

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

आयकर अपील सं./ITA No. 21/SRT/2022

Assessment Year: (2012-13)

(Physical Court Hearing)

Abhishek Navnitkumar Doshi, 204/205, 2 nd Floor, 6/1911-12, Jin Shanti Building, Jada Khadi, Mahidharpura – 395003.	Vs.	The ITO, Ward-2(3)(7), Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AFHPD0064M		
(Appellant)		(Respondent)

आयकर अपील सं./ITA No.38/SRT/2022

Assessment Year: (2012-13)

The ITO, Ward-2(3)(6), Surat.	Vs.	Abhishek Navnitkumar Doshi, 204/205, 2 nd Floor, 6/1911-12, Jin Shanti Building, Jada Khadi, Mahidharpura – 395003.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AFHPD0064M		
(Appellant)		(Respondent)

Assessee by	Shri Sapnesh Sheth, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	28/12/2022
Date of Pronouncement	09/01/2023

आदेश / ORDER

PER DR. A. L. SAINI, AM:

Captioned cross appeals filed by the Assessee and Revenue, pertaining to the Assessment Year (AY) 2012-13, are directed against the common order passed by the Learned Commissioner of Income Tax (Appeals), [in short “the Id. CIT(A)”], National Faceless Appeal Centre (in short ‘the NFAC’), Delhi, which in turn arise out of an assessment order passed by the Assessing Officer under section 143(3) r.w.s 147 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 16.12.2019.

2. Grounds of appeal raised by the Revenue (in ITA No.38/SRT/2022) are as follows:

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition made on account of bogus purchases of Rs.2,50,25,283/- to Rs.62,56,320/- (25% of Rs.2,50,25,283/-).

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not considering the fact that the assessee could not prove the genuineness of the purchase transactions during the assessment proceedings.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the disallowance of bogus purchase at 25% of total purchases instead of 100 % disallowance when the total purchase made by the assessee through Bhanwerlal Group was proved as bogus purchases. The Ld. CIT(A) has also not considered the decision of Hon'ble Apex Court in the case of M/s N. K. Proteins Ltd Vs DCIT which is squarely applicable In this case.

4. On the facts and In the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the Assessing Officer. It is, therefore, prayed that the order of the Ld. CIT(A) may be set aside and that the Order of the Assessing officer may be restored.

3. Grounds of appeal raised by the Assessee (in ITA No.21/SRT/2022) are as follows:

“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 partly confirming the action of assessing officer by sustaining the disallowance to the extent of Rs.62,56,321/- being 25% of total disallowance of Rs.2,50,25,283/- made by ld. assessing officer.

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

4. At the outset, Learned Counsel for the assessee, informs the Bench that assessee does not wish to press ground No.1 raised by it in ITA No.21/SRT/2022, therefore, we dismiss the ground No.1 raised by the assessee, as not pressed.

5. Brief facts *qua* the issue are that during the year under consideration the assessee have filled his return of income on 01.09.2012 declaring total income of Rs.20,13,260/-. As per information received from the DDIT (Inv.)-2, Mumbai,

assessee was found to have credit entry of Rs.2,50,25,283/- from Mark Gems, Mimixa Diam, Mother Exports, Naman Exports, Rahul Exports and Dax Diamonds identified paper concerns of Shri Bhanwarlal Jain group of concerns Shri Bhanwarlal Jain and Shri Manish Bhanwarlal in their sworn statement have agreed that no actual delivery or movement of goods has taken place. A search and seizure action u/s 132 of the IT. Act in the case of Shri Bhanwarlal Jain & others was carried out by the Investigation Wing of Income tax Department, Mumbai on 03.10.2013 From various incriminating documentary evidences collected and the statement recorded of Shri Bhanwarlal Jain, during the course of search, it is found that this group was in the activity of providing accommodation entries pertaining to bogus sales to various patties. As per list of details of bogus sales available with assessing officer, it was found that the assessee has received accommodation entries from concerns, namely, from Mark Gems, Mimixa Diam, Mother Exports, Naman Exports, Rahul Exports and Dax Diamonds to the tune of Rs.2,50,25,283/-.

6. Thus, there was reason to believe that income to the tune of Rs.2,50,25,203/- has escaped the assessment for A.Y.2012-13. With prior permission from Pr.CIT-2, Surat vides his letter no. SRT/Pr.CIT/HQ/147/ward 2(3)(7)/2018-19 dated 28/03/2019, notice u/s.148 of the IT., Act was issued on 29/03/2019 and duly issued on the assessee. In response to the notice, assessee filled return of income on 29.04.2019 of Rs 20,13,260/-. Reason for reopening was provided to the assessee. The following notices were issued upon the assessee through his registered email:

Sr. No.	Notices u/s	Date of issue	Date of hearing	Remarks
1	Notice U/s. 148 of the IT. Act.	29.03.2019	Within 30 days	Duly served through regd. email address in response return filled on 19.08.2019
3	Notice U/s 142[1] of IT. Act	06.08.2019 & 24.08.2019	13.08.2019 & 29.08.2019	Reply on 29.08.2019
	Notice U/s 143[2] of IT. Act	29.10.2019	01.11.2019	compliance
4	Show Cause Notice u/s 144 of the IT. Act.	29.11.2019	04.12.2019	compliance

During the year under consideration the assessee have taken accommodation entry to the tune of 2,50,25,283/-. During the course of assessment proceedings the assessee has filed ledgers of these parties showing transactions with the parties. Accordingly a show cause notice was issued to the assessee asking why the entire amount of Rs.2,50,25,283/- should not be treated as his income.

7. In response to which the assessee has stated that the assessee filed confirmations of said party alongwith bank statement. Though no written reply has filed but by filing bank statement and mere confirmations of these bogus parties the assessee wanted to establish that he has done genuine business with these parties.

8. The assessing officer observed that there were no merits in the contention of the assessee. It is for the assessee to substantiate his purchases by producing the parties for verification, which he has failed to do. Thus, the assessee has failed to prove the onus lying upon it to prove the genuineness of the transaction. The assessee could only furnish the copies of ledger and 'so-called' confirmations of these parties with bank statement to prove its claim that the transactions were genuine. In this regard, first of all, it would be pertinent to mention here that a racket of issuance of bogus bills from one Shri Bhanwarlal Jain had been unearthed and established by the Department and the same has been duly admitted by Shri Bhanwarlal Jain and his accomplices. The admission is based on solid evidences which are in conformity with the corresponding entries found in the assessee's books. The chain is fully established leaving no doubt whatsoever. Shri Bhanwarlal Jain, in his statement recorded admitted that he used to only issue bogus bills of diamonds to the persons who approached him. Shri Bhanwarlal Jain also admitted in his statement recorded that whatever cheques received by him against those bills were deposited in his respective concerns of the bank account and after clearing equivalent amount of cash withdrawn and also after deducting his commission from the cash withdrawn, the remaining amount of cash was paid back to the persons. Here in the case of the assessee, it had allegedly purchases of diamonds to the tune of

Rs.2,50,25,283/- from abovesaid concerns, which is controlled by Shri Bhanwarlal Jain. In this back drop of the case, the assessee has taken the plea that its purchases from the above parties were genuine as had made payment through account payee cheques. In this regard, it would be necessary to note that this argument of the assessee cannot be taken into believe since in various case laws it has been held that *"mere payment by account payee cheque is not sacrosanct nor can it make & non-genuine transaction genuine* [Precision Finance Pvt. Ltd. vs. CIT - 208 ITR 465 (Cal.)].

9. The assessing officer noted that burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence. In this context, reference is invited to the ratio laid down in Section 106 of the Indian Evidence Act whereby the onus of proving the correctness of the entry, the truth of which is called in question by Assessing Officer shifts on to the assessee. If the assessee fails to discharge this onus, the AO is left free to draw his own interference from the inability of the assessee to explain what was within his knowledge and from the other circumstances of the case. Here, it is also pertinent to mention that proceedings under the Income-tax Act are not judicial proceedings in the sense in which the phrase "judicial proceedings" is ordinarily reduced. Therefore, the AO is not feted or bound by technical rules about the evidence as contained in the Indian Evidence Act. The assessment can be made on the basis of inference on evidence which in criminal or civil justice may be insufficient. In this context, reference is invited to Hon'ble Supreme Court's decision in the case of D. Dhormal (AIR 1974 Supreme Court 859) the Department is not required to prove its case with mathematical, a demonstrable degree for in all human affairs, absolute certainty is a myth and as proof all exactness is a fake. The absolute proof being unattainable the law accepts for it probability as a substitute in this work-a-day world the law does not require the department to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may form on the basis of existence of fact. Moreover, as per section 114 of Indian Evidence Act, the court may presume the existence of any fact which it thinks likely to have happened

