

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

आयकर अपील सं./ITA No.569/SRT/2019

Assessment Year: (2008-09)

(Physical Court Hearing)

Sanjaykumar Devkishan Panwar, 207, 2 nd floor, 6/2060/61 Vedant Building Bojabhai Ni Sheri, Mahidharpura, Surat – 395003.	Vs.	The ITO, Ward-2(3)(8), Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AOVPP8989A		
(Revenue)/(Appellant)		(Assessee)/(Respondent)

आयकर अपील सं./ITA No.588/SRT/2019

Assessment Year: (2008-09)

The ITO, Ward-2(3)(8), Surat.	Vs.	Sanjaykumar Devkishan Panwar, 207, 2 nd floor, 6/2060/61 Vedant Building Bojabhai Ni Sheri, Mahidharpura, Surat – 395003
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AOVPP8989A		
(Revenue)/(Appellant)		(Assessee)/(Respondent)

Assessee by	Shri Rohit Vijayvargia, CA
Respondent by	Shri Ritesh Mishra, CIT(DR)
Date of Hearing	03/02/2023
Date of Pronouncement	20/02/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned cross appeals filed by the Assessee and Revenue, pertaining to the Assessment Year (AY) 2008-09, are directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-1, Surat [in short “the ld. CIT(A)”], which in turn arises out of an assessment orders 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”).

2. Since in these both cross appeals, common and identical issues are involved, therefore we have clubbed these appeals and heard together and a consolidated order is being passed for the sake of convenience and brevity.

3. Grounds of appeal raised by the assessee (in ITA No.569/SRT/2019 for AY.2008-09, are as follows:

“1. Learned CIT(A) has erred in confirming re-opening , u/s 148 of the Income Tax Act, 1961, of appellant’s case for A.Y.2008-09.

2. Learned CIT(A) has erred in confirming addition of Rs.1,15,68,364/- of alleged bogus purchases.

3. The appellant reserves the right to add, alter, amend or withdraw any grounds of appeal.”

4. The assessee has also filed additional grounds of appeal, which is reproduced below:

“Ground No.4: Whether it is justified under law that books of accounts can be rejected without bringing on record the defects in books.

Ground No.5: Whether Learned CIT(Appeal) and Learned AO were justified according to law in making additions based on statements of third party and not giving appellant opportunity for cross objection of persons, information, statements, documents.”

5. The grounds of appeal raised by the Revenue (in ITA No.588/SRT/2019 for AY.2008-09) are as follows:

“(i) On the facts and circumstances of the case and in Law, the Ld. CIT(A) has erred in restricting the addition made by the AO to the extent of 5% of entire purchase i.e. Rs.23,13,67,290/- on account of bogus purchases.

(ii) On the facts and circumstances of the case and in Law, the Ld. CIT(A) has failed to appreciate the fact that the entire purchase from alleged concerns was bogus and it was only to suppress the profit of the beneficiaries which has been duly substantiated by the statement on oath given by the entry provider.

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

6. Succinctly, the factual panorama of the case is that assessee before us is an Individual and has filed his original return of income for A.Y.2008-09, declaring total income at Rs.4,07,941/- on 25.09.2008. The assessment was finalized u/s 143(3) on 08.04.2010 determining the income at Rs.5,25,570/-. In this case, an

information was received by the office of the undersigned from the DIT (Inv), Mumbai that assessee was one of the beneficiaries of bogus purchase bills provided by Praveenkumar Jain Group and Shri Gautam Jain Group during the previous year relevant to assessment year under consideration. Accordingly, it was construed that the income to the extent of purchase from such parties has escaped assessment within the meaning of section 147 of the Act, which lead into invoking of provisions of section 147 followed by issuance of notice u/s. 148 of the Act after recording reasons for such reopening of assessment as required under these provisions. Accordingly, notice u/s. 148 dated 20.03.2015 was issued and served upon the assessee. The assessment was reopened by the AO by recording reasons. The assessment was reopened after examining the information received from the DIT (Inv.), Mumbai and recording satisfaction for reopening by the AO. A Search and Seizure action was conducted in the premises of Shri Praveenkumar Jain & Shri Gautam Jain Group concerns on 01.10.2013 and 03.10.2013 by the DGIT (Inv), Mumbai. During the course of Search proceedings, it was established that the Group concerns are all paper companies / firms/ Proprietorship concern with no real business activities, operating solely with the purpose of facilitation of fraudulent financial transactions which includes, providing accommodation entries in the form unsecured loans to interested parties, issuing of bogus sales / purchase bills to various parties and providing a bogus front to concerns which do not want to import diamonds in their own hands.

7. Ongoing through the documents forwarded by the DIT(Inv), Mumbai, it was noticed by AO that the assessee has obtained accommodation entries of bogus purchase from the concerns of Shri Praveenkumar Jain & Shri Gautam Jain, during the financial year 2007-08 relevant to A.Y. 2008-09, the details of which is given as under:

Sr. No.	Name of the Entry Provider	Amount (Rs.)
1	M/s Karishma Diamond P. Ltd.	8,26,472/-
2	M/s Krishna Diam P. Ltd.	2,52,43,845/-
3	M/s Mihir Diamond	6,21,53,932/-
4	M/s Parshwanath Gems Pvt. Ltd.	13,91,42,900/-

5	M/s Ansh Merchandise Pvt. Ltd. (New Planet Trading Co. Pvt. Ltd.)	40,00,141/-
	Total	23,13,67,290/-

Considering the facts and circumstances of the case discussed above, it is clear that the assessee had obtained the bogus bill to the tune of Rs.23,13,67,290/- from various parties, without actually getting the material (diamond). Thus, AO noted that bills issued by the said Praveen kumar Jain Group and Shri Gautam Jain Group concerns is nothing but accommodation entry. Hence, the accommodation entry received from M/s Karishma Diamond Pvt. Ltd., M/s Krishna Diam Pvt. Ltd., M/s Mihir Diamond, M/s Parshwanath Gems Pvt. Ltd. and M/s Ansh Merchandise Pvt. Ltd. (New Planet Trading Co. P. Ltd.) as discussed above, totaling to **Rs.23,13,67,290/-** was treated as bogus purchases/unsecured loan and added to the total income of the assessee by the AO.

8. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A), who has partly allowed the appeal of the assessee. The Id CIT(A) has upheld the reopening of assessment u/s 147, as valid. However, on merits, the Id CIT(A) restricted the addition on account of bogus purchases at the rate of 5% of bogus purchases. The Id CIT(A) has passed a detailed and speaking order. The findings of Id CIT(A) is reproduced below:

“9. DISCUSSION AND DECISION OF THE APPELLATE AUTHORITY

Ground regarding validity of re-opening and assessment there-on;

9.1.1 *This ground of appeal pertains to validity of re -opening of the case u/s 147 of the Act and issuance of notice u/s 148 of the I T Act. I have perused the submission of the AR, Remand Report and considered verbal arguments. It is seen from the records that the AO had received report from the Investigation Wing, Mumbai, which indicated that the appellant was beneficiary of accommodation entry operators. The said accommodation entry operator 'has admitted before the Investigation Wing that they had given bogus purchase bills to many persons including the appellant. Based on this report, the Id assessing officer had '**reason to believe**' that income was escaped the assessment. In the facts and circumstances, I am convinced that the re - opening in this case is justified. Further, in his submission and verbal arguments, the A R contested that the assessment is not made as per Law. The Id. AO has not provided the copy of statement, material, etc. which he has relied upon, to the appellant, thereby denying the appellant, an opportunity to counter the same. The AR further submitted that this is against the principle of natural justice and strikes at the validity of the assessment completed.*

9.2 Ground regarding disallowance of bogus/ unverified purchases

9.2.1 On perusal of the assessment order and submission of AR, it appears to the case of unverified purchases made from concerns belonging to one Praveen Kumar Jain, Gautam Jain Group. The Ld. AO relied on statement of respective key person, the names are not given. The appellant produced before Ld. AO, the confirmation from suppliers, invoices ledger a/c, bank a/c showing cheque payments, Stock register showing movement of stock 85 corresponding sales etc. The Id. AO was not satisfied with explanations & evidences furnished by the assessee, and hence proceeded to disallow the total impugned purchases. It is interesting to note that Ld. AO has not rebutted or discredited the material evidences furnished nor has he doubted the sales made. It is seen that, the Ld. AO has not made any efforts to established 'de-jure' connection between the said unnamed respective key persons with the Company supplying diamonds to appellant Company. The AR Vide his second submission has demonstrated by way of stock summary that purchases in quantitative terms are duly entered in stock register and also corresponding sales have been made. Hence impugned purchases cannot be denied in quantitative terms.

9.2.2. I have decided the identical issue in my earlier order as CIT(A)-3, Surat in the case of Gagnani Irnpex A.Y 2013-14, Appeal No.CAS-3/512/2015-16 Date of Order: 24.11.2016. The operative part of the order is reproduced below, it applies mutatis mutandis to this case also.

The Id assessing officer has relied on statement of Shri B.Jain which is allegedly retracted by him at later stage and report of Investigation Wing, as against this, the appellant has filed copies of purchase bills, copy of bank statements showing payments, day - to day stock register showing incoming and outgoing diamond and daily stock tally, confirmation of the impugned parties from whom the said purchases have been made. Thus, the AR has practically submitted all possible evidences (one can expect any purchaser to have) to support his claim of purchases. It is seen that all the payments are made from bank accounts. The Id assessing officer has not discussed any of the evidences submitted by the appellant. 'No word as to why these documentary evidences furnished by appellant is not acceptable to the Id A.O. The appellant has also furnished day - to - day stock tally of rough diamonds purchased, issued to polishing and polished diamond stock statement. It is seen that all impugned purchases are properly accounted for the rough are issued to polishing and the polished diamonds are later on sold / exported. It is also seen that most of the impugned purchases can be traced to specific exports made. Needless to say, these exports are supported by all the required documents, customs clearances, etc. The Id assessing officer has not found any defect / irregularities in daily stock tally or in the s-ales /exports made. In fact, the sales have not been doubted at all.

