

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

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.451/Mum./2022
(Assessment Year : 2015-16)

M/s. Meridian Gems
304, Kohinoor Complex
Chowki Sheri Sayedpura
Surat (Gujarat) 395003
PAN – AAQFM7140P

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Central Circle-1(3), Mumbai

.....Respondent

Assessee by : Shri Suchek Anchliya
Revenue by : Smt. Riddhi Mishra

Date of Hearing – 02/02/2023

Date of Order – 07/02/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 24/01/2022, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals)-47, Mumbai [*"learned CIT(A)"*], for the assessment years 2015-16.

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

"1. *On the facts and in the circumstances of the case and in law the Ld. CIT (A) erred in not considering that the assumption of jurisdiction by the Ld.*

Assessing Officer is bad in law as the conditions laid down under the Act for initiating reassessment proceeding u/s 147 of the Act have not been fulfilled.

2. On the fact and circumstances of the case and in law the Ld. CIT (A) erred in confirming the addition of alleged commission income arising out of alleged bogus unsecured loans, bogus purchases and bogus sales amounting to Rs. 10.96,997/- on protective basis without appreciating the fact that the same amount has been substantively added in the case of Shri Bhanwarlal Jain, thereby making the same addition in the hands of two assesseees leading to double taxation.

3. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming addition of Rs. 1,00.16.345/- (being 10.37% of Rs. 9,65,89,639), on estimation basis, by treating genuine turnover of the appellant as bogus sales.

4. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the addition of Rs. 4,59,78,905/- being the difference of preceeding years Trade Payables and the current years Trade Payables, without appreciating the fact that the appellant had disclosed all the information regarding Current Liabilities submitted in the Audited Financial Statements for the relevant year and the said increase in Trade Payables is on account of change in the exchange rate at the year end.

5. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the addition of alleged commission income arising out of alleged bogus unsecured loans, bogus sales and bogus purchases and also confirming the addition of gross profit on estimation basis, of a percentage of the total turnover, without appreciating the fact that both such additions cannot co-exist together.

6. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming addition of alleged commission income arising out of alleged bogus unsecured loans, bogus sales and bogus purchases, without appreciating the fact that for the very same assessee for previous assessment years, being AY, 2010-11 to A.Y 2014-15, the Ld. CIT(A) has deleted the protective addition of alleged commission income, thereby not following the principal of consistency

7. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in changing protective addition of commission income on alleged bogus sales to substantive addition on the incorrect presumption that the same was not considered in the order of the Hon'ble ITAT in the case of Shri Bhanwarlal Jain.

8. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in changing protective addition to substantive addition without issuing any show cause notice or opportunity of being heard to the appellant, which is in violation of section 251(2) of the Income Tax Act, 1961 and in violation of the principles of natural justice.

9. On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in confirming the addition made by Id. AO, without providing any

opportunity of cross examination, without any corroborative evidence and without providing copy of statements relied upon.

10. The appellant craves to add, alter, classify, reclassify, delete or modify any of the above grounds of appeal and requests to consider each of the above grounds without prejudice to one another."

3. The brief facts are: The assessee is engaged in the business of import, export, and trading of cut and polished and rough diamonds. For the year under consideration, the assessee filed its return of income on 24/09/2015, declaring a total income of Rs.45,400. The return of income filed by the assessee was processed under section 143(1) of the Act. Subsequently, based on the information received from the Investigation Wing, Mumbai, that the assessee is a part of Bhawarlal Jain Group, in whose case during the course of search and seizure action under section 132 of the Act, Shri Bhawarlal Jain, admitted that he is engaged in issuing accommodation entries for bogus loans/sales/import through 70 different concerns operated and managed by him, the reassessment proceedings were initiated in assessee's case. In response to the notice issued under section 148 of the Act, the assessee filed its return of income on 27/10/2018, declaring a total loss of Rs.45,400. In the reasons recorded for reopening of assessment provided to the assessee, it was mentioned that the assessment in the case of Shri Bhawarlal Jain, was concluded from the assessment year 2008-09 to 2014-15 on unaccounted cash commission income. It is further mentioned that during the assessment proceedings for the assessment year 2015-16, in the case of concerns of Bhawarlal Jain Group, it has been found that the factual matrix and the nature of activities including those of the inter-connected entities have remained identical to that which existed during the search operation. The Assessing

Officer, vide order dated 26/11/2019, passed under section 143(3) r/w section 147 of the Act noted that the facts of the case have remained unaltered and are the same as in the preceding year. The Assessing Officer after taking note of the statement of Shri Bhawarlal Jain, recorded during the course of the search and seizure operation noted that the assessee is one of the 70 concerns operated by Shri Bhawarlal Jain, along with his son. The Assessing Officer estimated the undisclosed commission income at Rs.10,96,997, on a protective basis since similar addition was made on a substantive basis in the case of Shri Bhawarlal Jain, for the assessment year 2015-16, after granting 10% deduction towards expenses for earning the undisclosed commission income. The Assessing Officer, after taking into consideration the huge turnover of the assessee computed the gross profit percentage @ 10.37% of the turnover amounting to Rs.1,00,16,345. The Assessing Officer, in the absence of details in respect of liabilities in the form of sundry creditors, made an addition amounting to Rs.4,59,78,905, in respect of increase in sundry creditors by treating the same as unexplained cash credit under section 68 of the Act. Accordingly, the Assessing Officer, vide assessment order, computed the total income of the assessee at Rs.5,71,37,647.

4. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee. Being aggrieved, the assessee is in appeal before us.

5. During the hearing, the learned Authorised Representative ("*learned A.R.*") submitted that the addition in respect of commission income has been made on a protective basis in the hands of the assessee whereas the addition on a substantive basis is made in the hands of Shri Bhawarlal Jain, for the year

under consideration. The learned A.R. further submitted that the learned CIT(A) proceeded to decide assessee's appeal wherein the addition has been made on a protective basis when the appeal in the case of Shri Bhawarlal Jain, wherein the additions are made on a substantive basis is still pending for adjudication before the learned CIT(A).

6. On the other hand, the learned Departmental Representative ("*learned D.R.*") vehemently relied upon the order of the lower authorities.

7. We have considered the rival submissions and perused the material available on record. We find that in the case of another group concern of Shri Bhawarlal Jain Group, the Co-ordinate Bench of the Tribunal in Pushpak Gems v/s ACIT, in ITA no.357/Mum./2022, vide order dated 29/12/2022, for the assessment year 2015-16, observed as under:-

"010. We have carefully considered the rival contentions and perused the orders of the lower authorities. The learned CIT (A) on the above facts has categorically held in Para no.10.2.2 in his order that the coordinate Bench has decided the issue in case of Shri Bhanwarlal Jain for A.Y. 2007-08 to 2014-15, wherein addition on account of commission is confirmed. The above order of the co-ordinate bench is not accepted by the Revenue. Therefore, estimation is not finalized; accordingly, the learned CIT (A) confirmed the addition on protective basis in the hands of the assessee.

011. Further, the commission income on bogus sales was not considered in case of Mr. Bhanwarlal Jain, therefore, addition to the extent of ₹1,37,944/- is confirmed on substantive basis in the hands of the assessee.

012. On account of low profit the addition was made compared with the profits of other entities.

013. On careful reading of the order of the learned CIT (A), we find that the impugned assessment order is A.Y. 2015-16. There is no order in case of Mr. Bhanwarlal Jain by the co-ordinate Bench for the impugned year. Therefore, the addition made by the learned Assessing Officer in case of Mr. Bhanwarlal Jain on substantive basis for AY 15-16 is not confirmed. The issue is still pending before the learned CIT (A). Therefore, the

confirmation of the protective addition in the hands of the assessee is not proper before deciding the issue of substantive addition in case of Mr. Bhanwarlal Jain. Preferably when the addition in the hands of two assessee are made on substantive and protective basis, both should be heard together. Therefore unless it is decided that in whose hands the accommodation entry commission income is to be assesseed, confirmation on protective basis , addition in the hand sof this assessee is not proper.

014. Further the accommodation entry commission income on bogus sales is confirmed in the hand sof assessee for the reason that ITAT has not dealt with the ame in the case of Mr Bhanwarlal jain. Thus, if the commission income on bogus sales is taxed in the hands of the assessee, it is necessary to first identify the beneficiaries. If there are no beneficiaries identified, assessee cannot be termed as accommodation entry provider. Therefore , before giving a specific finding that assessee is an accommodation entry provider or not would depend on the name and address of the beneficiaries identified by the assessee. Unless the name and address of the beneficiaries are available and identified, the commission income in the hands of the assessee as accommodation entry provider cannot be assessed.

015. Further the estimation of profit in the hands of the assessee merely on the bais of comparison of other entities is alos not proper without looking in to the books of accounts of the assessee and meeting the arguments of the assessee that such profit is derived on genuine business of the assessee.

016. In view of the above facts, we set aside all the grounds of appeal back to the file of the Id CIT (A) with a direction to decide the appeal of the assessee along with the appeals of Mr. Bhanwarlal Jain for the impugned assessment year. Therefore, the whole appeal is set aside to the file of the learned CIT (A)."

8. Since similar additions are made in the present case, therefore, respectfully following the aforesaid decision passed by the Co-ordinate Bench of the Tribunal, we set aside the impugned order passed by the learned CIT(A) and restore the issues to the file of the learned CIT(A) with similar directions, as rendered in the aforesaid decision. As all the other issues are remanded to the file of the learned CIT(A) for *de novo* adjudication, the issue pertaining to the addition on account of the increase in trade payables is also remanded to the file of the learned CIT(A) for fresh adjudication. Therefore, the entire

appeal is restored to the file of the learned CIT(A). As a result, all the grounds raised by the assessee in its appeal are allowed for statistical purposes.

9. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 07/02/2023

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 07/02/2023

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.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai