

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

आयकर अपील सं./ITA No.40/SRT/2022

निर्धारण वर्ष/Assessment Year: (2012-13)

(Physical Hearing)

Ganesh Ganpat Alim, B-205, Mahashakti Appartment, Jai Shree Jahannath, Nr. Manvel Panda Road, Nr. Mahak City Virar East, Mumbai, Maharashtra – 401305.	Vs.	The ITO, Ward -1(1)(1), Surat.
(Appellant)		(Respondent)
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AMBPA5834F		

आयकर अपील सं./ITA No.41/SRT/2022

निर्धारण वर्ष/Assessment Year: (2012-13)

Ganesh Ganpat Alim, B-205, Mahashakti Appartment, Jai Shree Jahannath, Nr. Manvel Panda Road, Nr. Mahak City Virar East, Mumbai, Maharashtra – 401305.	Vs.	The ITO, Ward -3(3)(1), Surat.
(Appellant)		(Respondent)
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AMBPA5834F		

<b>Appellant by</b>	Shri Sapnesh Sheth, CA
<b>Respondent by</b>	Shri Ashok B. Koli, CIT(DR) with Shri Vinod Kumar, Sr. DR
<b>Date of Hearing</b>	22/03/2023
<b>Date of Pronouncement</b>	08/05/2023

**आदेश / ORDER**

**PER DR. A. L. SAINI, AM:**

Captioned two appeals filed by the assessee, pertaining to Assessment Year (AY) 2012-13, are directed against the orders passed by the Learned Commissioner of Income Tax (Appeals), [in short “the ld. CIT(A)”], which in turn arises out of an assessment order passed by the Assessing Officer under section 144 r.w.s 147 and a penalty order passed by the Assessing Officer under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”).

2. First, we shall take ITA No.41/SRT/2022 for AY.2012-13, wherein the grounds of appeal raised by the assessee, are as follows:

*“1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-tax (Appeals), NFAC has erred in passing ex-parte order without providing reasonable opportunity of hearing to assessee.*

*2. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of income-Tax (Appeals), NFAC has erred confirming the action of assessing officer in imposing penalty of Rs.7,34,48,950/- u/s 271(1)(c) of the I.T. Act, 1961.*

*3. It is therefore prayed that penalty imposed by assessing officer and confirmed by Commissioner of Income-tax (Appeals) may please be deleted.*

*4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*

3. At the outset, Shri Sapnesh Sheth, Ld. Counsel for the assessee, begins by pointing out that the quantum addition, in respect of penalty imposed by the Assessing Officer under section 271(1)(c) of the Act, has been remitted back to the file of the Ld. CIT(A) for fresh adjudication. Since the quantum involved on which the penalty was imposed by the Assessing Officer under section 271(1)(c) of the Act, has been remitted back to the file of the Ld. CIT(A) for fresh adjudication, therefore the penalty in respect of quantum involved should also be remitted back to the file of the Ld. CIT(A) for fresh adjudication.

4. On the other hand, Learned Departmental Representative (Ld. DR) for the Revenue, supported the plea taken by ld Counsel. The ld DR thus pleaded that since the quantum on which the penalty under section 271(1)(c) of the Act, was imposed by assessing officer, has been remitted back to the file of the Ld. CIT(A) for fresh adjudication, therefore the penalty under section 271(1)(c) of the Act, in respect of the said quantum, should also be remitted back to the file of the Ld. CIT(A) for fresh adjudication.

5. 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 ld. CIT(A) and other material brought on record. We

note that assessee`s quantum appeal (in ITA No.773/SRT/2018 for assessment year 2012-13, vide order dated 09.09.2021), has been remitted back to the file of the Id CIT(A) for fresh adjudication. The instant penalty appeal u/s 271(1) (c) of the Act, in ITA No.41/SRT/2022, filed by the assessee before this Tribunal relates to the quantum appeal (in ITA No.773/SRT/2018 for assessment year 2012-13, which has been remitted back to the file of Id CIT(A) for fresh adjudication, therefore, we are of the view that such penalty appeal should be remitted back to the file of Id CIT(A) for fresh adjudication, by Id CIT(A), as per the outcome of the quantum appeal. Therefore, we remit this lis back to the file of the Ld. CIT(A) with the direction to adjudicate the penalty under section 271(1)(c) of the Act in accordance with law. Therefore, we allow the appeal filed by the assessee, in ITA No.41/SRT/2022 for statistical purposes.

6. In the result, appeal filed by the assessee (in ITA No.41/SRT/2022) is allowed for statistical purposes.

7. Now, we shall take assessee`s appeal in ITA No.40/SRT/2022, wherein the grounds of appeal raised by the assessee are as follows:

*“1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-Tax (Appeals), NGAC has erred in confirming the action of assessing officer in issuing notice under section 148 of Income Tax Act.*

*2. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-Tax (Appeals), NFAC has erred in confirming the action of assessing officer in making addition of Rs.64,00,000/- as unexplained credits u/s 68 of Income Tax Act, 1961.*

*3. It is therefore prayed that addition made by assessing officer and confirmed by Commissioner of Income-tax (Appeals) may please be deleted.*

*4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*

8. Succinct facts qua ground No. 2 are that during the assessment proceedings the assessing officer got information from investigation wing that M/s Delight Diam P Ltd. and M/s Bafna Exim Pvt. Ltd. are not carrying out any real business but are only providing accommodation entries. The investigation wing also recorded statement of Shri Deepak Kailash Babel and Sh. Pravin

Kumar Jain, the key persons of M/s Delight Diam P Ltd and M/s Bafna Exim Pvt Ltd respectively. The assessee did not respond to initial notices however, as per assessment order assessee has given reply to assessing officer on 23.11.2019. The impugned amount in ground No.2 of the assessee at Rs.64,00,000/- comprises, of an amount of Rs.45,00,000/- as purchases and an amount of Rs.15,00,000/- as advance against goods from M/s Delight Diam Pvt Ltd and an amount of Rs.4,00,000/- as purchases from M/s Bafna Exim Pvt Ltd. The assessing officer observed that the unexplained transaction carried out with the Delight Diam Pvt Ltd, Bafna Exim Pvt. Ltd to suppress his total income. Since, the assessee had made bogus transactions with Delight Diam Pvt. Ltd of Rs.45,00,000/- and Rs.4,00,000/- with Bafna Exim Pvt Ltd during the year under consideration. Therefore, Rs.49,00,000/- was added in the total income of the assessee as bogus purchase. Further, the assessee company has received fund of Rs.15,00,000/- from the bogus concern Delight Diam Pvt. Ltd. The assessee has not furnished his explanation during the assessment proceedings. Therefore, AO noted that it is nothing but unaccounted income of the assessee and the same was not offered for taxation. Therefore Rs.15,00,000/- was added to the total income of the assessee for the year under consideration on account of unexplained fund received from the paper/shell company M/s Delight Diam Pvt. Ltd. This way, total addition made by the assessing officer comes to Rs.64,00,000/-. The assessing officer, having gone through the reply of the assessee, held that assessee has not explained the bona fide of these transactions therefore made addition to the tune of Rs.64,00,000/-.

9. On appeal, Id CIT(A) confirmed the action of the assessing officer. Aggrieved, the assessee is in further appeal before us.

10. Shri Sapnesh Sheth, Learned Counsel for the assessee pleaded before the Bench that reasons recorded by the Assessing Officer are bad in law as there was no new information before the Assessing Officer to reopen the assessment. The Ld. Counsel took us through the original assessment order dated 30.03.2015 passed by the Assessing Officer under section 144 r.w.s 147 of the Income Tax

Act, 1961, wherein the Assessing Officer has discussed the issue of unverifiable purchases and made the addition to the tune of Rs.23,79,26,834/- vide para no. 5 and 5.1 of the original assessment order which is reproduced below:

**“5. Unverifiable Purchases:**

*During the assessment proceedings, the assessee has made total purchases amounting to Rs.95,17,07,336/- from various parties. As the assessee has failed to furnish any written information/documents with relation to the purchases made during the year under consideration, ex parte assessment has been finalized. This fact leads to only one conclusion that the purchases shown by the assessee are unverifiable. Since the purchases are not verifiable in toto, it is needless to reiterate that in respect of claim of any expenditure, the entire onus lies upon the assessee to prove that the expenditure was incurred wholly and exclusively for the purpose of business. The word ‘wholly’ refer to the quantum of expenditure. The word ‘exclusively’ refer to the motive object and purpose of the expenditure. As per the ratio laid down in the decision of Delhi High Court in the case of Siddhe mal & Sons vs CIT reported in 122 ITR 839 the Assessing Authorities are empowered to examine the expenditure from the aforesaid stand points. The law does not prescribe any quantitative test to find out whether the onus in a particular case has been duly discharged. It all depends on facts and circumstances of the case as laid down in the decision of Gauhati High court in the case of Assam Pesticides and Agro Checmicals vs CIT reported in 227 ITR 384. Here, reference is also invited to the decision of Hon'ble ITAT in the case of M/s. Vijay Proteins Ltd. reported in 55 TTJ 76 wherein, owing to non-verifiable purchases. 25% of the sum of purchases was held to be reasonable amount of disallowance of expenditure. Accordingly, 25% of the total purchases is appropriate for disallowance.*

