

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'B' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.6408/Del./2016  
(ASSESSMENT YEAR : 2007-08)**

**ITA No.6409/Del./2016  
(ASSESSMENT YEAR : 2008-09)**

M/s. Dhadha International,  
1992, Ground Floor, Naughara,  
Kinari Bazar,  
Delhi – 110 006.

vs. ACIT, Circle 48 (1),  
New Delhi.

**(PAN : AAAFD0928J)**

**ITA No.6691/Del./2016  
(ASSESSMENT YEAR : 2007-08)**

**ITA No.6692/Del./2016  
(ASSESSMENT YEAR : 2008-09)**

ACIT, Circle 48 (1),  
New Delhi.

vs. M/s. Dhadha International,  
1992, Ground Floor, Naughara,  
Kinari Bazar,  
Delhi – 110 006.

**(PAN : AAAFD0928J)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri K. Sampath, Advocate  
Shri V. Rajakumar, Advocate  
REVENUE BY : Shri Vipul Kashyap, Sr. DR

Date of Hearing : 19.01.2023  
Date of Order : 03.02.2023

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

These are appeals by the assessee and Revenue against the respective orders of Id. CIT (A) for the concerned assessment years.

2. Since the facts are common and the appeals were heard together, these are disposed off by this common order.

### **REVENUE'S APPEAL**

3. Grounds are common except for the difference of figures, hence we are referring facts and grounds for AY 2007-08.

4. The grounds of appeal taken by the Revenue read as under :-

“1. On the facts and the circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of Rs.2,87,58,745/- made by AO on the account of bogus purchases from benami concerns berated and managed by Bhanwar Lal Jain.

2. On the facts and the circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of Rs.2,87,58,7451- made by AO as the assessee has not substantiated that purchases made are genuine.

3. On the facts and the circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition without giving any evidence which leads to conclusion that there were purchases from the parties.

4. On the facts and the circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition without appreciating the fact of the case.”

5. In this case, AO noted that DDIT, Investigation Wing, Murthal vide letter dated 13.03.2014 informed that search and seizure was carried out under section 132 of the Income-tax Act, 1961 (for short 'the Act') in M/s. Bhanwar Lal Group of companies wherein it was established that Shri Bhanwar Lal Jain along with his sons Shri Rajesh Bhanwar Lal and Shri Manish Lal Bhanwar was operating and managing 70 benami

concerns in the names of their employees through which they provided accommodation entries of unsecured loans and purchases of various beneficiaries. He further observed that some of the benami concerns have provided accommodation entry to an assessee of this circle namely M/s. Dhadda International (PAN AAFD0928J) during the AY 2007-08 to the tune of Rs.2,87,58,745/- as per details given below :-

S. No.	From	PAN	A.Y.	Amount involved
1	Ankit Exports	AAFFA6854K	2007-08	Rs.28,24,925/-
2	Prime Star	AAHFP4334R	2007-08	Rs.84,37,920/-
3	Mohit Enterprises	ACRPK1211G	2007-08	Rs.24,49,515/-
4	Mohit Enterprises	ACRPK1211G	2007-08	Rs.46,06,910/-
5	Mohit Enterprises	ACRPK1211G	2007-08	Rs.27,35,720/-
6	Parvati Exports	AAEFP2530Q	2007-08	Rs.77,03,755/-
Total				Rs.2,87,58,745/-

6. AO further observed that Investigation Wing further informed that bogus unsecured loans and sales were being routed in benami concerns. Assessee in response responded that these are genuine transactions of the purchases which have been then sold to customers on which assessee has paid the tax. Further, it was submitted that all the payments made against these purchases were through account payee cheques which were duly reflected in the bank account of the assessee. Assessee further challenged the reopening of the assessment merely on the basis of the information gathered during the search and seizure and that too at a third party's

premises. However, AO was not convinced and passed a very laconic order as under :-

“After considering the submissions made by the assessee and facts of the case and further keeping the findings of the Investigation Wing, I am satisfied that the assessee has taken accommodation entry by providing unaccounted cash which has not been shown in the details filed by the assessee. Hence it is evident that the assessee has not disclosed fully and truly all material facts of his income for the assessment year i.e. 2007-08. On account of failure on part of the assessee, income for the A.Y. 2007-08 to the extent of Rs. 2,87,58,745/- has escaped assessment within the meaning of section 147 of the LT. Act, 1961. Penalty proceedings u/s 271(1)(c) has been initiated separately for concealing the true and correct facts of the income.”

