

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'B' BENCH, MUMBAI.

Before Shri B.R. Baskaran (AM) & Smt. Kavitha Rajagopal (JM)

I.T.A. No. 3203/Mum/2022 (A.Y. 2007-08)

Blue Gems International 434, 4 th Floor, Panchratna Mama Parmanand Marg Opera House, Girgaon Mumbai-400 004. PAN : AAEFB0034D (Appellant)	Vs.	ITO-23(1)(1) (Erstwhile ITO-19(1)(2) Matru Mandir 1 st Floor, R.No. 106 Tardeo, Grant Road Mumbai-400 007. (Respondent)
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Assessee by	Shri P.P. Bhandari & Shri Ashwin Kashinath
Department by	Dr. Mahesh Akhade
Date of Hearing	27.03.2023
Date of Pronouncement	29.03.2023

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 25.11.2022 passed by the learned CIT(A), National Faceless Appeal Centre, Delhi and it relates to A.Y. 2007-08.

2. The assessee is challenging the
 - (a) validity of reopening of the assessment and
 - (b) the addition of Rs. 15.06 crores relating to non-genuine purchases alleged to have been made by the assessee.

3. The facts relating to the case are stated in brief. The assessee is a partnership firm and is engaged in the business of trading in diamonds and jewellery. The assessee filed its return of income for the year under consideration declaring Nil income. Subsequently, the Assessing Officer reopened the assessment by issuing notice under section 147 of the I.T. Act

on the reasoning that the assessee has made bogus purchases from the concerns belonging to a person named Bhanwarlal Jain, who was found to be involved in providing only accommodation bills without actually supplying goods. The AO had received above said information from the investigation wing of the department and as per the said information, aggregate amount of bogus purchase was reported at Rs. 15.06 crores. Before the Assessing Officer, the assessee submitted that it has not made purchases from any of the concerns belonging to Shri Bhanwarlal Jain. It was submitted that it may be a case of mistaken identity. However, the Assessing Officer did not accept the contentions of the assessee and accordingly made addition of Rs.15.06 crores "Protectively" in the hands of the assessee.

4. Before the learned CIT(A), the assessee contested the addition by making detailed submissions. Hence the learned CIT(A) called for a remand report from the AO. In the remand report, the Assessing Officer gave details of sales and purchases made by the concern named "M/s. Blue Gems". According to the AO the above said transactions of purchases and sales belong to the assessee. The assessee, however, contended before the learned CIT(A) that the alleged accommodation transactions belong to "M/s Blue Gems", while the name of the assessee herein is "M/s. Blue Gems International". It was submitted that M/s Blue Gems and M/s Blue Gems International are two different concerns. Accordingly it was contended that the assessee cannot be subjected to tax in respect of the transactions entered by another concern named 'M/s Blue Gems'. However, the learned CIT(A) rejected the above said contention on the reasoning that the assessee did not bring any material on record to support of the above said claim. Further the learned CIT(A) also took the view that the impugned amount of Rs. 15.06 crores should be added on "substantive" basis. Accordingly, he dismissed the appeal of the assessee by confirming the addition on substantive basis. With regard to the validity of reopening of the assessment the learned CIT(A)

confirmed the same holding that the bogus purchases are established and there is no change of opinion.

5. Aggrieved, the assessee has filed this appeal before the Tribunal.

6. The Learned AR reiterated the contention that the assessee has not entered into any type of transactions with Bhanwarlal Jain group of concern. He submitted that the name of the assessee is 'Blue Gems International' whereas the transactions with Bhanwarlal Jain have been claimed to have been done by another concern named 'M/s Blue Gems'. Accordingly, it was submitted by learned AR that the addition has been made in the hands of the assessee on mistaken identity. He further submitted that the books of accounts of the assessee do not contain the alleged bogus purchases and Sales.

7. The Ld D.R, on the contrary, supported the order passed by Ld CIT(A).

8. It is the submission of the assessee that the alleged bogus purchases and sales are not reflected in the books of accounts of the assessee. We notice that the said contention has not been examined by the tax authorities. If the alleged bogus purchases are not claimed as deduction, then the question of making any disallowance will not arise. Further, the assessee has claimed that it is a case of mistaken identity. Hence, the bench asked learned DR to furnish PAN number of 'M/s Blue Gems' in order to find out whether the said PAN number matches with the PAN number of the assessee. If it does not match, then there will be merit in the contentions of the assessee that the impugned transactions belong to another concern named 'M/s Blue Gems'. Accordingly, the Ld D.R was directed to find out factual position.

9. However, the learned D.R submitted that the Assessing Officer has not furnished details of PAN number till date. The Ld A.R, however, submitted that the assessee is unnecessarily being subjected to tax for transactions not related to it. He further submitted that the AO has raised huge tax demand after the order passed by Ld CIT(A).

10. We noticed that the assessing officer has not examined the books of accounts of the assessee. Further, the AO has also not furnished the details of PAN number of 'M/s Blue Gems', which could have helped to identify the real concern, which has entered into alleged bogus transactions. Under these set of facts, in the absence of factual details, we are unable to render any decision on this issue. However, we are of the view that it is necessary for the AO to examine the books of accounts in order to find out whether the alleged bogus entries are reflected in the books of accounts of the assessee. If they have not been entered into, then the question of making any addition will not arise. Further, the PAN number of 'M/s Blue Gems' will prove the real concern and this aspect also require verification. Accordingly, we set aside the order passed by Ld CIT(A) and restore all the issues to the file of AO for examining them afresh in the light of discussions made supra, after affording adequate opportunity of being heard.

11. In the result, the appeal filed by the assessee is allowed.

Pronounced in the open court on 29.3.2023.

Sd/-
(KAVITHA RAJAGOPAL)
Judicial Member

Sd/-
(B.R. BASAKARAN)
Accountant Member

Mumbai; Dated : 29/03/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(Judicial)

4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

PS

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai