

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 29/Srt/2023 (Assessment Year 2010-11)  
(Virtual hearing)

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|---|-----|------------------------------------|
| Exotic Jewels,<br>304, Kohinoor Complex, Chowky Sheri,<br>Sayedpura, Surat-395003.<br><b>PAN No. AABFE 2823 Q</b> | Vs. | I.T.O.,<br>Ward 2(3)(7),<br>Surat. |
| Appellant/ assessee   |     | Respondent/ revenue                |

|                               |                          |
|-------------------------------|--------------------------|
| Assessee represented by       | Shri P.M. Jagasheth, CA  |
| Department represented by     | Shri Vinod Kumar, Sr. DR |
| Date of Institution of appeal | 17/01/2023               |
| Date of hearing               | 25/04/2023               |
| Date of pronouncement         | 25/04/2023               |

**Order under Section 254(1) of Income Tax Act**

**PER: PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by the assessee is directed against the order of learned National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A)) dated 23/11/2022 for the Assessment Year (AY) 2010-11. The assessee has raised following grounds of appeal:

- “1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in not considering that the assumption of jurisdiction u/s 148 of the Act is bad in law as the conditions laid down under the Act for initiating reassessment proceedings have not been fulfilled.*
- 2. On the facts and circumstances of the case and law, the Id. CIT(A) erred in confirming the addition of Rs. 2,99,880/- i.e. @ 7.5% on alleged bogus purchase of Rs. 39,98,400/-.*
- 3. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in making the addition of genuine purchases solely on*

*the basis of statement of the third party i.e. Mr. Bhanwarlal Jain with whom the appellant had not transaction.*

*4. Appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing .”*

2. At the outset of hearing, the learned Authorised Representative (Id. AR) of the assessee submits that he is not pressing ground No. 1 of the appeal which relates to validity of reopening under Section 147 of the Income Tax Act, 1961 (in short, the Act). Considering the submission of assessee, ground No. 1 of appeal is dismissed as not pressed.
3. Rival submissions of the parties heard and record perused. Ground No. 2 relates to restricting the addition of alleged bogus purchases to the extent of 7.5%. The Id. AR of the assessee submits that the case of assessee was reopened under Section 147 of the Act on the basis of information of Investigation Wing, Mumbai that the assessee is one of the beneficiary of accommodation entry received from Bhanwarlal Jain. On Bhanwarlal Jain group, a search was conducted under Section 132 of the Act on 03/10/2013. The Assessing Officer after making reopening made addition of 100% purchases shown from M/s Euro Diam of Rs. 39.98 lacs. M/s Euro Diam was allegedly managed by Bhanwarlal Jain and his associates. The Assessing Officer made 100% addition of purchases shown from alleged Hawala dealer/impugned parties without disputing the sale of assessee. The books of assessee was not rejected. No finding on various evidences furnished by assessee was given by the Assessing Officer. On appeal before the Id. CIT(A), the addition of impugned purchases was

restricted to the extent of 7.5%. The Id. AR of the assessee submits that in a series of decisions, the division Bench of this tribunal has restricted similar disallowance to the extent of 6% by taking a view that only profit element embedded in such disputed purchases may be added to the income of assessee and not the substantial part of transaction. One of such decision of division Bench of this Tribunal has been confirmed by the Hon'ble Jurisdictional High Court in Pr.CIT Vs M/s Surya Impex (2023) 148 taxmann.com 154 (Guj). The Id AR for the assessee submits that entire purchase of the assessee are genuine, even if the disallowance to be made it may be restricted to 6% of the impugned purchases.

4. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the orders of lower authorities. The Id. Sr. DR for the revenue submits that while restricting the addition to the extent of 7.5% of the impugned purchases, the Id. CIT(A) held that the assessee has shown very nominal gross profit rate in his books result.
5. I have considered the submissions of both the parties and perused the record carefully. I find that during the re-assessment proceedings, the Assessing Officer noted that the assessee has shown purchases from M/s Euro Diam of Rs. 39.98 lacs. M/s Euro Diam was identified by the Investigation Wing, Mumbai as one of the entity managed by Bhanwarlal Jain and group. The Assessing Officer issued show cause notice as to why the purchases shown from Bhanwarlal Jain had been disallowed as a

bogus purchases. The assessee filed its reply dated 25/11/2016 explaining that he has not dealt with Bhanwarlal Jain and do not know him personally. The assessee made purchases from M/s Euro Diam. There is no corroborative evidence that the assessee availed accommodation entry. The assessee submitted that the goods purchased from the said party have been sold. The assessee also asked for cross examination of Bhanwarlal Jain and his statement if any recorded by the Investigation Wing, Mumbai. The assessee also furnished copy of purchase bills, details of purchases, account confirmation, bank statement and ITR of purchase party. The Assessing Officer not accepted the explanation of the assessee. The Assessing Officer on the basis of modus operandi recorded by the Investigation Wing about the activities of Bhanwarlal Jain and his admission that he was engaged in providing accommodation entry, disallowed the entire purchases shown from M/s Euro Diam. The Id. CIT(A) restricted the addition to the extent of 7.5% of purchases by following various decisions of Hon'ble Jurisdictional High Court including in Hariram Bhambhani in ITA No. 313 of 2013 wherein it was held that only profit embedded on such unaccounted sales can be brought to tax. The Id. CIT(A) also relied on decision in the case of Simit P Sheth (38 taxmann.com 385-Guj) wherein it was held that only profit element embedded in such purchases and not the entire purchases can be added

to the income of assessee. The Id. CIT(A) restricted the addition to the extent of 7.5%.

6. The Division Bench of Surat Tribunal in a series of decisions wherein the parties are beneficiary of similar purchases shown either from Rajendra Kumar Jain, Pankaj Kumar Chaudhary and Bhanwarlal Jain have restricted or increased the addition to the extent of 6%. In one of the similar matter, the Hon'ble Jurisdictional High Court in PCIT Vs M/s Surya Impex (supra) have confirmed the decision of Division Bench of this Tribunal. Therefore, taking a consistent view, I direct the Assessing Officer to restrict the addition to the extent of 6% of the impugned purchases shown from M/s Euro Diam.

7. In the result, this appeal of assessee is partly allowed.

Order announced in open court on 25<sup>th</sup> April 2023 at the time of hearing.

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat, Dated: 25/04/2023

*\*Ranjan*

Copy to:

1. Assessee –
2. Revenue –
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat