

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 411/Srt/2019 (Assessment Year: 2013-14)

(Physical hearing)

D.C.I.T., Circle-2(1)(1), Surat.	Vs.	M/s Pokhrana Impex Private Limited, 203, Sheetal Chamber, Bhaja Bhai Sheri, Mahidharpura, Surat. PAN No. AABCP 7359 P
Appellant/ assessee		Respondent/ revenue

Department represented by	Shri Vinod Kumar (Sr. DR)
Assessee represented by	Shri Sapnesh Sheth, CA
Date of hearing	28/12/2022
Date of pronouncement	13/03/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the Revenue is directed against the order of learned Commissioner of Income Tax (Appeals)-2, Surat (in short, the Id. CIT(A) dated 27/06/2019 for the Assessment year (AY) 2013-14. The Revenue has raised following grounds of appeal:

- "1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition made by the AO of Rs. 2,06,53,050/- i.e. @ 1% of total sales and purchase turnover of Rs. 2,06,53,05,074/- on account of net profit.*
- 2. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that the observation of the AO is not only with respect to the sundry creditors with whom transactions were not carried during the assessment year as the assessee's creditor parties from whom assessee claimed purchase of diamonds were either not existing or were not involved in genuine business during the year under consideration.*
- 3. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred by ignoring the finding and conclusion of the AO that in the*

stock register as well as bills of sales/purchase, there was no quality wise description of the items sold or purchased. There was not even, day to day or transaction to transaction bifurcation or clarification that what item was purchased, of what quality and what or how was the price of item sold determined because the sales were not made in a manner which exactly matched with the purchased item.

4. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred by ignoring that in the sales bills and purchase bills which were produced, there was no acknowledgement of delivery of items which is a must in such high value goods transactions and is a norm in the diamond and jewellery industry.*
5. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that the assessee was not able to furnish the basis of calculation of commission and brokerage payments that were made and was not able to establish actual receipt of service from the brokers and commission agents.*
6. *On the facts and circumstances of the case and in law, the Id. CIT(A), Surat ought to have upheld the order of the Assessing Officer. It is, therefore, prayed that the order of the Id. CIT(A)-2, Surat may be set aside and that of the Assessing Officer's order may be restored."*

2. Brief facts of the case are that the assessee is a company engaged in the business of trading, manufacturing, importing and exporting of diamonds, filed its return of income for the A.Y. 2013-14 on 30/09/2013 declaring Nil income, after claiming current year loss of Rs. 1.80 crore. The case was selected for scrutiny. During the assessment, the Assessing Officer noted that the assessee has shown sundry creditors of Rs. 25.74 crores, details of which were compiled in para 4 of assessment order. In order to verify the creditors, the Assessing Officer deputed the Ward Inspector. The Inspector visited at the address of creditors provided by the assessee on 17/02/2016. The Inspector furnished his report on the same day. In the report, the Inspector reported that none of the creditors party are in existence on the

address provided to him. He also reported that the said parties were never existed on such addresses, either in past or present. After receiving such report, the Assessing Officer asked to assessee to produce the books of account with complete details and supporting vouchers along with stock register and sales and purchase register. On perusal of such details, the Assessing Officer was of the view that no quality wise details of items sold or purchases is shown. The diamond is highly high priced item and its value is determined by variation in cut, colour, clarity and carats and it is not possible to record a simple inventory of carats of stock. In the bills, there was no acknowledgement of delivery of items. In respect of inter branch transfer of goods from Surat to Mumbai, there was no cross voucher or reference about the movement of stock which could be verified as genuine. In the sale or purchase bills, the time duration of payment or realisation of payment is not mentioned. The assessee claimed payment of commission of Rs. 12,88,781/- about the brokerage and commission. On perusal of voucher of said expenses it was seen that the payments were made to broker or commission agent having address in Mumbai while sales on which brokerage and commission paid are made to local parties in Surat. The assessee failed to explain the basis of such discrepancies. On recording such discrepancies, the Assessing Officer issued show cause notice vide order sheet entry dated 22/03/2016 as to why business

should not be considered as non-genuine and existing only on paper for the purpose of providing entries.