7. Against the above order, assessee went in appeal before the Id. CIT(A). Against the challenge of reopening of the assessment by the assessee, Id. CIT (A) confirmed the reopening by observing as under:-

“I have considered the submissions made on behalf of the assessee. I have also perused the satisfaction as recorded by the Assessing Officer. The fact that Banwari Lal Group was indulging in accommodation entries was not in the knowledge of the Assessing Officer at the stage of the original assessment proceedings. The fact of the Appellant being served by the Banwari Lal Group came to the knowledge of the Assessing Officer only after the conclusion of the assessment proceedings. Once that information was received by the Assessing Officer from the Investigation Wing he perused the same and found in that context, that facts had not been fully and truly disclosed at the time of original assessment by the assessee. The information as received by the Assessing Officer is apparently specific and categorical. The Assessing Officer has recorded a clear satisfaction on this point. The Hon'ble Supreme Court in ALA Firm vs. CIT (1991) 189 ITR 285 has ruled that a subsequent reopening or a case would be valid in the event of the information reaching the Assessing Officer after the assessment. The information communicated by the Investigation Wing was fresh and was unknown to the Assessing Officer at the time of concluding the assessment. The Assessing Officer put that in place and after complying with all the prescribed statutory formalities reopened the case. Considering the totality of the pleadings of the assessee and also the satisfaction note and other related issues I am of the view that the saving as devised in terms of the first proviso to section 147 would not be available to the assessee in the subject case because it will be neutralised by the Explanation to that section. The normal limitation of six years would, therefore, apply. Besides the subject case is not a simple case of

change of opinion. There is fresh material to stoke the change of opinion. In such circumstances, I am constrained to dismiss the additional ground as raised.”

8. As regards merits of the case, Id. CIT (A) noted the submissions of the assessee. Assessee’s submissions were summarized by the Id. CIT(A) as under :-

“1. Further, whatever has the third Party said, on the basis of which this case has been reopened, is behind the assessee, thus for a fair justice, an opportunity should have been provided to the assessee to cross-examine that party.

2. Without prejudice to the above, It is once again confirmed that all purchases made during the relevant previous year, were genuine and duly recorded in the books of accounts and are reflected in the stock register, and all the payments against such purchases, had been made through account payee's cheques.

3. The accounts of the assessee have been audited by the chartered accountants under the provisions re section 44AB of the Act. All purchases/sales, quantitative details of purchase & sales were verified by them and reported in their Report.

4. It may also be appreciated that all these details had also been verified by the Id assessing officer, during the course of assessment made u/s 143(3) of the Act. No specific deficiency either in the purchases or in the sales or in the inventory has been pointed out by the AO. All that, notwithstanding, the fact that with the objective of enabling a correct and comprehensive examination of the trading results the assessee had submitted to the AO full details of the purchases and sales including the name of the parties involved and also the break up of the sales and purchase on a month to month basis has been submitted. The AO had not pointed out any defect or discrepancies in any of these statements.

5. Copies of the Ledger accounts showing the purchase made and the payments made against such purchases, copies of the Bills for purchases made from the parties mentioned in the Annexure A, annexed to the Form, recording the reasons for reopening, have already been submitted, in our earlier submissions. Copies of the relevant portion of the bank statements, showing the payments made

against such purchase, have also been submitted. Thus assessee has discharged its primary onus, no addition should be made with regard to purchases, as held in the case of ITO Vs Permand (2007) 107 ITJ 395 (Jd.) (Trib.).

6. Further, whatever goods had been purchased, from above mentioned parties, were entered in the stock register, maintained by the assessee and as when sales were made against these purchases, the quantity so sold has also been entered in the stock register. In this connection, your kind attention is drawn to the case ITO Vs. Surana Traders (2005) 92 ITD 212 (Mum.)(Trib.), where the Hon'ble Tribunal has held that " Where a quantitative tally of sales, are furnished, even if the purchases are not available, no addition can be made, merely on assumptions or presumption"

# Once the sales are accepted by the department, merely on the assumption, based on the statement given by a third party during Investigation, no addition can be made by treating the purchases as bogus, as held in the case of G. C. Diamond International Vs Dy CIT (2006) 104 ITJ 809 (Mum.) (Trib.) Copy of the judgment, already submitted.

8 Your kind attention is also drawn to the recent judgment of the Hon'ble Gujarat High Court In the case of CIT vs Nangalia Fabrics Private Ltd, (2014) 220 Taxmann 17 (Mag.) (Guj)(HC.), wherein, it has been decided that - In case where purchases were supported by bills, entries were made in the books of account and payment was made by cheques, said purchases could not be held as bogus purchase. Copy of the judgment, has already been filed.

Under these circumstances it is once again prayed that the purchases made, should be treated as genuine purchase and no disallowance should be made on the basis of declaration made by a third party.  
(A. R. of the Assessee)

AO can no treat purchase as Bogus merely because Supplier is declared Hawala dealer by Sales tax Department - Ramesh Kumar & Co vs. ACIT (ITAT Mumbai).”

9. Ld. CIT (A) further noted the assessee's submissions as under:-

"14. The entire business of the assessee in diamonds has been seen to with the stock tally by the auditor, the VAT authorities and the Assessing Officer in the original proceedings. The Auditors and the VAT authorities have confirmed the genuineness of the transactions.

All transactions are carried out personally by the partners. Items come in small packets which are carried In the body of the transacting persons. There is nothing on record brought by the Assessing Officer to impeach their credibility or an authenticity or genuineness. All transactions are transparent and above board. Parties to whom sales have been made for which payments received by account payee cheques assist. Unmistakably, their genuineness and validity. Such monies have come In exchange for valuable consideration of goods. The purchases are of Identifiable and definite items. They have a tally by weight for which payments have been made through account payee cheques. There is absolutely no proof of any manipulation or pilferage. In such circumstances, the AO was grossly wrong in distrusting the book version which all predecessors have approved. On merits also there is no substance in the action of the AO. All the above actions as proposed being erroneous, superfluous, unnecessary and unmerited must be quashed".

10. Considering the above, ld. CIT (A) found that the transactions were through banking channels and assessee submitted the copy of stock register containing quantitative details, copies of bills of the persons to whom the above purchased goods were sold in addition to the summary of party-wise purchases and sales. Further he observed that AO has not rejected books of account despite the fact that he held the purchases to be bogus. Further, he observed that so far as genuineness of transactions with M/s. Ankit Exports, Prime Star, Mohit Enterprises and Parvati Exports are concerned, assessee submitted all the documents and evidences proving the genuineness of the purchased, the addition cannot be made merely on the basis of statement of the third party, which has not been allowed to be cross examined by the assessee. Ld. CIT (A) further referred to case laws relied upon by the assessee as under :-

“The Hon’ble Gujarat High Court in the case of Commissioner of Income Tax vs. M K Brothers (1987), 163 ITR 249 held that merely on the statement of Seller it cannot be held that purchases are bogus.

The Hon’ble Delhi High COUJ1 vide order dated 22.01.2014 in the case CIT vs. Sunrise Tooling System Private Limited held that in any case when sales declared by the assessee have not been doubted, it was not proper on the part of the AO to deny the claimed purchases on the basis of which sales were made.

The Ld. ITAT "D" Bench, Ahmedabad in the case of Avishkaar Processing Mills (P) Ltd vs. ACIT, Central Circle-d, Surat relying on the decision of Akruiti Dyeing & Printing Mills Pvt. Ltd. in ITA No.2551 & 2752/AI-ID/2006heldas that merely on the basis of the third party statement the genuineness of the purchase cannot be questioned.

The Ld. ITAT "D" Bench, Mumbai in the case of Ramesh Kumar & Co., Ville Parle, Mumbai vs. The ACIT 21 (1) "D" Bench, (A Y 2010-11)held that the purchases are supported by proper invoices duly reflected in the books of account. The payments have been made by account payee cheque which is duly reflected in the bank statement of the assessee. There is no evidence to show that the assessee has received cash back from the suppliers. The additions have been made merely on the report of the Sales tax Department but at the same time it cannot be said that purchases are bogus. We, therefore, set aside the findings of the Ld. CIT (A) and direct the AO to delete the addition.

11. Ld. CIT (A) lastly observed that mere adjustment in purchase without disturbing sales is not justified, therefore, he concluded as under:-

“Mere adjustment in purchase without disturbing sales is not justified. Therefore in cases where :-

- i. Goods purchased are duly recorded quantity and value wise in the books of accounts.
- ii. Corresponding sales are verifiable from the books
- iii. If not sold, the goods have been accounted for in the closing stock.
- iv. Payment has been recorded in the books.

treating purchases as bogus shall not be correct. Therefore, the addition of Rs.2,87,58,745/- on a/c of alleged bogus purchases is deleted.”

12. Against the above order, assessee and Revenue are in cross appeals. Revenue has challenged the addition of deletion on merits while assessee has challenged the confirmation of reopening of assessment. We have heard both the parties and perused the records.

13. Ld. Counsel for the assessee relied upon the order of Id. CIT (A) and placed reliance upon the order of Hon'ble Gujarat High Court in the case of CIT vs. Bholanath Poly Fab (P.) Ltd. (2013) 355 ITR 290 (Guj.).

14. We find that as per the report of Investigation Wing, M/s. Bhanwar Lal Group of companies were engaged in bogus transactions of accommodation entries of sales and purchases of share capital and unsecured loans. However, in the present case, AO was informed that these are purchases from the concerned companies. Without making any further enquiry, AO simply based upon the investigation report treated the entire purchases bogus and added the same. AO did not doubt the sales. AO also did not issue any notice to any of the parties for making any enquiry. Upon assessee's appeal, Id. CIT (A) confirmed the reopening of assessment but deleted the addition on the ground that assessee has supplied all the documents, records are also there and sales are not doubted.

15. In this background of the case before us, admittedly assessee in this case has engaged in bogus purchase entries while sales have not been doubted. When sales are not doubted purchases alone cannot be disallowed at 100%. Making purchases through grey market gives the assessee benefits at the expense of exchequer. The assessee is engaged in the business of diamond trading. As per the report of task force of

diamond sector constituted by Ministry of Commerce & Industry, after considering capital BAP (Benign Assessment Procedure), net profit was prevalent at 1% to 3% in case of trading of diamonds and 1.5% to 4% for those who engaged in manufacturing of diamonds. In a similar case reported in 144 taxman.com 184 (Mumbai-ITAT) in case of Uppal Diamonds vs. ACIT, wherein assessee was engaged both in trading and manufacturing of diamonds and the allegation was sourcing from Bhanwar Lal Jain, the ITAT held that 3% estimate of profit percentage by the CIT (A) was correct estimate, hence, ITAT upheld the order of Id. CIT (A) and dismissed the assessee's appeal.

16. As per the facts of the present case, it is clear that this is a case of trading in diamonds and sales have not been doubted. Moreover, AO has made no enquiry whatsoever. The prevalent net profit as noted above was at 1% to 3%. The net profit declared by the assessee as per tax audit report is 1.24% for both the years. Although the net profit declared falls within the range recommended, in our considered opinion, the interest of justice would be served if the rate of net profit is taken at 2% of sales, Hence bringing to tax, difference between 1.24% net profit shown and the 2% net profit recommended by the above Task Force will, in our considered opinion, serve the ends of justice. We order accordingly. The above proposition is also in consonance with the exposition in the case of

Bhalanath Poly Fab (P.) Ltd. (supra). The head note in this regard may be referred as under :-

“Section 69 of the Income-tax Act, 1961 - Undisclosed investments [Bogus purchases] - Assessment year 2005-06 - Assessee was engaged in business of trading in finished fabrics - Assessing Officer found that concerned parties from whom material was purchased were not found at their addresses and held that purchases made by assessee were bogus - Accordingly, he made disallowance - Tribunal found that though purchases were made from bogus parties, but purchases themselves were not bogus as entire quantity of stock was sold by assessee and held that only profit margin embedded in such purchases would be subjected to tax and not entire purchases - Whether no illegality was committed by Tribunal - Held, yes [Para 6] [In favour of assessee]”

17. Since the assessee's cross appeals are challenging only the reopening confirmed by the Id. CIT (A) and Id. Counsel for the assessee has not made any argument in this regard, we treat the cross appeals as infructuous.

18. Our above order applies *mutatis mutandis* to all the appeals here.

19. In the result, the appeals filed by the Revenue are partly allowed and the appeals filed by the assessee are treated as infructuous.

**Order pronounced in the open court on this 3<sup>rd</sup> day of February, 2023.**

**SD/-  
(ASTHA CHANDRA)  
JUDICIAL MEMBER**

**SD/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 3<sup>RD</sup> day of February, 2023  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-16, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.

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