officer though recorded that the disallowance of unverifiable purchase @ 25% is reasonable. However, the Ld. Assessing officer made addition 100% of the purchase shown from M/s Nice Diamonds.

3. Aggrieved by the addition in the assessment order, the assessee filed appeal before Ld. CIT(A). The appeal of assessee was migrated to Ld.NFAC/CIT(A). Before Ld.NFAC/CIT(A) the assessee made similar submission as made before Assessing Officer. The Ld.NFAC/CIT(A) after considering the submission of assessee held that it is an

undisputed fact that M/s Nice Diamond, from whom the assessee made purchases were admitted by Shri Bhanwarlal Jain as one of his benami concern, which was indulging and providing accommodation entries without actual delivery of goods. The purchases were shown from such party would not genuine. Therefore the addition made by Assessing Officer was confirmed by Ld.NFAC/CIT(A). However, no finding on the issue against the validity of reopening was given by Ld.NFAC/CIT(A). Further aggrieved the assessee has filed present appeal before the Tribunal.

4. I have heard the submission of Ld. Authorized Representative (Ld.AR) for the assessee and Ld. Senior Departmental-Representative (Ld. Sr-DR) for the Revenue and have gone through the orders of lower authorities carefully. The Ld. AR for the assessee submits that the Assessing Officer has not given any finding on the documentary evidence produced by assessee. The sales of assessee was not disputed and the books of account was not rejected by the Assessing Officer. Although, in last paragraph of the assessment order, the assessing officer recorded that disallowance of 25% of purchases is

reasonable on account of non-verifiable. However, the assessing officer made addition of 100% of purchase. The Ld.AR for the assessee further submits that now it is settled position under law that only profit element in the disputed / bogus purchase is to be allowed and not the entire transaction. The Ld. AR for the assessee submits that assessee has shown gross profit @ 9.39% and net profit 4.34% respectively. As the assessee has shown very good gross profit and net profit, therefore no further disallowance on account of such alleged bogus purchases should be made.

5. In alternative submission, Ld. AR for the assessee submits that in a similar cases the Division Bench of this Tribunal has restricted or enhanced the similar type of disallowance of bogus purchases to the extent of 6%. However, in the present case, the assessee has already declared net profit @ 4.34%. In case the Bench is of the view that similar earlier orders as passed by the Division Bench of this Tribunal is to be followed, the assessee may be granted set off of net profit already declared by assessee in its return of income.

6. On the other hand, Ld. Sr-DR for the Revenue submits that Investigation Wing of Department has made full-fledged investigation and said investigation during the search action on Shri Bhanwarlal Jain Group and company on 03.10./2014. During search action, a lot of incriminating evidence were found and seized. It was found and proved during search that Shri Bhanwarlal Jain and his associates were engaged in providing accommodation entries by managing 70 different concerns and assessee is one of such benami / bogus concern of Shri Manish Bhanwarlal Jain. Thus, the entire transaction of purchases from Nice Diamond as shown by assessee is bogus, which is shown to inflate the expenses and prayed for upholding the entire purchases shown from M/s Nice Diamonds.
7. I have heard rival contentions of both the parties and have gone through the orders of lower authorities carefully. I find that the Assessing Officer made addition @ 100% of purchase from M/s Nice Diamonds. I find that Assessing Officer has not given any finding on various documentary evidences filed by the assessee to substantiate the purchase, which was filed by the assessee alongiwth his

reply dated 12/11/2019. The Assessing Officer solely relied upon the report of Investigation Wing. The NFAC/ld CIT(A) also upheld the action of Assessing Officer by simply taking view that assessee has shown purchase from the concern of assessee only occupy is to be provided accommodation entries from which cannot be genuine and has to be bogus. I further find that NFAC/CIT(A) has also not given any independent finding on various contentions raised before him. It is a settled law that in case of disputed purchases shown from such hawala dealer's only profit element embedded in such transaction is to be disallowed, to avoid the possibility of revenue leakage and not the substantial part of transaction. Considering the fact of the present case, I am of the view that 6% of the disputed / alleged bogus purchase would meet the end of natural justice to avoid the possibility of revenue leakage. Therefore, I direct the Assessing Officer to restrict the addition to the extent of 6% of the disputed / alleged bogus purchases of Rs.17.50 and re-compute the assessment in terms of above direction. This ground No.2 of assessee's appeal is partly allowed.

8. Ground No.1 relates to valid of reopening. The Ld. AR for the assessee at the time of making his submission that in case the addition is restricted on a reasonable percentage, in such circumstances, he would not raise the issue on the ground of validity of reopening. Considering the fact that I have already granted substantial part relief to the assessee in directing the Assessing Officer to restrict the disallowance @ 6% of the disputed purchases, therefore this ground of assessee is dismissed as not pressed by Ld. AR for the assessee at the time of hearing.

9. In the result, appeal of the assessee is partly allowed in above terms.

Order pronounced in the open court on 28/12/2022.

Sd/-
(PAWAN SINGH)
[न्यायिक सदस्य JUDICIAL MEMBER]

सूरत/Surat, Dated: 28/12/2022

Dkp. Out Sourcing Sr.P.S

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

By order

Sr PS/ Assistant Registrar

// True Copy //