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

आयकर अपील सं./ITA No.89/SRT/2017

निर्धारण वर्ष/Assessment Year: (2008-09)

(Physical Court Hearing)

Income Tax Officer, Ward-2(3)(7), Room No.414, 4th Floor, Aayakar Bhavan, Adajan, Surat-395009	**Vs.**	Anil Pukhraj Jain, Prop. of Aakruti Stone, 206-2nd Floor, Tulsi Building, Somnath Mahadev Ni Sheri, Mahidharpura, Surat – 395009.
(Appellant)		**(Respondent)/**
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **AHAPJ8569Q**		

प्रत्याक्षेप सं Cross Objection No.10/SRT/2021

(a/o ITA No.89/SRT/2017)

निर्धारण वर्ष/Assessment Year: (2008-09)

Anil Pukhraj Jain, Prop. of Aakruti Stone, 206-2nd floor, Tulsi Building, Somnath Mahadev Ni Sheri, Mahidharpura, Surat – 395009.	**Vs.**	Income Tax Officer, Ward-2(3)(7), Room No.414, 4th Floor, Aayakar Bhavan, Adajan, Surat-395009
Appellant/Co-objector		**(Respondent)**
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **AHAPJ8569Q**		

निर्धारिती की ओर से /Assessee by	Shri Sapnesh R. Sheth, CA
राजस्व की ओर से /Respondent by	Shri Ashok B. Koli, CIT-DR
सुनवाई की तारीख/Date of Hearing	23/12/2022
उद्घोषणा की तारीख/Date of Pronouncement	23/ 01/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the Revenue and Cross Objection filed by the Assessee, pertaining to Assessment Year (AY) 2008-09, are directed against the order passed by the Learned Commissioner of Income Tax (Appeals), Surat [in short "the ld.CIT(A)"], 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 21.03.2016.

2. The grounds of appeal raised by the Revenue are as follows:

"i) On the facts and in the circumstance of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.16,54,65,748/- made on account of accommodation entry pertaining to bogus purchases.

ii) On the facts and circumstances of the case and in Law, the Ld. CIT(A) has erred in estimating income @ 5% of total unverifiable purchase of Rs. 17,41,74,472/- without appreciating the fact that a search and seizure action was carried out by the Investigation Wing, Mumbai in the case of Sh. Pravin Kumar Jain and Gautam Kumar Jain and other Groups of Mumbai on 01.10.2013 which resulted in collection of evidences and other findings, which conclusively proved that said groups of Mumbai had through Benami concerns, run and operated by them, provided accommodation entries to various parties, the assessee being one of them, in respect of bogus unsecured loans, bogus purchases and bogus sales. Therefore, the Ld. CIT(A) should have treated the whole amount of these purchases as income of the assessee as assessee reduced his income to this extent by inflating his purchases by this amount in his P&L account.

iii) On the facts and circumstances of the case and in Law, the Ld. CIT(A) has erred in accepting the plea of the assessee that proper books of accounts and stock register was maintained without considering the fact that no such books of account and documents were produced before the AO. Ld. CIT(A) did not give any opportunity to the AO to rebut the contention of the assessee raised before him and relied upon the judicial pronouncement, facts of which are different from the instant case.

iv) On the facts and in the circumstances of the case and in Law, the Ld.CIT(A)-1, Surat ought to have upheld the order of the Assessing Officer. It is, therefore, prayed that the order of the Ld.CIT(A)-3 Surat may be set-aside and that of the Assessing Officer's order may be restored."

3. Grounds of appeal raised by the assessee in Cross Objection No.10/SRT/2021, 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) has erred in partly confirming the action of assessing officer in making addition as unverifiable purchases by sustaining addition to the extent of Rs.87,08,724/- as against addition of Rs.17,41,74,472/- made by ld. Assessing officer.

2. It is therefore prayed that above addition made by assessing officer and confirmed by Commissioner of Income-tax (Appeals) may please be deleted.