regarding being to the common courts of natural events, human conduct and public and private business in their relation to the fact of the particular case. The word 'exclusively' refers to the motive object and purpose of the expenditure. As per the ratio laid down in the decision of the Hon'ble **Delhi High Court** in the case of **Siddho Mal & Sons Vs. CIT reported in 122 ITR 839** the Assessing Authorities are empowered to examine the expenditure. The law does not prescribe any quantitative test to find out whether the onus in a particular case has been duly discharged. It all depends on facts and circumstances of the case as laid down in the decision of **Guwahati High Court** in the case of **Assam Pesticides and Agro Chemicals vs. CIT reported In 227 ITR 384**.

10. Therefore, the assessing officer concluded that assessee has failed to discharge its onus to prove that it had purchased diamonds. In view of the facts discussed above, it is very clear that the assessee had not actually made purchases of diamonds from the above mentioned concern but merely obtained bills from this concern to inflate its purchases by paying commission as stated by Shri Bhanwarlal M. Jain, in their statements recorded. Accordingly, an addition of Rs.2,50,25,283/- was made by the assessing officer and added to the total income of the assessee.

11. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A), who has partly allowed the appeal of the assessee, observing as follows:

“.....It is well known that if purchases are made from open market without insisting for the genuine bills, the suppliers may be willing to sell those products at a much lower rate as compared to the rate which they may charge in case the dealer has to give a genuine sale invoice in respect of that sale and supply the goods. There may be various factors due to which there is bound to be a substantial difference between the purchase price of unaccounted material and rate of purchase of accounted for goods. There may be a saving on account of sales-tax and other taxes and duties which may be leviable in respect of manufacture or sale of goods in question. The suppliers or the manufacturers make a substantial saving in the income-tax in respect of income from sale of unaccounted goods produced and sold by them. This may also be one of the factors due to which the seller may be willing to charge lower rates for unaccounted goods as compared to accounted for goods. Keeping all these factors in mind, the Hon'ble ITAT Ahmedabad in the case of Vijay Proteins Ltd. Vs. ACIT (supra) held that 25% of the purchase price accounted for in the

books of accounts through such bogus purchases should be disallowed out of the amount of total bogus purchases. This judgment of the Hon'ble ITAT Ahmedabad was challenged before the Hon'ble Gujarat High Court in TAX APPEAL. NO. 243 of 2002 by the assessee. The Hon'ble Gujarat High Court vide judgment dated 09-12-2014, case reported in [2015] 58 taxmann.com 44 (Gujarat)[09-12-2014], affirmed the view of the Hon'ble ITAT by observing as under:-

“12. We have heard learned counsel for both the sides. Having appreciated the material on record, the Tribunal recorded a finding that the transactions in respect of oil cakes shown as purchases by the assessee from 33 parties were not genuine transactions and that all those 33 parties were bogus parties. The Sale Invoices claimed to have been issued by them were also found to be fictitious and the bank account in the name of M/s. Pooja Traders was found to have been opened and operated mainly with a view to accommodate these fictitious transactions carried out by the assessee in respect of oil cakes shown as purchases from such bogus suppliers. The above findings were recorded on the basis of the material on record of the Tribunal.

13. The question which then arises for consideration is as to whether the entire amount of the said bogus purchases and freight payments made in relation thereto should have been disallowed or the assessee should have been held to be eligible for grant of deduction of a reasonable amount of purchase price of the oil cakes in question in view of the fact that receipts of the materials in question by the assessee were supported by various registers and books of account maintained by the assessee, which the Revenue has not disputed. The Revenue has also not disputed the genuineness of said documents.

14. On the basis of the entries recorded in the books of account of the assessee, the provisions of Section 40A(3) of the Act would not be applicable as such payments were shown to have been made by "crossed cheques". If these entries are ignored, the books of account stand rejected u/s.145(2) and then the income will have to be estimated on the basis of best judgment.

15. It is by now well settled that in order to decide as to whether a particular payment for expenditure would be covered under the exceptions provided in Rule 6DD(j) or not will depend on the peculiar facts and circumstances of each case. In the present case, for reasons recorded herein above, the provisions of Section 40A(3) would not be applicable and even if they are held to be applicable, the expenditure would be covered by the exceptions provided in Rule 6DD(j) of the Rules.

16. It is a matter of fact that the goods were not received from the parties from whom it is shown to have been purchased but, such material was received from a different source which is exclusively within the knowledge of the assessee and none else. Therefore, it is evident that the assessee had inflated the expenditure in question by showing higher amount of purchase price through the fictitious

invoices in the names of 33 bogus suppliers. Considering the overall factual scenario, the Tribunal was justified in disallowing 25% of the purchase price.”

*5.10. In the light of above discussion, it is concluded that the appellant did not purchase the goods from the aforesaid parties. At the same time, he did purchase the goods from some other persons (may be agents or persons well known to the appellant). However, the AO's action of adding the total purchase value cannot be sustained following the various judicial precedents rendered in respect of cases having similar facts and circumstances. Since, the receipt of the material in question is not in doubt but the material has been received from sources best known to the appellant, therefore, proportionate disallowance has to be made in these circumstances in the light of the decision of Vijay Proteins Ltd, Vs. ACIT (supra) so as to adequately cover the amount of unexplained peak credit in respect of bogus purchases. Keeping in view the facts and circumstances of the case and various judicial precedents on the issue involved, I direct the AO to restrict the disallowance to 25% of the total purchase value of Rs.2,50,25,283/-. The appellant gets partial relief on this account. The ground no. 2 raised by the appellant regarding this issue is **partly allowed**.*

6. In the result, the appeal is partly allowed.”

12. Aggrieved by the order of Id. CIT(A), the Revenue is in appeal before us and as well as the assessee is in cross appeal before us.

13. Learned Counsel for the assessee, pleaded that assessee is doing genuine business and submitted purchase bills and vouchers and all transactions were through banking channels. The Id Counsel stated that assessee has declared gross profit ratio at the rate of 11%, hence assessee is not engaged in hawala transactions. The Id Counsel also argued that opportunity of cross examination of statement of Bhanwarlal Jain, was not provided to the assessee during the assessment stage, hence it is violation of principle of natural justice. Therefore, Id Counsel contended that based on these facts narrated above, the entire addition made by the assessing officer may be deleted.

14. On the other hand, Learned Departmental Representative (Ld. DR) for the Revenue submitted that first of all the assessee has not demanded before the assessing officer for opportunity of cross examination, hence there is no violation of principle of natural justice. Besides, Id DR pointed out that assessee`s case relates to Bhanwarlal Jain group cases, wherein the Tribunal has taken consistent stand and make the addition at the rate of 6% of bogus purchases. Further, Ld. DR also submitted that considering the facts of the

assessee's case, the 100% of bogus purchases should be added in the hands of the assessee, therefore, Ld. DR reiterated the stand taken by the Assessing Officer and prays the Bench that addition should be made at the rate of 100% of bogus purchases.

15. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. We note that the issue raised in the Revenue's appeal and assessee's cross appeal, is squarely covered by the judgment of co-ordinate Bench in the case of Pankaj K. Chaudhary, in ITA No.1152/Ahd/2017, dated 27.09.2021, wherein it was held that addition @ 6% of bogus purchases are quite reasonable. The findings of the co-ordinate Bench are 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.”

16. We note that assessing officer made addition at the rate of 100% of bogus purchases. On appeal, by assessee, the ld. CIT(A) has restricted the addition to 25% of bogus purchases. Now, the assessee is in appeal before us and argued that addition sustained by the ld. CIT(A) at the rate of 25% of bogus purchases should be deleted as the assessee had submitted purchase bills and vouchers and all transactions were through banking channels. However, the main grievance of the Revenue is that the addition made by the Assessing Officer at the rate of 100% of bogus purchases, should be upheld.

However, we note that the issue under consideration is squarely covered by the judgment of the Coordinate Bench of this Tribunal in the case of Pankaj K. Chaudhary (supra), wherein the Tribunal held that addition should be sustained at the rate of 6% of bogus purchases. Therefore, we direct the Assessing Officer to make the addition at the rate of 6% of bogus purchases.

17. In the result, appeal filed by the assessee (in ITA No. 21/SRT/2022) is partly allowed, whereas the appeal filed by the Revenue (in ITA No. 38/SRT/2022), is dismissed.

Registry is directed to place one copy of this order in all appeals folder / case files.

Order is pronounced on 09/01/2023 by placing the result on the Notice Board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

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

सूत /Surat

दिनांक/ Date: 09/01/2023

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