The AR further argued that, unless the Id assessing officer proves positively that the material was not delivered to the assessee and the payment made through, the Bank channels have been bogus, or the amounts paid to the suppliers have come back to the purchaser assessee, the AO cannot make the impugned addition. Further, he argued that ld. AO has not doubted the sales disclosed by the appellant. Since there cannot be any sales without the purchase of the materials, the purchases cannot be disallowed. It was also pointed out by the AR that when

the quantity details of stock is tallying with the stock register, the purchases cannot be doubted. He further argued that addition cannot be made based on the statements given by a third - party that too without giving the assessee an opportunity to cross - examine them.

From the above detailed discussions of facts and circumstances it is clear that assessment suffer from incomplete investigation, and procedural loop holes. At the same time, there is no denying that the circumstances in which statement were made and the elaborate modus operandi unearthed by the Investigation Wing, Mumbai has created sufficient suspicion regarding the above purchases made by the appellant. It is also seen that the said suppliers are assessed with Central Circle, Mumbai, wherein they are being treated as 'entry providers' and assessed accordingly.

*The purchase bills, invoices, the daily inventory register tally with the purchases and sales made and the sales being mostly exported are not doubted. In such circumstances, the Hon'ble jurisdictional ITAT in the case of **Bholanath Polyfab Pvt Ltd (in ITA No. 137/Ahd/ 2009 dt 26. 07. 2011)** and other cases (as quoted by the AR), has arrived at a conclusion that purchases from said suppliers maybe bogus, but the appellant has made the quantity of purchases from some other parties. The observation of the jurisdictional ITAT in the case of M/s. Bholanath Polyfab P Ltd is reproduced below:-*

“The learned counsel for the assessee was unable to controvert the factual finding recorded by the AO in this regard. However, there is no dispute that the assessee is only a trader in the iron and steel and it has maintained quantitative details. The statement made by the ld Counsel that the purchases claimed to have been made by the assessee from Girnar Sales Corpn and Shiv Metal Corpn is duly recorded in the books of the assessee and has been reflected either in the sales or in the closing stock, is not controverted. On these facts, the decision in the case of Kulubi Steel (supra) would be squarely wherein the ITAT held as under. "8 From the above, it is evident that the assessee did not make any effort to controvert the finding recorded by the DDIT (Inv) and it made no efforts to produce the seller parties on the other hand it claimed that it is not his responsibility to produce the seller. It is a settled law that onus is on the assessee to establish the genuineness of the purchase. The assessee has produced various evidence with regard to the receipt of goods by it i.e. stock register, receipt of wegh - bridge for weighment of goods purchased by the assessee, Octroi receipt for the payment of Octroi duty, etc. After considering the entire material, we are of the opinion that 'the assessee did not purchase the goods from the parties mentioned in the sales bills. At the same time, it did purchase the goods from some other suppliers, may be without bill. Therefore, purchase rate as mentioned in the alleged sales bill cannot be accepted. Any person indulging in the practice of purchasing goods from the grey market and obtaining bogus bills of some other parties, would do so, for getting some benefit. But, what would be the magnitude of the benefit would depend upon facts of each case. In the case of Vijay Proteins, ITAT held that such benefit to be 25% and therefore sustained the ITA No. 137/Ahd/2009 disallowance for bogus purchase at 2.5 %. In the case of Sunsteel (supra), the ITAT deemed it fit to sustain the disallowance for a lump sum amount of Rs 50,000. However, we find that in the case of Shri Anubhai

Shivlal (supra) the ITAT has considered both the decisions in the case of Vijay Protens and Sunsteel (supra) and thereafter sustained the disallowance at 12.5%. Relevant findings of the ITAT in the case of Anubhai Shivalal reads are under-

"3. At the time of hearing before us, it is submitted by the Id Counsel that the addition sustained is excessive: In support of this contention he referred to the decision of the Tribunal in the case of ITO v/s Sun Steel 92 TTJ (And) 1126 wherein the Tribunal has sustained the addition of Rs 50,000 on a/c of bogus purchases. However, we find that the facts in the above case were different. In the above case, the assessee has shown purchases of Rs.27,39,410/- sale of Rs.28,17,207 and GP at Rs.94,740/-. The AO made the addition of Rs.27,39,407/- for bogus purchases. If the above sum is added to the GP, the GP works out Rs.28,34,247/- which was more than the sale itself. The Tribunal held that it is impossible that the GP is more than the sale itself. The Tribunal also found that the assessee has maintained the quantitative details in respect of materials purchased and sold. Considering peculiar facts of that case, the Tribunal arrived at the conclusion that it would be fair and reasonable to estimate the addition at Rs 50,000 as against the addition of Rs.27,39,407/- made by the AO. However, the Id CIT (A) considering the facts of the assessee's case, has sustained the addition at 12.5 % . While doing so, he has also relied upon the decision of the Tribunal in the case of M/s Vijay Proteins Ltd 55 TTJ (and) 76. In the case of M/s Vijay Proteins Ltd, the Tribunal has sustained the addition of 25 % of the bogus purchases. However, considering the facts of assessee's case, the CIT(A) restricted the disallowance to 12.5% as against 25 % made in the case of M/s Vijay Proteins Ltd. From these facts, it is evident that the CIT(A) has sustained the addition at 12.5% of the non-genuine purchases considering the facts of the assessee 's case. We, therefore, do not find any justification to interfere with the Order of the CIT (Appeals) in this regard. The same is sustained". After considering the facts and arguments of both the sides, we are of the opinion that it would meet ends of justice, if the disallowance is sustained at 12.5% of the purchase from these ITA No 137/Ahd/2009 two parties. The AO is directed to work out the disallowance accordingly.

Since the facts of the assessee's case are identical, we respectfully follow the above decision of the ITAT, direct the AO to disallow 12.5 % of the purchases made during the under consideration. Since the facts in the present case is identical to the facts cited in the case mentioned above, we respectfully following the above decision of the ITAT in the case of M/s Sanket Steel Traders (supra), restrict the disallowance to 12.5% of the purchase. We direct the AO to work out disallowance accordingly.

As held above, it is clear that, the appellants have made purchases from elsewhere, but have obtained bills from the impugned suppliers. In such circumstances the disallowance of 100% of purchases cannot be justified. Also as held above, the appellant would have indulged in above practice in order to get some benefit. What would be the magnitude of benefit derived by the appellant is the mute question. In the appellant's case, it is seen that the G P rate shown is 5.07 % (the lowest) in Asstt year 2007-08 to 9.52% (the highest) in assessment year 2009-10. This G P rate is on sales, which work out to higher rate on purchases. So, the appellant is already showing income on these impugned purchases.

The AR has brought to my notice that on identical facts, there is a binding decision of Hon'ble Gujarat High Court in the case of M/s **Mayank Diamond Pvt Ltd** reported in **2014 (11) TMI 812 (Guj)** in Tax Appeal no.200 of 2003 dated 07.11.2014. In that case, the appellant was engaged in trading of polished diamonds. The Id Assessing Officer came to the conclusion that purchases amounting to Rs.1,86,36,447/- are bogus and disallowed the same. The Ld CIT (Appeals) dismissed the appeal, however, the Hon'ble ITAT gave partial relief to the assessee by directing the Id Assessing Officer to make addition @ 12.5 %. On appeal, the Hon'ble High Court of Gujarat has held that '.....Gross Profit rate of 5% is the average rate of the industry and we think if fit to make addition on account of 5% gross profit rate. Further, the AR brought to my notice the decision of the Commissioner of Income Tax (Appeals)-1, Surat in the case of **Shri Vrajendra Jagivandas Thakkar, Mahidharpura, (AY 2007-08)** dt 21. 03.2016, wherein on identical facts and after considering the above legal positions, the Id CIT (Appeals), has taken a view that the decision of the Hon'ble High Court of Gujarat in the case of M/s **Mayank Diamond P Ltd** (supra) is binding and hence, confirmed the disallowance of 5 % of the impugned purchases.

During the appeal proceedings, the AR has produced before me the copies of assessments done by many Id AOs at Mumbai, in the case of beneficiaries of accommodation entries of the same Bhanwarlal group cases. In cases identical to the appellant, the Id AO (ACIT /ITOs) have not made 100% disallowances even if they have held that purchases are bogus. They have made disallowances ranging from 3/6 to 5 % of the impugned purchases. A chart showing the details of those assessments is annexed as Annexure "A". Similarly, the Id Commissioners of Income Tax (Appeals) in Mumbai have confirmed disallowance @ 3% in different cases. A table showing details is annexed as Annexure B '. The annexure may be treated as integral part of this order. From the above, it is clear that the Id AOs and Id CIT(Appeals) are of the view that the beneficiaries of accommodation entries have made a benefit of 3 % to 5% of the impugned purchases. In view of these precedents and also in view of the binding decision of jurisdictional High Court of Gujarat, I am of the considered opinion that disallowance of 5% of the impugned purchases would be reasonable and would meet the ends of justice.

9.2.3. The above decision in case of **Gangani Impex A.Y 2013-14, Appeal No. CAS-3/ 512/2015-16** Date of Order: 24.11.2016 has been referred to and confirmed by the jurisdictional Hon the ITAT in its decision in the cases of (1) **Deluxe Diamonds ITA No. 1396/Ahd/2017 dt. 11/04/2018** (2) **J.B.Brothers ITA No. 3661/Ahd/2015/SRT dated 06.04.2018**. Hence, this decision is binding on me. Further the Hon'ble ITAT Surat in the case of (1) **SudeepMahendrabhai Shah ITA No. 2423/Ahd/2016/SRT dt 29/05/2018**, (2) **M/s. Krunal Enterprises ITA No. 2262/A/2015/SRT dtd. 20.08.2018**,(3) **Gangani Impex ITA No.353/Ahd/2017/SRT dtd. 15/11/2018**(4) **M/s Opulant Jewells Pvt. Ltd. ITA No.1855/Ahd 2010/SRT dtd 15.11.2018** (5) **Dipak Banwarilal Agarwal ITA/2932 & 3277/Ahd/2016 dtd. 18/07/2019** (6) **Vikash Gopichand Choradia ITA No.2930 & 3279/Ahd/2016 dtd.24/06/2019** has taken a view that 5% disallowance of the impugned purchases is just and unreasonable. The AR furnished copy of the appeal order of CIT (A)-2 Surat, in. the case of **W/ Sunil Dhirubhai Davariya A.Y. 2011-12 CAS-2/2/746/2016-17** dated on 13/08/2018, wherein, respectfully following the above referred decision of honorable jurisdictional ITAT, the

disallowance is restricted to 5% of the unverifiable purchases. The AR furnished order of ITAT Surat in case of **Bhavna Automobiles ITA No. 2760 & 2761/A/2015 and ITA No.239 /Ahd /2017 dtd. 18/08/2018** where in the disallowance of 100% impugned purchases confirmed by undersigned as CITA-3, Surat, was reduced to 5% by Hon'ble ITAT.

Background

9.2.4 In the interest of fairness it is necessary to mention about the manner in which the issue of involving unverified purchases and accommodation entries by known operators have been decided by the undersigned and other CIT(A). Initially, the Appeals were decided by restricting the disallowance to either 5% or 12.5% based on the GP/NP disclosed by the appellant, nature of trade etc. While arriving at that conclusion the binding decisions of Hon'ble Jurisdictional High Courts such as **Satyanaraya P. Rathi (2013) 351 ITR 150, President Industries 258 ITR 654, Sum.it P Seth 2013 356 ITR 451, Bholanath Poly fab (2013) 355 ITR 290, Mayank Diamonds TA No. 200 of 2003 dated 07.11.2011 etc.** where in it was held that only a percentage of the purchase representing element of profit may be taxed. Guidance was also drawn from the various decisions of Hon ITAT in the cases of beneficiaries of the same accommodation entry providers being **Shri Rajendra Jain, Shri Pravin Jain and Shri Bhawarlal Jain**, listed therein the orders as well as decisions of Id CIT Appeals Surat such as (1) CAS-1/10810/2016-17 dated 03/07/201, **Shri Vrajendra Thakkar**, (2) CAS-1/279/15-16 dated 05/05/2016, **Creative Diamond Pvt. Ltd** (3) CAS 2/743/15-16 dated 10.02.2017, **Albert Diamonds Private Limited**.

9.2.5 However, subsequently, the decision of Hon., Gujarat High Court in the case of **N K Proteins (Industries) Ltd v ACIT TA No. 242/2003 dtd 20/06/2016 and SLP(C) CCNo. 963/2017 dtd 16/01/2017** was brought to notice. So in the appeals decided after that, the same was followed and disallowance was confirmed/enhanced to 100% of such unverified purchases, with the following observation; " The AR has not been able to substantiate his arguments with the help of any subsequent decision of the Hon., ITAT Ahmedabad or the Hon'ble High Court where in the above decision has been distinguished based on facts or dissented upon. In such circumstances, the above decision of the Hon. High Court is applicable to the case of appellant. In the absence of any judicial decision/ decision of jurisdictional ITAT, to the \ contrary, the above decision of the Hon High Court is binding." So the decision of HC in **NK Proteins Ltd** was applied to all cases of unverified purchases decided by undersigned as no decision of ITAT/HC was furnished before me to distinguish on facts and circumstances.

9.2.6. That is not the situation anymore, as the jurisdictional ITAT, Surat Bench in the case of **JB Brothers (Supra)** has held as under, "..the Id. AR relied on the case of **Suryanarayanan Silk Mills P. Ltd v ACITITA No. 2088/And/2007 did 22/08/2017** wherein ITAT has considered the decision of **NK proteins Limited** dated 20/06/2016 as upheld in **SLP (C) 963/2017 did. 16/01/2017** and had distinguished the case on the ground that a search has been conducted in said case leading to seizure/recovery of blank signed cheques, vouchers of numbers of concerns along with endorsements, blank purchase bills, book letter heads from searched persons. There are no such facts in the instant case. In view of this, the said case was distinguishable. The Tribunal therefore restricted the disallowance to 12.5%. No such adverse facts are present in the present case. In view of the

above facts we are of the view that facts NK Proteins Limited dated 20/06/2016 as upheld in SLP (C) 963/2017 dtd. 16/01/2017 are not applicable to present facts of the case."

9.2.7 It is further seen that the Honorable Gujarat High Court in the cases decided subsequent to N K Proteins ltd (supra) has not followed it, viz in the cases of Jagdish H Patel, TA No. 411 of 2017 dtd 01/08/2017 (8% disallowance) and TEJUA ROHITKUMAR KAPADIA, Surat in TA No. 691/2017 dated 18-09-2017 (0% disallowance). It is further seen that the Hon., Supreme Court has confirmed the decision of lion Guj HC in Tejua R. Kapadia in SLP (C) Diary No(s). 12670/2018 dtd: 04-05-2018. This goes to show that the decision of Gujarat High Court in the case of N K Proteins (Industries) Ltd (supra) is specific to the facts of that case.

9.2.8 ITAT 'F' Bench Mumbai in recent case of VR Enterprises vs ITO 17(3)(5), ITA No.4650/Mum/2018 order dtd.16/05/2019 has held that " The CIT(A) is not justified in enhancing assessment to disallow 100% of bogus purchases. The only addition, which can be made is to account for profit clement embedded in the purchase transactions to factorize for profit earned by assessee against possible purchases in grey market. The Hon. ITAT has relied upon the decision of Hon Bom. HC in case of Mohammed Haji Adam ITA No. 1004 of 2016 dtd 11/02/2019 where in the Hon HC distinguished the decision of Hon Guj HC in NK Industries Supra.