3. The assessee filed its reply dated 28/03/2016. The contents of reply of assessee is extracted in para 5.5 at page Nos. 4 to 14 of the assessment order. In the reply, the assessee stated that the assessee is regularly following mercantile system of accounting and that actual the income accruing or being received, the same has been shown. For rejecting of books of account, there are three conditions i.e. method of accounting is not regularly followed by assessee or if accounting standard is notified under sub-section (2) of Section 145, have not been regularly followed and or the Assessing Officer is not satisfied about the correctness or completeness of the accounts of assessee. The assessee is consistently following the specified accounting standard and has made necessary disclosure as required in its books of account, the books of assessee represent true and fair results. The assessee has submitted all necessary books including bills and vouchers and other evidences as sought by the Assessing Officer. No defect is pointed out in such books of account.
4. The assessee in response to another show cause notice dated 22/03/2016 also furnished its detailed reply and submitted that all the purchases and sales are routed through account payee cheque. All the necessary books of account are maintained and has been submitted

before the Assessing Officer. The books of assessee is audited under Section 44AB of the Act, copy of such audit report is already furnished.

The assessee also relied on various case laws.

5. The Assessing Officer not accepted the explanation furnished by assessee. The Assessing Officer held that business of the assessee is not genuine and merely existing on papers for providing entries to the parties. The Assessing Officer rejected the books of account under Section 145(3) and proceeded to make assessment under Section 144 of the Act. The Assessing Officer noted that the assessee has shown purchase of Rs. 101.14 crores and sales of Rs. 105.38 crores, thus the assessee has provided entry to the tune of Rs. 206.53 crores. The Assessing Officer estimated profit @ 1% on total turnover thereby made addition of Rs. 2.01 crores.
6. Aggrieved by the additions, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee filed its detailed written submissions as recorded in para 5 of order of Id. CIT(A). The assessee in its submission submitted that during the year under consideration, the assessee was engaged in the business of trading, manufacturing, importing and exporting of diamonds. The assessee has shown purchases from six parties aggregating of Rs. 25.74 lacs. The purchases were shown as creditors. The Assessing Officer relied on the Inspector's report that none of the creditors were in existence. On the basis of

report of Inspector, the Assessing Officer concluded that the assessee has no genuine business and doubted the business activities. The addition made by the Assessing officer is completely baseless. The transaction was of earlier years and not for the assessment year in question. In the immediately preceding assessment year, no such doubt was raised about the genuineness of business activities and the assessments were completed under Section 143(3) of the Act. The books of account were accepted in previous assessment years. There cannot be a case where the Assessing Officer accepted the books of account in previous and subsequent assessment years and rejected in current assessment year by taking a view that the assessee is not maintaining consistency in accounting principle. The assessee made purchases in A.Y. 2012-13, which has been accepted by the Assessing Officer and no question over the genuineness of business activities of assessee was raised in his order. Books of account were produced during the course of assessment proceedings. The assessment was completed in A.Y. 2012-13 without any doubt. The report of Inspector relied by the Assessing Officer was not genuine. Such report was not provided to the assessee. Out of six parties namely Reva Gems & Jewels Ltd., Suyash Gems, Suparshva Gems Pvt. Ltd., Riddhi Exim Private Limited, R.A. Distributors Pvt. Ltd. and M.B. Offshore Distributor Private Limited, two creditors namely Suparshva Gems Pvt. Ltd. and

Suyash Gems are related concerns, which have replied to the relevant notices and furnished confirmation during the assessment proceedings. When the parties have filed confirmation, it cannot be said that the parties were not existing at the given address or not responded to the notices. On the observation of the Assessing officer that "*in business like diamonds when the price is highly determined by minute variation in cut, colour, clarity and carats, it is not possible to have simple carat based inventory of stock.*" The assessee submitted that the said sales and purchases of assessee is vouched and verifiable. The assessee has maintained quantitative details in respect of diamonds purchased and sold by it. There was no adverse comment from auditors that profit cannot be computed from the books of account maintained by assessee. There is no requirement of law to maintain quality details of each piece of diamond for computing the income. The income of assessee company can be very well computed on the basis of accounts already maintained by assessee. There was no defect in the method of accounting which requires the rejection of book results. Books of account cannot be rejected under Section 145(3) that only on the basis of fact that the assessee had not maintained the quality wise description of stock. To support such contentions, the assessee relied on various case laws as noted by the Id. CIT(A) on page No. 23 and 24 of the impugned order. On the observation of Assessing Officer "*in sales and*

purchase bills produced, there was no acknowledgement of delivery of items was done by him or staff.” The assessee explained that books of account had also been audited under Section 44AD of the act which has already been furnished. No defect was found or shown in the books of account just on the ground of acknowledgement of delivery of item is not available does not suffice valid ground for rejection of entire books of account of assessee. Missing or non-production of few of the vouchers or bills of normal amount should not lead to rejection of entire books of account. Non-availability of relevant vouchers or bills or any expenditure claimed by assessee should not lead to disallowance of portion of any claim on the basis of subjectivity. Moreover, when books of account was accepted by Assessing Officer in previous and succeeding assessment proceedings, thus, rejecting the same books of account in the current assessment year on same accounting principle is bad in the eyes of law on the delivery of goods, the assessee explained that the nature of goods dealt by assessee is such that the assessee himself or his few reliable employees used to physical delivery the goods to the sales parties or to the branch office of the assessee themselves. The law does not provide any restriction on the mode adopted for delivery of goods. Keeping in view the peculiar nature of goods, the assessee dealt with personal involvement of assessee in these aspects of business is inadvertent. To support such stand, the

assessee also relied on various case laws. On the objection of Assessing Officer that *"in none of the sale or purchase bill, the time duration in which the payment has to be made is written."* The assessee explained that they maintained proper books of account required to be maintained under Rule 6F of the Income Tax Rules and income can properly be deduced therefrom. There is no law governing or describing the monetary condition to be stipulated in sales and purchase bills, such conditions are generally framed on the basis of one's dealings in the markets depending on the market parlance. Missing of any such condition cannot lead to treat the entire sale and purchase to be in genuine. The assessee also relied on certain case laws.

7. On the objection on the brokerage and commission of Rs. 12,88,781/-, the assessee submitted that all the evidences and details of commission payment was filed before assessing officer and no defect in the quantum of commission or identity of commission agents was established.
8. On the submissions of the assessee, the Id CIT(A) vide his order dated 20.09.2018 called remand report from assessing officer. The assessing officer was directed to examine the contentions of the assessee and to file his remand report. The assessing officer furnished his remand report dated 15.05.2019. In the remand report dated 17.02.2016, the assessing officer reported that outstanding as on 31.03.2012 and

31.03.2013 were same in respect of the creditors, which points to the facts that no transaction might have been carried out by the assessee with these parties during this year unless equal amount of outstanding payment and fresh purchases have been made from these parties. The assessing officer also issued notice under section 133(6), which was replied by Suparsheva Gems Private Limited and Suyash Gems and also filed their sales register, ITR, bank statement on 12.02.2016. The contents of the remand report is recorded on page No. 33 of order of Id CIT(A). The assessee filed his rejoinder to the said remand report, contents of which is recorded on page No. 33 to 35. In the rejoinder the assessee repeated its submissions and submitted that when the assessing officer accepted the books of accounts of previous and subsequent years, the same cannot be rejected in the year under consideration, when the assessee is consistently following same method. And prayed to quash the assessment order.

9. The Id. CIT(A) after considering the assessment order, submissions of assessee, remand report of the assessing officer and the rejoinder thereto held that the contention of the assessee is correct. The conclusion drawn by assessing officer that assessee is paper company and rejection of books of account is not correct. In the remand report the assessing officer has accepted that with first three creditors, there is no transaction during this year. Further no question about the

genuineness is raised by the assessing officer about the purchases from these three creditors. There is no transaction with these three parties during the current year. On the basis of above observation, the Id CIT(A) the estimation of addition of Rs. 2.06 Crore was deleted. Aggrieved by the order of Id. CIT(A), the Revenue has filed the present appeal before this Tribunal.

10. We have heard the submissions of learned Commissioner of Income Tax-Departmental Representative (Id. CIT-DR) for the revenue and the learned Authorised Representative (Id. AR) of the assessee. The Id. CIT-DR for the revenue submits that the assessing officer rejected the books of accounts of the assessee by pointing out discrepancies. The assessee was not doing real business of trading or export or import. The parties shown as sundry creditors were not found at the given address when ward inspector visited their addresses. The assessing officer has not rejected the claim of sundry creditors, rather based his finding that the purchase shown by the assessee were not genuine. Once the purchase are found to be non-genuine therefore, income cannot be computed on the basis of such accounts. The assessing officer rejected the books of account and estimated commissions income of the assessee on reasonable basis. The Id SR DR for the revenue submits that if there was no negative finding about the sundry creditors in earlier year, so it cannot be concluded that all the creditors were genuine in the year

under consideration. Every year is separate and different from other years. The Id Sr DR for the revenue fully supported the order of assessing officer.