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

4. In addition to this, the assessee has raised additional grounds of appeal, which is reproduced below:

> *"Sub: Request to admit additional ground for A.Y 2008-09.*
>
> *Ref: Cross Objection No.10/SRT/2021filed against Revenue appeal- ITA No. 89/SRT/2017 for A.Y. 2008-09*
>
> *1. In the above case, the assessee has filed cross objection against appeal filed by Revenue for the above assessment year. In addition to the ground raised in the cross objection, assessee prays to admit the following additional ground:*
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> - *On the facts and circumstances of the case as well as law on the subject, learned CIT(A) has erred in confirming the action of assessing officer in reopening assessment u/s 148 of the I.T. Act, 1961.*

5. Learned Counsel for the assessee, pleads that above additional ground in cross objection may be admitted in the interest of natural justice, equity and fair play, as the omission of the same in Form 36A is purely unintentional.

6. On the other hand, Learned DR for the Revenue, argues that at this stage such additional ground should not be admitted, as the assessee has not raised this issue during the appellate proceedings before the ld CIT(A).

7. We have heard both the parties. We note that assessee has raised the additional ground on the legal issue challenging the validity of reassessment proceedings under section 147/148 of the Act. During the assessment stage assessee did not file return of income in response to notice issued u/s 148 of the Act but he filed reply in the course of assessment proceedings stating to treat original return of income filed under section 139(1) of the Act, as the return of income field in response to notice u/s 148 of the Act. Therefore, the facts relating to reopening the assessment under section 147/148 were there before the assessing officer.

8. We note that it is purely a legal issue and all facts are already on record which goes to the root of the matter and no further inquiry is required for deciding the same as all facts are already on record. Therefore, in the light of ratio laid down by the Hon'ble Supreme Court in the case of *National Thermal Power*

Company Ltd., vs. CIT (1998) 229 ITR 382 (SC), we admit the additional ground raised by the assessee.

9. First we shall take this additional ground raised by the assessee in its cross objection.

10. Brief facts *qua* the issue are that assessee filed original return of income for A.Y.2008-09 declaring total income at Rs.4,76,841/- on 25.09.2008. The return was processed u/s 143 (1) of the Act. Subsequently, information was received from the Director of Income Tax (Inv)-II, Mumbai regarding the sharing of information in the case of beneficiaries of accommodation entries related to Shri Pravin Jain group and Gautam Jain Group wherein details of the beneficiaries who have taken bogus purchase / sale accommodation entries in the A.Y.2008-09 and details of beneficiaries who have taken these bogus accommodation entries in the A.Y. 2008-09. As per the information received, it was mentioned that search and seizure operation u/s. 132 of the Act was carried out in the case of Pravin Jain Group & Gautam Jain Group, Mumbai involved in providing accommodation entries through benami concerns. During the year the assessee had carried out transactions with the company i.e. M/s. Karishma Diamond Pvt. Ltd., M/s. Krishna Diam Pvt. Ltd., M/s. Mihir Diamond, M/s. Parshwanath Gems Pvt. Ltd,. M/s. Ansh Merchandise Pvt. Ltd., M/s. Mohit International Pvt. Ltd and M/s. Casper Enterprise Pvt. Ltd., and which are run by the key persons of the Pravin Jain group & Gautam Jain Group.

11. The assessing officer noted that Assessee had received accommodation entries pertaining to bogus purchases of Rs.17,41,74,472/- which was nothing but accommodation entry, as no real business was carried out by the assessee, as the bogus nature was confirmed in the statement recorded on oath by one of the directors of the group. It was further stated that the entities of this group were operated solely with the purpose of facilitation of fraudulent transactions which includes providing accommodation entries of bogus purchases / sales. The

specific and important information received as above, has been subjected to the verification. After formation of reason to believe that the purchase bill of diamonds received by assessee firm are bogus in nature and escaped assessment due to failure on the part of the assessee to disclosed fully and truly all the material facts necessary for the purpose of assessment. The case was reopened u/s. 147 of the Act after obtaining the necessary satisfaction of the competent authority. The notice u/s. 148 of the Act was issued on 31.03.2015 and served upon the assessee firm. In response to notice u/s. 148, the assessee vide its letter dated 28.04.2015 has requested to treat the original return of income filed on 25.09.2008 as the return of income filed of the Act for A.Y. 2008-09, and also requested for copy of reasons recorded, which was provided to the assessee in view of the Hon'ble Supreme Court judgment in the case of GKN Driveshafts (India) Ltd. (259 ITR 19).

12. Subsequently, Notices 142(1) & 143(2) of the Act were issued to the assessee on 17.12.2015, 11.01.2016 and 26.02.2016. The assessee attended the office of AO and furnished submission/explanation. The details called for were examined. The AO noted that during the year under consideration, the assessee company was engaged in the business of diamond trading. During the re-assessment proceedings, the assessee had furnished details of parties from diamonds have been purchased during the year under consideration. On verification of the same it is found that the following concerns are fictitious and belongs to Shri Pravinkumar Jain and Shri. Gautam Jain Group. The details of which are as under:

Sr. No.	Name of the entry provider	Amount (in Rs.)
1	M/s. Karishma Diamond Pvt. Ltd.	14466087/-
2.	M/s. Krishna Diam Pvt Ltd	30363304/-
3.	M/s. Mihir Diamonds	25943727/-
4.	M/s. Parshwanath Gems Pvt Ltd.	52190279/-
5.	M/s. Ansh Merchandise Pvt Ltd	32556059/-
6.	M/s. Mohit International	10675016/-
7.	M/s. Casper Enterprise Pvt Ltd.	7980000/-
	Total	17,41,74,472/-

During the search proceedings statement on oath were recorded of dummy directors/partners/proprietors of concerns of Shri Gautam Jam Group and Shri Pravinkumar Jain Group. In which the following person stated on oath as follows:

(i) Shri. Gautam Bhanwarlal Jain director of M/s. Parshwanath Gems Pvt. Ltd and M/s. Karishma Diamond Pvt. Ltd. during the search proceedings in his statement he stated that I would like to state that factually there is no actual business of trading in diamond that is being carried out by me in the above stated three concerns namely M/s. Karishma Diamond Pvt. Ltd., M/s. Krishna Diam, M/s. Mihir Diamond and that is why during the course of search and seizure action u/s. 132 of the IT Act on 03.10.2013, business premises were found vacant and not being in use. Those addresses have been kept only for the purpose of registration of company address; receiving any mails including Income Tax notices if any, bank verification etc. Sir, I would also like to add that not only the above 3 concerns, but I also control the concerns in the name of M/s. Parshwanath Gems Pvt. Ltd. and M/s Shree Ganesh Gems which also claim to be trading in diamonds but in which no actual business takes place. I hereby on my own declare that I running these paper based companies with no real business activities at all."

(ii) Also Shri Gautam Jain Has explained the *modus oparendi* which is reproduced as under:

"Various brokers of the diamond market approach me regularly and they give direction from time to time to import diamonds in my books of A/c, Once the diamonds are received they are taken away by these brokers at whose direction these imports were made, For doing these activities, I get a commission. As a result of above, stock of diamonds is reflected in my books without any physical stock being there. Thereafter, at a certain commission I issue bogus sale bills of such diamonds which are appearing in my books as sock in the names of other interested parties/concerns, which is again arranged by these brokers. For this, I get commission. I also give bogus sale bills when there is no stock available in my books, by arranging bogus purchase bills from the local market from various concerns through various brokers. For this type of transaction, I get profit of

differential commission received and paid by me. Also, in case some person required entry for unsecured loan, I give the entry by giving them cheque and in return I receive cash for the same. But most of the times it so happens that I have to pay this cash back to some parties to get cheque entry in my books again so as to maintain the balance in bank accounts. Normally, there is no surplus cash which remains available with me at any point of time. All the local purchases, local sales and loan entries appearing in my books of accounts of the above 2 concerns controlled by me are totally bogus entries which were done against cash taken/given against such entries. None of these entries reflect any genuine transaction at all."

(iii) Shri Gyanchand Bhanwarlal Jain director of M/s. Karishma Diamond Pvt. Ltd., M/s. Parshwanath Gems Pvt. Ltd, M/s. Krishna Diam Pvt. Ltd has stated in his statement recorded during search proceedings in the case of Gautam Jain Group that the concerns namely M/s. Karishma Diamond Pvt. Ltd., M/s. Parshwanath Gems Pvt. Ltd, M/s. Krishna Diam Pvt. Ltd are all nothing but paper concerns with no actual business of any kind in diamond trading. All the bills issued for sales since the inception of these concerns are nothing but bogus bills issued to interested parties and that all the loan and advances to interested parties are nothing but "accommodation entries" given against cash.

(iv) Shri Manish Jain, the director of M/s. Ansh Merchandise Pvt. Ltd. had admitted in his statement recorded during the search proceedings that he is dummy partner of M/s. Ansh Merchandise Pvt. Ltd. and the firm is not engaged in any business of actual diamond trading and the firm is engaged in provide accommodation entries and the M/s. Ansh Merchandise Pvt. Ltd. is Paper entity only. He also stated in his statement that he is employee of Shri. Pravinkumar Jain and the firm Ms. Ansh Merchandise Pvt. Ltd. belongs to Shri Pravinkumar Jain only.

(v) Shri. Nilesh F. Parmar, the Proprietor of M/s. Mohit International had admitted in his statement recorded during the search proceedings that he is dummy partner of M/s. Mohit International and the firm is not engaged in any business of actual diamond trading and the firm is engaged in provide

accommodation entries and the M/s. Mohit International is Paper entity only. He also stated in his statement that he is employee of Shri. Pravinkumar Jain and the firm Ms. Mohit International is belong to Shri Pravinkumar Jain only.

(vi) Also Shri Pravinkumar Jain Has explained the *modus oparendi* which is reproduce as under

"As I have told you I am in the business of import of diamond. I need to import diamonds in various group companies controlled by me to create a base for my bogus loans and advances. There are several brokers and traders in the market who want to import a part of their rough diamonds through people like me with a view to suppress their turnover and profit. The consignments are sent on credit by the suppliers (usually from Hong Kong and Dubai) in the name of companies at the instance of the actual importer. On receipt of consignments in the name of my company, the real importer gets the actual delivery of diamonds from the Clearing Housing Agents (CHA) on the basis of my authority letter and declaration from. The payments are settled through a process of adjustment and understanding between the supplier and the real importers which I am not aware of. The payments for the imports are shown as outstanding creditors in my books as I have an understanding with the facilitating brokers that the payments can be sent to supplier through cheque as per my convenience. The payment made by me by cheque is returned to me in cash by the broker in India. There are certain parties in the market who want accommodation entries for the purchase of diamonds in their books. Such parties either approach me or my network of brokers for an accommodation entry in the nature of bogus purchase of diamonds. The payment received from the party for accommodation entry of bogus purchase is used to give entries of unsecured loans and investments to builder, jewelers, and businessmen and corporate for which I earn an interest of about 0.15% to 0.20% per month. The cash is received back from the builder/real estate company who takes an accommodation entry for unsecured loan/advance. The cash received from the builder/real estate company is paid to the party to whom the bogus sale of diamonds is made to square off the transaction. After a period of about 6 month to 1 year, the payment is made to the party based in Hong Kong or

Dubai is square off the transaction which was shown as outstanding creditors in my books. The cash received is paid to the builder/real estate company to square off the transaction. Sir, the only profit I have earned in this entire transaction is the commission on the accommodation entry given to the beneficiary company/builder @ 0.15% to 0.20% per month. I do not get any commission on the bogus diamond purchase made through my companies or on the accommodation entry given for sale of the diamonds to the third party.

13. Then after Assessing Officer dealt with the objection raised by the assessee as follows:

> *"**10. Point wise Reply to objection raised by the Assessee in response to show cause and final conclusion:***
> *I have carefully gone through the various objection raised by the assessee through their CA in reply to the show cause notice and they are rejected for the following reasons:*
>
> ***Point**: The assessee has not been granted an opportunity either to go through the statements of the principal hawala operator / his associates or given an opportunity to cross examine the person whose statements is being used against the assessee.*
>
> **Reply**: *as regards assessee's claim that the assessee has not been furnished with the statement of hawala operators and their associates nor being given an opportunity to cross examine such persons ,it may be stated that furnishing a copy of the statements and the cross examination is an absolute necessarily under the law of evidence and a trail under Indian penal code , the law of evidence and the provision of Indian penal code is do not operate directly under the income tax act proceedings which is a semi judicial proceedings and not criminal proceedings. Therefore, non-granting of opportunity of cross examination does not deprive the assessee of its right or it is in violation of principle of natural justice. Under the income tax act, proceedings are based on the principle of preponderance of probability and not the law of the evidences.*
>
> ***Point** : In the support of the contention the CA of the assessee has furnished several details like Party wise purchase and sales, purchase registers, stock registers, ledger account of purchase parties, movement of goods and copy of the bank statement etc. the CA of the assessee has also furnished additional information to prove genuineness of purchases made. The information furnished are like PAN Card copy of the parties, Copy of Relevant Bank Statements of the supplier parties reflecting the genuineness of the transactions, Copy of Income Tax Return Acknowledgment of the referred parties/ suppliers, Declaration from the referred parties/ suppliers regarding genuineness of their business transactions.*

Reply*: I have carefully gone through all the materials in the Party wise purchase and sales purchase registers stock registers, ledger account of purchase parties, movement of goods and copy of the bank statement etc., have been carefully considered by me. This documentary evidences and proof are sufficient and acceptable if it is a matter of normal scrutiny assessment. The most important aspects should not be lost sight of that but for the search and seizure and unearthing of incriminating evidences, the nature of bogus accommodation entry, bills against the cash would not have come to the lime light. The search and seizure action is the most stringent and effective action by the department for the purpose of unearthing undisclosed income/ finding incriminating evidences. The search and seizure action is a rare and uncommon action which to some extent amount to encroaching upon the privacy of private citizen. And therefore such action is taken seldom and with an extreme care and caution and conducted by the highest investigation authority of the department i.e. DDIT (Inv) u/s. 132 of the Income Tax Act. Certain powers of CRCP and CPC are imbedded in it, which shows the significance of such search proceedings. When such proceedings are conducted by extreme care and caution and evidences collected which cannot be found under normal proceedings, cannot be viewed lightly or without significance. And therefore such incriminating documents directly implicating the assessee in the hawala transactions either through principal hawala operator or through one of the shale concerns far over weight than normal documents furnished during the normal assessment proceedings.*

Point: *The AR of the assessee has relies on judgements of Tribunal and courts.*

Reply*: As per case laws quoted, I find that the facts of the case under scrutiny totally different and distinguishable and therefore the case laws has not application.*

Point: *It is argued that during original assessment proceedings u/s 143(3) of the Act, no such inference of bogus transactions were drawn by the then A.O.*

Reply*: in this connection your kind attention is invited to the proviso to section 147 which refers to failure on the part of the assessee to disclose fully and truly all the material fact necessary for the purpose of assessments. Since the assessment was completed us. 143 (3) of the Act, the assessee and his representative was under greater obligation to disclosed fully and truly all the primary facts. The assessee having failed to do so the proviso to section 147 correctly invoked.*

11. In the view of the above observation, when the books of account do not reflect correct and complete account and statement of affairs, the rejection of the books of accounts is necessary. I have gone through the reasons submitted against the show cause for the rejection of books of accounts. The books of accounts are therefore, on due consideration of the assessee's full and complete explanation, facts of the case, and circumstances are hereby rejected under provision of section 145(2) and the assessment is completed under section 143(3) r.w.s. 147 of the IT Act For the reason discussed above, assessee's contention is rejected and as the assessee failed to explained that the purchase worth Rs.17,41,74,472/- are the genuine purchases therefore appropriate addition on

account of bogus purchase of Rs.17,41,74,472/- u/s. 69C of the Act is required to be made over and above the net profit declared in the return of income filed. Accordingly, Rs.17,41,74,472/- on account of unexplained source of Purchase u/s. 69C of the Act, added to the total income of the assessee for the year under consideration."