9.2.9 In the instant appeal, there is no such adverse finding as in the case of N K Proteins (supra). The facts in instant appeal are identical to Ganganilmpex (supra) and the cases decided by the jurisdictional ITAT (supra). In view of this, respectfully following jurisdictional ITAT, the disallowance is restricted to 5%. The AR has furnished orders Hon'ble ITAT Mumbai , Delhi and Kolkata wherein, an identical circumstances 85 factual matrix involving the same accommodation entry providers the entire disallowance made by Ld. AO was deleted (Sanghvi Export International Ltd. ITA No. 3305, 3375/Mum/2017 dt 21.08/2018, Karamchandra Rubber Industries ITA No.6599/Del/2014 12.02.2018 M/s Vaman International Pvt. ITA 1040 & 10/41 /M/2017 dtd 27,09.2017, Fancy wear ITA No. 1596/ M/2016 dtd. 20.09.2017, Suraj Jewells Co. ITA No. 1581/Ko/2016 dtd 05.05.2017). The AR also furnished copies of order of CIT(A) Valsad in the case of (1) Sahjanand Export CIT(A) /vls/236/ 2016-17 dtd. 24.08.2017, (2) Rushabh International No. CIT(A)/vls/102/2016-17 dt. 14.02.2018, which in the disallowances is restricted to 2% of impugned purchases. However, since I have already taken a view of disallowing 5% of purchases and since it is confirmed by Hon'ble jurisdictional ITAT, Surat Bench as discussed in para above; the above decisions of ITAT Mumbai/ Kolkata are not followed.

10. In view of above discussion the disallowance is restricted to 5% of unverified purchases.

A.Y.	Unverified purchases	Disallowance confirmed
2008-09	Rs.23,13,67,290/-	Rs.1,15,68,364/-

11. In the result, the appeal is partly allowed."

9. Aggrieved by the order of the Id. CIT(A), the Revenue as well as Assessee is in appeal before us.

10. The Learned Departmental Representative (Ld. DR) for the Revenue contended that reasons recorded by the Assessing Officer are as per the provisions of the Act, therefore the findings of the Id. CIT(A) should be upheld.

11. The Ld. DR, however on merit submitted that Assessing Officer has made 100% addition on bogus purchase, however Id. CIT(A) has restricted to 5% of bogus purchase. The Ld. DR contended that since it is a matter of bogus purchases, therefore 100% of bogus purchases should be disallowed. The bogus purchases are not the genuine business expenses, for the purpose of section 37 of the Act, therefore it should be disallowed entirely and order of the Assessing Officer must be upheld.

12. On the other hand, Ld. Counsel for the assessee submitted that reasons recorded by the Assessing Officer are bad in law and defective, therefore the reopening of assessment is not a valid. The Ld. Counsel took us through the reasons recorded by the Assessing Officer and contended that in the reasons recorded the facts relating to assessee, has not been mentioned. Therefore, these are not in accordance with the provisions of the Act. The Ld. Counsel also submitted that in assessee's case, the assessment was reopened after four years and there is no failure on the part of the assessee to disclose fully and truly, all facts necessary for making the original assessment, therefore reassessment proceedings are bad in law and hence it should be quashed.

13. In respect of additional grounds raised by the assessee, the Ld. Counsel submitted that books of accounts were rejected by the Assessing Officer without bringing out any defect in the books of accounts. Therefore, rejection of books of accounts under section 145(3) of the Act is bad in law. The Ld. Counsel also submitted that no opportunity of cross-examination in respect of statement of third party, has been provided to the assessee, therefore order passed by the Assessing Officer is bad in law and hence it should be quashed.

14. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. We have gone through the reasons recorded by the Assessing Officer and noted that there is no defect in the reasons recorded by the Assessing Officer. The argument of Id Counsel to the effect that *'since 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 necessary for making the original assessment, therefore reassessment proceedings should be quashed'* is not acceptable. We note that there was a fresh information with the AO that assessee made bogus purchases without taking delivery of goods, to inflate the expenses. Hence, argument made by Id Counsel is not tenable.

15. We note that AO on the basis of the information received from the Investigation Wing Mumbai has found that the appellant had obtained accommodation entries in form of bogus purchases. From the reasons recorded, the following facts and sequence of events are observed:

- a) Credible information was received by the AO from the Investigation Wing, Mumbai, regarding search and seizure action carried out in the case of Shri Pravin Kumar Jain group/Gautam Jain and evidences found during it including the statements of various persons, it was found that they were engaged in systematic providing of accommodation entries.
- b) The AO has noted that the search has revealed that the appellant managed to have received bogus bills for purchases.
- c) This information was not available at the time of passing the original assessment order, hence, entire bogus purchases were allowed.

d) The AO had verified the information with the record available in his office.

16. Having gone through the entire gamut of facts and circumstances, we are of considered opinion that not only there existed new information with the AO from the credible sources, but also that he has 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).

17. 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 Chand 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."

18. 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.**"*

19. 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.**

20. In fact, in three recent judgments; the Hon'ble Gujarat High Court has upheld the reopening on similar facts. The case is squarely covered 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.**

21. As observed earlier not only **there existed new information** with the AO **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. Hence, we dismiss the ground no.1 raised by assessee in ITA No.569/SRT/2019.