11. On the other hand, the Id. AR of the assessee submits that during the year under consideration, the assessee was engaged in the business of trading, manufacturing, importing and exporting of diamonds. The assessee has shown purchases from six parties aggregating of Rs. 25.74 lacs. The Assessing Officer doubted the creditors and on the basis of report of Inspector that none of the creditors were in existence, proceeded to reject the books result by doubting the business activities and made addition of 1% of the total turnover of the year. The addition made by the Assessing officer is completely baseless and was not sustainable and was rightly deleted by Id CIT(A). The transaction of sundry creditors was of earlier years and not for the assessment year in question. In the immediately preceding assessment year, no such doubt was raised about the genuineness of business activities and the assessments were completed under Section 143(3) of the Act. The books of account were accepted in previous assessment years. There cannot be a case where the Assessing Officer accepted the books of account in previous and subsequent assessment years and rejected in current assessment year by taking a view that the assessee is not maintaining consistency in accounting principle. The assessee made

purchases in A.Y. 2012-13, which has been accepted by the Assessing Officer and no question over the genuineness of business activities of assessee was raised in his order. Complete books of account were produced before assessing officer during the course of assessment proceedings. The assessment was completed in A.Y. 2012-13 without any doubt. The report of Inspector relied by the Assessing Officer was not genuine and was not provided to the assessee. Out of six parties namely Reva Gems & Jewels Ltd., Suyash Gems, Suparshva Gems Pvt. Ltd., Riddhi Exim Private Limited, R.A. Distributors Pvt. Ltd. and M.B. Offshore Distributor Private Limited, two creditors namely Suparshva Gems Pvt. Ltd. and Suyash Gems are related concerns, which have duly replied to the notice of assessing officer. The Id AR for the assessee has maintained quantitative details in respect of diamonds purchased and sold by it. There is no requirement of law to maintain quality details of each piece of diamond for computing the income. The income of assessee company can be very well computed on the basis of accounts already maintained by assessee. There was no defect in the method of accounting which requires the rejection of book results. Books of account cannot be rejected under Section 145(3) that only on the basis of fact that the assessee had not maintained the quality wise description of stock. The books of account had also been audited under Section 44AD of the act which has already been furnished. No defect was found

or shown in the books of account just on the ground of acknowledgement of delivery of item is not available does not suffice valid ground for rejection of entire books of account of assessee. The books of account were accepted by Assessing Officer in previous and succeeding assessment proceedings, thus, rejecting the same books of account in the current assessment year on same accounting principle is bad in the eyes of law. The Id AR for the assessee submits that Id CIT(A) deleted the estimated addition by giving fully opportunity to the assessing officer.

12. We have considered the submissions of both the parties and have gone through the orders of lower authorities carefully. We have also deliberated on various case laws relied upon by the Id. AR of the assessee as well as referred by the Id. CIT(A) in the impugned order. We find that the Assessing Officer during the assessment proceedings, made addition of Rs.2.06 Crore by taking view that business of the assessee is not genuine and existing on papers for providing entries to the parties. The Assessing Officer rejected the books of account under Section 145(3) and noted that the assessee has shown purchase of Rs. 101.14 crores and sales of Rs. 105.38 crores. The assessee has provided entry to the tune of Rs. 206.53 crores. The Assessing Officer estimated profit @ 1% on total turnover and added Rs. 2.01 crores. As noted above, before Id CIT(A) the assessee filed detailed written

submissions. On the submission of the assessee, the Id CIT(A) called remand report from the assessing officer. The assessing officer filed his report dated 17.02.2017. The Id CIT(A) on considering the remand report of assessing officer held that conclusion drawn by assessing officer about the assessee that it is a paper company is not correct. The assessing officer has wrongly rejected of books of account, when assessing officer in his remand report has accepted about first three creditors, as there is no transaction with these three creditors during this year. Further no question about the genuineness is raised by the assessing officer about the purchases from these three creditors. On such observation, the Id CIT(A) held that the estimation of addition of Rs. 2.06 Crore is not justified. Before, us the revenue has failed to bring contrary fact or evidence that the assessee made any such transaction with the first three creditors, which is otherwise accepted by assessing officer in his remand report. Further the books of accounts of the assessee was accepted by the assessing officer in preceding and subsequent years. When the assessing officer accepted books result prepared on similar accounting standard, without specifying the criteria prescribed under section 145(3) of the Act. The assessing officer without giving his finding that the assessee was really engaged or indulging in providing entry, or the transaction shown by the assessee are circular transaction, compared the assessee with entry provider

company and estimated commissions income. The assessing officer not even examined the bank statement of the assessee. No finding about the expenses claimed, if any, was given. The assessing officer estimated income on the purchases as well as on sales, which is unjustified. In view of aforesaid factual and legal discussion, we do not find any infirmity or illegality in the order passed by the Id. CIT(A) which we affirm. In the result, all the grounds of appeal which is in the form of narrative, is dismissed.

13. In the result, this appeal of revenue is dismissed.

Order pronounced in the open court on 13th March, 2023.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 13/03/2023

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Sr. Private Secretary, ITAT, Surat