

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

BEFORE SHRI S. RIFAUZ RAHMAN, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.1815/Mum./2022
(Assessment Year : 2011-12)

Ashok Kirtilal Bhansali
C-112, Grand Paridi Apartments
August Kranti Marg, Mumbai 400 036
PAN – AEMPB0889E

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-19(3), Mumbai

.....Respondent

Assessee by : Shri N.K. Mohnot
Revenue by : Shri S. Anbuselvam

Date of Hearing – 17/11/2022

Date of Order – 20/01/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The captioned appeal has been filed by the assessee challenging the impugned order dated 27/05/2022, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*learned CIT(A)*], for the assessment year 2011-12.

2. In this appeal, the assessee has raised the following grounds:-

- "1. The appellate order dated 27-05-2022 passed by CIT(A), National Faceless Appeal Centre, Delhi is quite arbitrary, illegal and contrary to the facts of the case of your appellant.*
- 2. The Ld. CIT(A) has further erred in not allowing the claim of appellant in respect to the re- opening of assessments.*
- 3. The case laws relied upon by him is not at all relevant to the facts and circumstances of the present case.*
- 4. The Ld. CIT(A) has further grossly erred in rejecting the appellant's contention that there was no new information on record to warrant the initiation of proceedings u/s.148 of the Act.*
- 5. The Ld. CIT(A)'s conclusion that opportunity to cross examination is not necessary can be called as arsenic in a cup of coffee.*
- 6. He ought to have appreciated that entire addition herein is made on the basis of sworn statement recorded from Gautam B. Jain, when this is the fact how can one arrive at the truth, in the absence of cross examination from him.*
- 7. His such an act of justifying the non cross examination of witness is against the principles of natural justice and fair play.*
- 8. His citation in this regard is not at all relevant to the facts of the case of your appellant. For the grounds stated supra and such other grounds / submission which shall be filed at the time of hearing the appellant prays to the Honorable ITAT for to delete the addition to render the Justice."*

3. During the hearing, at the outset, the learned Authorised Representative (*"the learned AR"*) wishes not to press grounds no.1-4 challenging the initiation of proceedings u/s 147 of the Act. Accordingly, grounds no. 1-4 as dismissed as not pressed.

4. Thus, the only surviving grievance, argued by the learned AR, in the remaining grounds of appeal is pertaining to disallowance made on account of non-genuine purchases.

5. We have considered the rival submissions and perused the material available on record. In the present case, we find that the assessee is an individual and is, inter-ala, engaged in the business of trading in diamonds. For

the year under consideration, the assessee filed his return of income on 27/09/2011 declaring a total income of Rs.30,62,800/-. The return filed by the assessee was initially processed u/s 143(1) of the Act. Thereafter, on the basis of information received from DGIT (Inv.), Mumbai, proceedings u/s 147 of the Act were initiated, and notice u/s 148 of the Act was issued on 28/03/2018 in the case of the assessee. As per the said information, the assessee is a beneficiary of bogus purchases from a concern, viz. M/s Krishna Diam, of Gautam Jain Group, who are entry/accommodation bills provider. Accordingly, in absence of proof of the genuineness of purchases made by the assessee, the AO vide order dated 14/12/2018 passed u/s 143(3) r.w.s. 147 of the Act treated the entire purchase of Rs.71,39,812/- from the aforesaid entity as bogus and added the same to the total income of the assessee. In further appeal, the learned CIT(A), inter alia, dismissed the appeal filed by the assessee on merits and upheld the impugned addition made by the AO.

6. It is evident from the record that only the purchases from M/s Krishna Diam have been disputed by the Revenue on the basis of information received from the Investigation Wing. However, the sales made by the assessee have not been disputed by the Revenue. We find that the Co-ordinate Bench of the Tribunal in Oopal Diamond Vs. ACIT, (2022) 144 taxmann.com 184 (Mumbai-Trib.), while dealing with a similar issue in the case of a taxpayer engaged in trading and manufacturing of diamonds observed as under:

"4.2. The only issue that arises before us is as to whether the estimation on profit element made by the Id. CIT(A) at 3% is just and fair. It is pertinent to note that against the order of the Id. CIT(A), the Revenue had not preferred any appeal before us. As per the report of the Task Force for Diamond Sector constituted by the Ministry of Commerce and Industry after considering the BAP

(Benign Assessment Procedure) scheme, the Task Force recommended that the net profit prevailing in the Diamond Industry engaged in the business of trading would be in the range of 1% - 3% and those engaged in the business of manufacturing would be in the range of 1.5% - 4.5%. We find that the Tribunal has been consistently taking the stand by estimating the profit element on the basis of reliance placed on the aforesaid report of the Task Force. In the instant case, the assessee is engaged in the business of both trading as well as manufacturing of diamonds. Considering the same, we find that the Id. CIT(A) was duly justified in estimating the profit percentage at 3% on which we do not deem it fit to interfere. In other words, the estimation of profit percentage at 3% by the Id. CIT(A) is just and fair and does not require any interference. Accordingly, the ground No.2 raised by the assessee is dismissed."

7. As, in the present case there is no dispute regarding the fact that the assessee is also in the business of trading in diamonds, therefore, respectfully following the aforesaid decision, we deem it appropriate to restrict the disallowance to 3% being the profit element in the diamond trading business. As a result, other grounds raised by the assessee are partly allowed.

8. In the result, the appeal by the assessee is partly allowed.

Order pronounced in the open Court on 20/01/2023

Sd/-
S. RIFAUR RAHMAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 20/01/2023

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Mahesh Sonavane
Stenographer

By Order

Assistant Registrar
ITAT, Mumbai