22. About additional grounds raised by the assessee, we note that assessee has injected bogus purchases bills in his books of accounts, therefore book results were not reliable, hence AO has rightly rejected the books of accounts. About, opportunity of cross examination is concerned, we note that assessee has not demanded the same before the authorities below, (CIT and AO). Hence, we reject the contention raised by Id Counsel. Hence, additional grounds raised by the assessee are dismissed.

23. On merits, we note that this issue is squarely covered by the judgment of the Co-ordinate Bench, of ITAT Surat, in the case of Pankaj K. Chaudhary, in ITA No.1152/AHD/2017, dated 27.09.2021, wherein it was 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	<i>M/s Andaman Timber industries Vs Commissioner of Central Excise, CIVIL APPEAL NO. 4228 OF 2006 (Supreme Court)</i>
2	<i>CIT vs. Indrajit Singh Suri [2013] 33 taxmann.com 281 (Gujarat)</i>
3	<i>Albers Diamonds Pvt. Ltd. Vs ITO 1(1)(1), Surat I.T.A. No.776 &1180/AHD/2017</i>

4	<i>The PCIT-5 vs. M/s. Shodiman Investments Pvt. Ltd.</i> <i>TTANO. 1297 OF 2015 (Bombay High Court)</i>
5	<i>Shilpi Jewellers Pvt. Ltd. vs. Union of India & Ors.</i> <i>WRIT PETITION NO. 3540 OF 2018 (Bombay High Court)</i>
6	<i>CIT in Vs. Mohmed Juned Dadani 355 ITR 172 (Gujarat)</i>
7	<i>Micro Inks Pvt. Ltd. Vs. ACIT</i> <i>[2017] 79 taxmann.com 153 (Gujarat)</i>
8	<i>Shakti Karnawat Vs. ITO - 2(3)(8), Surat ITA 1504/Ahd/2017 and 1381</i> <i>/Ahd/2017</i>
9	<i>Asian Paints Ltd. Vs. DCIT, [2008] 296 ITR 90 (Bombay)</i>
10	<i>PCIT, Surat 1 Vs. Tejua Rohit kumar Kapadia</i> <i>[2018] 94 taxmann.com 325 (SC)</i>
11	<i>The PCIT-17 vs. M/s Mohommad Haji Adam & Co.</i> <i>ITA NO. 1004 OF 2016 (Bombay High Court)</i>
12	<i>Pankaj Kanwarlal Jain HUF Vs. ITO 2(3)(8) Surat ITA.No.269/SRT/2017</i>

16. *In the rejoinder submissions the ld. CIT-DR for the revenue submits that that rigour of the rules of evidence contained in the Evidence Act is not applicable before the tax authorities. It was submitted that the ratio of various case laws relied by the ld. AR for the assessee is not applicable on the facts of the present cases. The ratio of decision of Hon'ble Gujarat High Court in Mayank Diamond Private Limited (supra) is directly applicable on the facts of the present case.*

17. *We have considered the submissions of the parties and have gone through the order of the lower authorities. We have also deliberated on each and every case laws relied by both the parties. We have also examined the financial statement of all the assessee(s) consisting of computation of income and audit report. We have also gone through the documentary evidences furnished in all cases. Ground No.1 in assessee's appeal relates to the validity of reopening. The ld AR for the assessee vehemently argued that the AO reopened the case of the assessee on the basis of third party information, and without making any preliminary investigation, which was vague about the alleged accommodation entry by Bhanwarlal Jain Group. And that there was no specific information about the accommodation entry availed by the assessee. There is no live link between the reasons recorded qua the assessee. We find that the assessee has raised objection against the validity of the reopening before the AO. The objections of the assessee was duly disposed by AO in his order dated 09.02.2015. The assessee raised ground of appeal before ld CIT(A) while assailing the order of AO on reopening. The ld CIT(A) while considering the ground of appeal against the reopening held that the AO has received report from investigation wing Mumbai, which indicate that the assessee is beneficiary of the accommodation entry operators. The accommodation entry provider admitted before investigation wing that he has given such entry to various persons; based on such report the AO has reason to believe that the income of the assessee has escaped assessment and thus the action of AO in reopening is justified.*

18. We find that the Hon'ble Jurisdictional High Court in *Peass Industrial Engineers (P) Ltd Vs DCIT (supra)* while considering the validity of similar notice of reopening, which was also issued on the basis of information of investigation wing that they have searched a person who is engaged in providing accommodation entries, held that where after scrutiny assessment the assessing officer received information from the investigation wing that well known entry operators of the country provided bogus entries to various beneficiaries, and assessee was one of such beneficiary, assessing officer was justified in re-opening assessment. Further similar view was taken by Hon'ble Jurisdictional High Court in *Pushpak Bullion (P) Ltd Vs DCIT (supra)*. Therefore, respectfully following the order of Hon'ble High Court, we find that the assessing officer validly assumed the jurisdiction for making re-opening under section 147 on the basis of information of investigation wing Mumbai. So far as other submissions of the ld AR for the assessee that there is no live link of the reasons recorded, we find that the Hon'ble Jurisdictional High Court in *Peass Industrial Engineers (P) Ltd* clearly held that when assessing officer received information from the investigation wing that two well known entry operators of the country provided bogus entries to various beneficiaries, and assessee was one of such beneficiary, assessing officer was justified. Hence, the ground No. 1 in assessee's appeal is dismissed.