*5.1 I, therefore, disallow 25% of total unverifiable purchases of Rs.95,17,07,336/- which is worked out to Rs.23,79,26,834/- and added the same to the total income of the assessee. Penalty proceedings u/s 271(1)(c) of the Act initiated for furnishing inaccurate particulars of income thereby concealment of income.”*

11. Therefore, Ld. Counsel contended that the issue has been discussed and examined by the Assessing Officer in the original assessment order, dated 30.03.2015 for assessment order 2012-13, therefore the Assessing Officer should not have recorded reasons again on the same issue which was discussed by the Assessing Officer in the original assessment order. The Ld. Counsel also argued that the original assessment belongs to AY 2012-13 and the re-assessment proceedings were initiated by the Assessing Officer by recording the reasons on 29.03.2019, which is clearly after a period of four years. Since in the original assessment, the Assessing Officer has examined and discussed the issue, which was the subject matter of reasons recorded by the Assessing Officer and the re-

assessment was reopened after a period of four years. There was no failure on the part of the assessee to disclose fully and truly all material facts necessary for making original assessment. Therefore, reassessment under section 144 r.w.s 147 of the Income Tax Act is not in accordance with law.

12. On merits, Ld. Counsel argued that assessee has furnished, during the assessment proceedings, the entire details and documents and genuineness of the documents were not doubted by the assessing officer. The assessee submitted the following documents before the Assessing Officer:

- (i) Letter filed before Assessing Officer, dated 23.11.2019 (vide Pb. 19 to 25)
- (ii) Letter filed before Assessing Officer, dated 20.11.2019 (vide Pb. 26 to 27)
- (iii) Letter filed before Assessing Officer, dated 18.11.2019 (vide Pb. 28 to 34)
- (iv) Ledger copy of M/s Delight Diam Pvt. Ltd. (vide Pb. 35)
- (v) Ledger copy of M/s Bafna Exim Pvt. Ltd. (vide Pb.36)
- (vi) Bank Statement of M/s Sona Enterprises (Assessee's business Concern) indicating payment made to Delight Diam Pvt Ltd & M/s Bafna Exim Pvt. Ltd. for purchases made (vide Pb. 37 to 45)

Therefore, based on these documents and details, the Id Counsel contended that assessee had proved the genuineness of the transactions, hence addition made by the assessing officer may be deleted.

13. The Ld. Counsel also took us through the paper book page nos.35, wherein it is stated that amount has been repaid in the same year, therefore addition should not be made by the Assessing Officer. The Ld. Counsel also stated that during the assessment proceedings, the assessee has demanded the opportunity of cross-examination, however the Assessing Officer has not provided the opportunity of cross-examination of the concerned parties. The Ld. Counsel therefore prays the Bench that assessee submitted enough documents and

evidences to prove the genuineness of the transactions, therefore addition made in the hands of the assessee may be deleted.

14. On the other hand, Ld. DR for the Revenue submitted that Assessing Officer was right in initiating the re-assessment proceedings under section 147 of the Act. The Ld. DR pointed out that there was a specific information received by the Assessing Officer from the Investigation Wing and such specific information was not available during the original assessment proceedings. Therefore, it is a new information/tangible material and therefore the reassessment proceedings were rightly initiated by the Assessing Officer. The Ld. DR also pointed out that since the original assessment was completed under section 144 r.w.s 147 of the Act, therefore assessee has not submitted the entire documents and details during the assessment stage to disclose fully and truly all material facts for making original assessment. Therefore, statement of Id Counsel to the effect that assessee has submitted the documents and evidences during the original assessment proceedings to disclose fully and truly all material facts for making original assessment, is wrong. In fact, in the original assessment proceedings, the assessment was done under section 144 of the Act and assessee has not submitted any documents and evidences from his side to disclose fully and truly all material facts. The assessee had not submitted the required documents and details and that is why the assessment was framed under section 144 of the Act. Therefore, the assessee cannot take a plea that reassessment proceeding was initiated after a period of four years and there was a full disclosure on the part of the assessee for making the assessment. No doubt, the reassessment proceedings were initiated after a period of four years, however there was failure on the part of the assessee to disclose fully and truly all material facts of making the assessment and that is why, the original assessment was framed by making estimated addition under section 144 of the Act.

15. On merits, Ld. DR submitted that assessee has not explained the genuineness of the transactions and therefore it is a case of bogus purchase relating to the various concern of Mr. Pravin Kumar Jain, and assessee was

engaged in taking accommodation entries only. Therefore, addition made by the Assessing Officer should be sustained.

16. 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 find merit in the arguments of Id Counsel that repayment of loan and purchases were made in the same year by the assessee, therefore addition should not be made. We note that assessee has submitted the ledger copy of M/s Delight Diam Pvt. Ltd. which is paced at paper book page no. 35. The ledger copy of M/s Bafna Exim Pvt. Ltd. which is placed at paper book page no.36. The statement of M/s Sona Enterprise (assessee business concern) indicating payment made to M/s Delight Diam Pvt Ltd and M/s Bafna Exim Pvt. Ltd. for purchases made, which is placed at paper book page nos. 37 to 45. Therefore, we note that assessee has repaid the amount during the assessment year itself, hence the genuineness of the transactions should not be doubted. We note that Hon`ble Gujarat High Court in the case of Ambe Tradecorp (P.) Ltd, [2022] 145 taxmann.com 27 (Gujarat) held that where assessee took loan from two parties and assessee had furnished requisite material showing identity of loan givers and that assessee was not beneficiary as loan was repaid in subsequent year, no addition under section 68 could be made on account of such loan. The findings of the Hon`ble Court is reproduced below:

*“4. Learned advocate for the appellant attempted to emphasize that for the purpose of application of section 68 of the Act, three ingredients were necessary. Firstly identity of the parties to the transaction of loan, second is the creditworthiness of such parties and thirdly the genuineness of the transaction. It was submitted in vain that neither of the ingredients were satisfied.*

*5. As discussed above, since the requisite material was furnished by assessee showing the identity and since the assessee was not beneficiary when the loan was repaid in the subsequent year, even the ingredients of creditworthiness and genuineness of transaction were well satisfied.*

*6. The Tribunal rightly recorded in para 29 of the judgment,*

*"Once repayment of the loan has been established based on the documentary evidence, the credit entries cannot be looked into isolation after ignoring the debit entries despite the debit entries were carried out in*

*the later years. Thus, in the given facts and circumstances, were hold that there is no infirmity in the order of the Ld. CIT-A. "*

*7. For the reasons recorded above, no question of law much less substantial questions arises in this appeal. It stands meritless and accordingly dismissed"*

17. We must hasten to add here that in the assessee`s case under consideration, there is no finding that any details, documents and evidences supplied by the assessee to the AO in respect of payment/repayment in the same year were found to be incorrect or erroneous or false. As such addition cannot be made where the assessee has paid the amount in the assessment year itself.

18. We note that original assessment of the assessee was complete under section 144 of the Act dated 30.03.2015 wherein the Assessing Officer made addition of Rs.23,82,34,900/- on account of bogus purchases. Later on reassessment proceedings were initiated under section 147 of the Act and assessment was framed under section 144 r.w.s. 147 of the Act dated 31.12.2019. In the said reassessment proceedings, the bogus purchases to the tune of Rs.49,00,000/- (Rs.45,00,000 + Rs.4,00,000) was again added by the Assessing Officer, which amounts to double taxation. Since, the above amount of Rs.49,00,000/- was disallowed by Assessing Officer in original assessment, therefore the same amount of Rs.49,00,000/- should not be disallowed in reassessment proceedings. Hence, addition made by Assessing Officer in reassessment proceedings is not sustainable in law. Hence, we are not inclined to accept the contention of the Assessing Officer in any manner and hence the addition of Rs.64,00,000/- (49,00,000 + 15,00,000) so made is deleted. Hence this ground No.2 of the assessee is allowed.

19. Since, we have allowed the appeal of the assessee based on the fact that amount has been paid by the assessee in the assessment year itself, therefore other arguments made by the Id Counsel in respect of ground No.1 challenging the validity of reassessment u/s 147/148, and opportunity of cross examination etc., are not adjudicated being rendered academic and infructuous.

20. In the result, appeals filed by the assessee is allowed.

Registry is directed to place one copy of this order in all appeals folder / case files.

Order is pronounced on 08/05/2023 in the open court.

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

सूरत /Surat

दिनांक/ Date: 08/05/2023

*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

**// TRUE COPY //**

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

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Surat