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

"7.8 In this factual background, the question arises as to what should be the profit estimation. On one side, the assessee is showing GP/NP at the rate of 2% (maximum) approximately in various years which I have found quite low in comparison to industry average. On after hand Ld AR has also placed reliance on Gujarat High Court decision in the case of Mayank Diamond Pvt Ltd. wherein Hon'ble court has upheld NP @ 5%. On this basis, Ld AR has pleaded for application of the ratio of said decision. I have perused the above cited decision & found the same applicable to the facts of this case. Following the binding precedent of Hon'ble Gujarat High Court in the case of Mayank Diamonds Pvt. Ltd. (Supra), entire purchases could not be disallowed and profit @ 5% should be estimated. So the action of the AO of making disallowance of entire purchases from such alleged parties by treating the same as bogus is not sustainable, hence rejected.

8. The appellant vide written submission dated 26.05.2017 has also put forth alternative plea t sustain addition to the extent of 5% of impugned purchases of Rs.17,41,74,472/- which works out to be Rs.87,08,724/- in view of the decision of M/s. Mayank Diamond case (supra). The ratio of Hon'ble High Court is binding and facts of the present case are also quite similar to M/s. Mayank Diamondcase, therefore I uphold the addition to the extent of Rs.87,08,724/- and grant a relief of Rs.16,54,65,748/- (Rs.17,41,74,472 – Rs.87,08,724). The ground of appellant is ***partly allowed.***

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

16. Learned Counsel for the assessee, argued a lot in respect of additional ground raised by the assessee, challenging the validity of reassessment proceedings under section 147/148 of the Act. He pleaded that reasons for reopening should be recorded on one occasion only, however, in case of the assessee, under consideration, the Assessing Officer has recorded reasons for three times.

17. Therefore, Ld. Counsel contended that there is no provision in the Act to record the reasons three times on the same issue, therefore on this count the reasons recorded may be quashed. The Ld. Counsel also submitted that in assessee`s case, the assessment was reopened after a period of four years and there is no failure on the part of the assessee to disclose fully and truly all material facts for making the original assessment. That is, assessing officer has failed to demonstrate in the reasons so recorded that in the assessee's case, the assessment was reopened after a period of four years and there is failure on the part of the assessee to disclose fully and truly all material facts necessary for making assessment, therefore the reopening proceedings initiated by Assessing Officer is bad in law.

18. On the other hand, Learned Departmental Representative (ld. DR) for the revenue submitted before us the copy of reasons recorded, dated 28.03.2015, (*Copy of the reasons recorded was supplied to the AR of the assessee*) wherein it was stated by the Assessing Officer, that there is a failure on the part of the assessee to disclose fully and truly all material facts necessary for making assessment. The ld DR pointed out that in assessee`s case the original assessment was framed under section 143(3) of the Act, wherein the assessing officer had never discussed the issue of bogus purchases. The issue relating to bogus purchases, is a fresh issue, and such fresh information was not there with the assessing officer at the time of making original assessment for A.Y. 2008-09, under section 143(3) of the Act dated 24.10.2010, hence the AO was right in reopening the assessment.

19. The ld DR also stated that there is no bar to record the reasons three times in case of the assessee. In every reason so recorded by the AO, there is a fresh amount (figure) which has escaped assessment and total amount of these three reasons comes to Rs.17,46,51,313/-, which is matching with these three reasons and there is no repetition. In fact, the AO has made the addition to the tune of Rs.17,46,51,313/-. Further section 147 does not say that reasons should be

recorded only at one time in case of an assessee. More than one reason may be recorded if the department got information in piecemeal bases. Hence there is no infirmity in the reasons recorded by the Assessing Officer.

20. 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 ld. CIT(A) and other material brought on record. We note that in assessee`s case the reasons were recorded three times on 11.03.2015, 26.03.2015 and 28.03.2015. The copy of reasons recorded on 28.03.2015 was supplied by ld DR for the Revenue to the ld Counsel for the assessee. In these three reasons so recorded, the subject matter of income escaped assessment, and quantum of income escaped is different, the number of invoices mentioned in the reasons recorded are different thus proposed addition to be made based on the reasons recorded are also different. These three reasons are recorded separately and independently. Moreover, there is no overlapping in these reasons so far number of invoices and quantum involved in these invoices are concerned. We note that the first question raised by the ld Counsel for the assessee before the Bench is that reasons should not be recorded three times in case of one assessee. In order to know the answer of this question, let us consult the bare provisions of section 147 of the Income Tax Act, which are reproduced below:

"147. Income escaping assessment.—If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):

> ***Provided*** *that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment*

for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

***Provided further** that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year.*
***Provided also** that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.*

Explanation 1.—Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

Explanation 2.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:—

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax ;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

(ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E;

(c) where an assessment has been made, but—

> *(i) income chargeable to tax has been under assessed ; or*
> *(ii) such income has been assessed at too low a rate; or*
> *(iii) such income has been made the subject of excessive relief under this Act; or*
> *(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed;*

(ca) where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, under sub-section (2) of section 133C, it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may

be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

(d) where a person is found to have any asset (including financial interest in any entity) located outside India.

Explanation 3.—For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.

Explanation 4-For the removal of doubts, it is hereby clarified that the provisions of this section, as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012."

21. From the above section 147 of the Act, it is vivid that assessing officer may reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section. Thus, it is abundantly clear that Assessing Officer may reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148 of the Act. Therefore, there is no restriction on the **number of reasons to be recorded**, that is, reasons may be recorded twice, thrice etc. as per the circumstances, hence we do not agree with the ld Counsel to the effect that reasons cannot be recorded three times.

22. The second question of ld Counsel is that assessment was reopened after a period of four years and there is no failure on the part of the assessee to disclose fully and truly all material facts necessary for making original assessment. We do not agree with the ld Counsel, as in assessee`s case the original assessment was framed under section 143(3) of the Act, wherein the assessing officer had never discussed the issue of bogus purchases. The issue pertaining to bogus purchases

was fresh issue before the Assessing Officer and it is a fresh and new information therefore assessing officer has rightly reopened the assessment. Moreover, in the reasons recorded on dated 28.03.2015, it is mentioned that:

"From the above facts, I have reason to believe that income to the tune of Rs.12,29,63,397/- chargeable to tax has escaped assessment due to failure on the part of the assessee to disclose true particulars of income"

23. Thus, we note that reasons were recorded by the Assessing Officer within the legal framework of provisions of section 147 of the Act therefore, second objection/question raised by the ld Counsel is hereby rejected.

24. It is also important to note that during the appellate proceedings, the assessee never challenged the issue of validity of reopening the assessment under section 147 of the Act and never demanded the reasons recorded by the Assessing Officer on 28.03.2015. The assessee, raised the additional ground first time before the Tribunal challenging the validity of reopening of the assessment and reasons recorded on 28.03.2015 was provided to ld Counsel for the assessee. The ld Counsel also submitted written submission before the Bench, we have gone through and considered the same. We note that even during the assessment proceedings, the assessee has not contested the issue of reopening u/s 147 of the Act. We note that the assessee`s case was reopened u/s. 147 of the Act after obtaining the necessary satisfaction of the competent authority. The notice u/s 148 of the Act was issued on 31.03.2015 and served upon the assessee firm. In response to notice u/s 148, the assessee company vide its letter dated 28.04.2015 has requested to treat the original return of income filed on 25.09.2008 as the return of income filed for A.Y. 2008-09, and also requested for copy of reasons recorded, which was provided to the assessee in view of the Hon'ble Supreme Court judgment in the case of GKN Driveshafts (India) Ltd. (259 ITR 19).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. The Apex Court in the case of Phul Ghand Bajrang Lal (supra), observed as following:

"...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."

25. 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 as following:

> *"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."*

26. 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.**

27. In fact, in three recent judgments; the Hon'ble Gujarat High Court has upheld the reopening on similar facts. The case is squarely covered against the assessee by these judgments which are:

- **Yogendrakumar Gupta vs. ITO 366 ITR 186 (Guj)**
- **Peass Industrial Engineers (P) Ltd. 73 taxmann.com 185 (2016)**
- **Order dated March 25, 2014 in the case of Lalita Ashwin Jain vs. ITO, Special Civil Application No. 1626 and 1627 of 2014.**

28. As observed earlier not only **there existed new information** with the Assessing Officer **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 additional ground raised by the assessee.

29. On merit, we note that Revenue's appeal in ITA No.89/SRT/2017 for AY.2008-09 and Assessee`s CO.No.10/SRT/2021, are squarely covered by the judgment of Co-ordinate Bench of ITAT, Surat in the case of Pankaj K. Chaudhary, in ITA No.1152/AHD/2016, dated 27.09.2021, 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	*M/s Andaman Timber industries VsCommissioner of Central Excise, CIVIL APPEAL NO. 4228 OF 2006 (Supreme Court)*
2	*CIT vs. Indrajit Singh Suri [2013] 33 taxmann.com 281 (Gujarat)*
3	*Albers Diamonds Pvt. Ltd. Vs ITO 1(1)(1), Surat I.T.A. No.776 &1180/AHD/2017*
4	*The PCIT-5 vs. M/s. Shodiman Investments Pvt. Ltd. TTANO. 1297 OF 2015 (Bombay High Court)*
5	*ShilpiJewellers Pvt. Ltd. vs. Union of India &Ors. WRIT PETITION NO. 3540 OF 2018 (Bombay High Court)*
6	*CIT in Vs. Mohmed Juned Dadani 355 ITR 172 (Gujarat)*
7	*Micro Inks Pvt. Ltd. Vs. ACIT [2017] 79 taxmann.com 153 (Gujarat)*
8	*Shakti Karnawat Vs. ITO - 2(3)(8), Surat ITA 1504/Ahd/2017 and 1381 /Ahd/2017*
9	*Asian Paints Ltd. Vs. DCIT, [2008] 296 ITR 90 (Bombay)*
10	*PCIT, Surat 1 Vs. Tejua Rohit kumar Kapadia [2018] 94 taxmann.com 325 (SC)*
11	*The PCIT-17 vs. M/s Mohommad Haji Adam & Co. ITA NO. 1004 OF 2016(Bombay High Court)*
12	*Pankaj Kanwarlal Jain HUF Vs. ITO 2(3)(8) Surat ITA.No.269/SRT/2017*

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."

30. Since, the issue under consideration is squarely covered by the judgment of the Co-ordinate Bench of ITAT, Surat in the case of Pankaj K. Chaudhary (supra). There is no change in facts and law and the Revenue, as well as Assessee are unable to produce any material to controvert the aforesaid findings of the Co-ordinate Bench (supra), wherein the Tribunal considering overall facts and circumstances held that disallowances @ 6% of impugned purchases / disputed purchases would be sufficient to meet the possibility of revenue leakage. Therefore, respectfully following the binding judgment of Co-ordinate Bench, the appeal of the Revenue is partly allowed and cross objection filed by the assessee are dismissed.

31. In the combined result, appeal filed by the Revenue (in ITA No.89/SRT/2017) is partly allowed whereas Cross Objections (in CO No.10/SRT/2021) and additional ground raised by the assessee are dismissed.

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

Order is pronounced on 23/01/2023 by placing the result on the Notice Board.

Sd/-	**Sd/-**
(PAWAN SINGH)	**(Dr. A.L. SAINI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

सूरत /Surat
दिनांक/ Date: 23/01/2023
SAMANTA /Dkp Out Sourcing Sr.P.S.

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

By Order

// **True Copy** //

Assistant Registrar/Sr. PS/PS
ITAT, Surat