19. Ground No. 2 in assessee's appeal and the grounds of appeal raised by the revenue are interconnected, which relates to restricting the disallowance of bogus purchases to the extent of 12.5%. The AO made of 100% of purchases shown from the hawala dealers/ entry provider namely Bhanwarlal Jain. We find that the AO while making additions of 100%, of disputed purchases solely relied on the report of the investigation wing Mumbai. No independent investigation was carried by the AO. The AO has not disputed the sale of the assessee. The AO made no comment on the evidences furnished by the assessee. We further find that ld CIT(A), while considering the submissions of the assessee accepted the lapses on the part of the AO and noted that no sale is possible in absence of purchases. The Books of the assessee was not rejected by the AO. The ld CIT(A) on further examination of the facts and various legal submissions find that Ahmedabad Tribunal in *Bholanath Poly Fab Private Limited (supra)* held that in the such cases the addition of bogus purchases was sustained to the extent of 12%, on the observation that the assessee may have made purchases from elsewhere and obtained the bills from impugned supplier to inflate Gross Profit Rate. The ld CIT(A) by considering the overall facts, concluded that the 100% disallowance of purchase is not justified. We also find that the ld.CIT(A) also considered the decision of jurisdictional High Court in *Mayank Diamonds Pvt. Ltd. (supra)* and compared the fact of the present case with the facts in *Mayank Diamonds Pvt Ltd (supra)* and noted that assessee in that case was also engaged in the trading of polished diamonds. The ld CIT(A) noted that in that case the AO made disallowance of entire bogus purchase and on first appeal before CIT(A) the disallowances were maintained. However, the Tribunal gave partial relief to the assessee directing to sustain the addition @12% of such bogus purchases. And on further appeal, the Hon'ble High Court sustained Gross Profit Rate @ 5% being average rate of profit in industry.

20. Now adverting to the facts of the present case, the ld.CIT(A) held that in some other similar cases; though he had sustain 5% of Gross Profit Rate, considering the fact that where Gross Profit shown by those assessee's are more than 5%. However, in the present case, the assessee has merely shown Gross Profit Rate only at 0.78% of turnover, accordingly, the ld. CIT(A) was of the view that disallowance of 12.5% of impugned purchases/bogus purchases would be reasonable to meet the end of justice.

21. We have seen that during the financial year under consideration the assessee has shown total turnover of Rs. 66,09,62,458/-. The assessee has shown Gross Profit @ .78% and net Profit @ .02% (page 11 of paper Book). The assessee while filing the return of income has declared taxable income of Rs.1,81,840/- only. We are conscious of the facts that dispute before us is only with regard of the disputed purchases of Rs, 4.34 Crore, which was shown to have purchased from the entity managed by Bhanwarlal Jain Group. During the search action on Bhanwarlal Jain no stock of goods/ material was found to the investigation party. Bhanwarlal Jain while filing return of income has offered commission income (entry provider). Before us, the ld CIT-DR for the revenue vehemently submitted that the ratio of decision of Hon'ble Gujarat High Court in Mayank Diamond Private Limited (supra) is directly applicable on the facts of the present case. We find that in Mayank Diamonds the Hon'ble High Court restricted the additions to 5% of GP. We have seen that in Mayank Diamonds P Ltd (supra), the assessee had declared GP @ 1.03% on turnover of Rs. 1.86 Crore. The disputed transaction in the said case was Rs. 1.68 Crore. However, in the present case the assessee has declared the GP @ 0.78%. It is settled law that under Income-tax, the tax authorities are not entitled to tax the entire transaction, but only the income component of the disputed transaction, to prevent the possibility of revenue leakage. Therefore, considering overall facts and circumstances of the present case, we are of the view that disallowances @ 6% of impugned purchases / disputed purchases would be sufficient to meet the possibility of revenue leakage. In the result the ground No. 2 of appeal raised by the assessee is partly allowed and the grounds of appeal raised by revenue are dismissed.

22. In the result the appeal of revenue is dismissed and the appeal of the assessee is partly allowed.”

24. As the issue is squarely covered by the judgment of the Co-ordinate Bench in the case of Pankaj K. Chaudhary (supra) wherein Tribunal held that in respect of bogus purchases, the addition @ 6% of bogus purchases is fair and reasonable. There is no change in facts and law and Ld. DR for the Revenue unable to produce any material to controvert the above findings of the Co-ordinate Bench (supra). Therefore, respectfully following the judgment of the Co-ordinate Bench in the case of Pankaj K. Chaudhary (supra), we direct the Assessing Office to make addition @ 6% of bogus purchases. Hence, we dismiss the appeal of the assessee

including additional grounds raised by the assessee and partly allow the appeal of the Revenue.

25. In the result, appeals filed by the assessee is dismissed whereas the appeal filed by the Revenue is partly allowed.

Registry is directed to place one copy of this order in all appeals folder / case file(s).

Order is pronounced on 20/02/2023 by placing the result on the Notice Board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

सूरत /Surat

दिनांक/ Date: 20/02/2023

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

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

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat