

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

BEFORE

**SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 9702/Del/2019
Asstt. Year: 2010-11

| | | |
|--|-----|---|
| Sumer Chand Jain, 8/10, Old Rajendar Nagar, New Delhi – 110 060 PAN AAAPJ4161B (Appellant) | Vs. | ITO, Ward-50(4) New Delhi. (Respondent) |
|--|-----|---|

| | |
|-----------------------|--------------------------|
| Assessee by: | None |
| Department by : | Shri Amit Shukla, Sr. DR |
| Date of Hearing | 05.04.2023 |
| Date of pronouncement | 18.05.2023 |

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order of the Ld. Commissioner of Income Tax (Appeals)-17, New Delhi ("**CIT(A)**") dated 21.10.2019 pertaining to the Assessment Year ("**AY**") 2010-11.

2. The grounds raised by the assessee are as under:-

- “1. That on facts and in circumstances of the case and in law, Ld. CIT (A) has erred in confirming the order passed u/s. 143(3)/ 147 by the Ld.
2. That the Ld. CIT(A) has erred on facts and in law in upholding the reopening of the assessment on the basis of notice u/s.148 of the Income Tax Act 1961 which itself is not valid.

3. *That the Ld. CIT(A) has erred on facts and in law in upholding the assumption of Ld. AO that the purchase made by the assessee amounting to Rs.3,42,09,724/- is bogus.*
4. *That the Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs.85,52,431/- considering that assessee has earned profit at 25% on the assumed bogus purchase of Rs.3,42,09,724/-*
5. *That the impugned assessment order is arbitrary, illegal, bad in law and the violation of rudimentary principle of contemporary jurisprudence.*

3. Brief facts of the case are that the assessee individual is engaged in the business of trading in export handicraft goods and jewellery. For AY 2010-11, the assessee filed his return on 28.09.2010 declaring income of Rs. 6,31,180/-. It was processed under section 143(1) of the Income Tax Act, 1961 (**the "Act"**). Subsequently, the assessment was reopened by issue of notice under section 148 of the Act on 30.03.2017 after approval from Pr. CIT, Delhi-17, New Delhi on receipt of following information by the Ld. Assessing Officer (**"AO"**) from DCIT, Central Circle-4, Surat:

"2. As per information received from DCIT, Central Circle-4, Surat vide letter No. SRT/DCIT/CC-4/Rajendra jain, Dharmichand jain, Sanjay Choudhary Gr./2015-16 dated 30.11.2015, Shri Rajendra Jain, Shri Sanjay Choudhary and Shri Dharmichand Jain were some of the entry providers operating in. Mumbai, indulging in providing accommodation entries in the nature of bogus sales and unsecured loans. A search and seizure action in these groups of cases were carried out in 03.10.2013 by the DGIT(Inv.), Mumbai Charge. During the course of search operation, list of the beneficiaries were prepared who were benefited from the accommodation entries obtained from the groups through bogus billing against which no goods were supplied to these beneficiaries. The list of beneficiaries was provided by the office of the DCIT, Central Circle-4, Surat alongwith the office letter date 30/11/2015. On perusal of beneficiaries list, it has perused that assessee has taken the accommodation entry of total value of transaction of Rs. 3,42,09,724/- from M/s five entities as per the following details:-

| S No. | Name of Bill Provider | A.Y. | Nature of Transaction | Beneficiary name j | Total value of transaction i |
|-------|----------------------------------|-----------|-----------------------|---------------------|------------------------------|
| 1. | KRIYA (PAN: AADCK1926B) | 2010-11 | Sale | Parmeshwar Exports. | 96,18,783 |
| 2. | AVI (PAN: ABIPJ5587A) | 20 10- 11 | Sale | Parmeshwar Exports | 41,32,479 |
| 3. | SUN (PAN: ABAFS0852K) | 20 10-11 | Sale | Parmeshwar Exports | 88,80,360 |
| 4. | KALASH (PAN: AFRPJ9962J) | 20 10-11 | Sale | Parmeshwar Exports | 69,80,161 |
| 5. | KARNAWAT (PAN: AADCK1927A) | 2010-11 | Sale | Parmeshwar Exports | 45,97,941 |
| | | | | Total | 3,42,09,724 |

4. In response to notice under section 148 of the Act, the assessee submitted that the return filed on 28.09.2010 may be treated as return filed in response to notice under section 148. During re-assessment proceedings, the assessee filed objection against notice under section 148 which the Ld. AO disposed of.

5. The assessee was required to prove the genuineness of the transaction of alleged purchases from the aforesaid five parties. The assessee filed copies of invoices raised by the respective seller, details of payments made to respective parties through banking channel, ledger account of these parties. The assessee also filed confirmation from the respective parties. Stock statement of diamond highlighting inward and outward of diamond and closing balance was also filed. Purchase bills from the alleged five parties were also produced. Statement of sale of jewellery, cut and polished diamonds evidencing outward of diamond from the stock was furnished. It was the contention of the assessee that when he has made export of goods, then definitely he had made purchases for export. Without purchases it is not possible to export the same. It was submitted that entire goods were

exported out of India from purchases made after clearance from customs authorities and payments were received through banking channels.

6. For the reasons stated in para 4.3 to 4.13 of his order, the Ld. AO relying on the decision of Hon'ble Gujarat High Court in M/s. Vijay Protein Limited vs. CIT 58 taxmann.com 44 (SLP filed by the Department dismissed by the Hon'ble Supreme Court) and in Sanjay Oil Cake Industries vs. CIT (2009) 316 ITR 274 (Guj.) disallowed Rs. 85,52,431/- being 25% of alleged bogus purchase amount of Rs. 3,42,09,724/- on account of inflation of purchase price which he added to the income of the assessee and completed the assessment on total income of Rs. 92,09,440/- vide order dated 29.12.2017 under section 143(3)/147 of the Act.

7. The assessee challenged the initiation of reassessment proceedings under section 147 as also the addition of Rs. 85,52,435/- before the Ld. CIT(A).

8. On both the issues the assessee submitted written reply which has been reproduced by the Ld. CIT(A) in para 4.2 and 5.2 respectively in the appellate order. On consideration thereof, the Ld. CIT(A) decided both the issues against the assessee.

9. On the issue of reopening the assessment, the Ld. CIT(A) observed thus in para 4.3 of his order

“There is no merit in the contention of the appellant. It is observed that AO has recorded detailed reasons and he has pursued and examined the information received from DCIT, Central. Circle – 4, Surat. The AO has also examined the ITR of the appellant and it is found that amount of purchases reflected in the ITR does not commensurate with the information received. Therefore, AO has reason to believe that income has escaped assessment and there is failure on the part of the appellant to disclose fully and truly all material fact necessary for his assessment for A.Y. 2010-11. Hence, AO has issued notice u/s 148 after taking necessary approval u/s 151(1) of the Act. In the case of the appellant AO has initiated reassessment proceeding after proper analysis of the information alongwith ITR of the appellant and there is failure on the part of the appellant to disclose fully and truly all material fact necessary for assessment. Thus, AO is justified in initiating

reassessment proceedings, in the case of the appellant and the case laws on which appellant has placed reliance facts are distinguishable.”

10. The Ld. CIT(A) recorded his findings on the issue of impugned addition in para 5.4 and 5.5 of his order which is reproduced hereunder:

*“5.4 in the case of the appellant, genuineness of the purchase party is doubtful but genuineness of purchase on a whole cannot be doubted. The appellant has brought evidences on record that sales was effected by him during the year and he has received the payments from the export parties in his bank account. It shows that appellant was actually in possession of goods and there cannot be any sales without purchases. The appellant did purchase goods from some other supplier may be without bills and he has been benefited by providing margin of grey market. In such a situation, the judicial authorities have taken a view that only profit margin embedded in such transaction could be taxed. The similar issue raised before the **Hon'ble ITAT** in the-case of **Virender Kumar Gupta** wherein Hon'ble ITAT after considering decisions of the **Apex Court** in the case of N.K. Proteins Ltd. and other cases decided that addition could not be made of whole of the purchases and it should be restricted to the extent of 25% of the purchases. The observation of the **Hon'ble ITAT in the case of Virender Kumar Gupta Vs ACIT ITA No. 2721/Del/2016** is reproduced as under:*

“14. The various decisions cited by the Ld CIT DR as well as the contention of the assessee before the lower authorities were considered. The Hon'ble Supreme Court in case of NK Proteins Ltd Vs. DCIT in 2017-TIOL-23-S.C.-IT has confirmed on the similar circumstances addition to the extent of 25% of the bogus purchases. Similar view has been taken by the Hon'ble Gujarat High Court in NK Industries Ltd Vs. DCIT 2016 T10L-3165-H.C-AHM-1T dated 20.06.2016 and Vijay Proteins Ltd Vs. CIT 58 Taxmann.com 44. Therefore, the addition made by the Id Assessing Officer in the present case of whole of the purchase consideration cannot be sustained. The various judicial precedents cited before us also suggest that addition should be restricted to the extent of 25% of the purchases. Further, the decision relied upon by the Id Departmental Representative of Hon'ble Delhi High Court in case of CIT Vs. La Medica 2501TR 575 do not apply to the facts of the case as in that particulars case the goods were pledged with the bank and the person from whom the purchases were made and who was operating the bank account was the employee of the group concern of the assessee. However, in the present case there is no such finding similar to that judgment. Further, assessee has already recorded the sales of the goods allegedly purchased from these bogus parties. Further, the Id CIT(A) has categorically stated at page No.

39 of his order under the heading “actual transaction” that goods have actually been purchased from grey market by cash payment from the cash generated outside the books of account and on quantitative details shown by the assessee, it has to be reasonably presumed that assessee purchased material from market in cash and bills were obtained from the above two bogus concerns of the accommodation entry provider. Therefore, it is apparent that the addition of whole of the amount cannot be made. Therefore, in view of the decision of ' the Hon'ble Supreme Court and Hon'ble High Court cited by the Id DR. we direct the Id Assessing Officer to restrict the addition @25% of the total purchases of Rs. 5247565/- from these tainted parties. Accordingly, the addition is restricted to Rs. 1311891/- and balance addition of Rs. 3935673/- is deleted. In the result ground No. 4 to 7 are partly allowed.”.

*5.5 A perusal of the above decision of the Hon'ble ITAT shows that the facts of the above referred case are identical to the facts of the case under consideration. Both the cases have been reopened on the information received from the investigation wing that appellant has received accommodation entries by booking bogus purchases. Considering the above facts and decision of Hon'ble ITAT AO is justified in adding 25% of bogus purchase amount on account of inflation of purchases and addition made by the AO at **Rs. 85,52,431/-** is hereby confirmed,”*

11. Aggrieved, the assessee is in appeal before the Tribunal and all the five grounds relate thereto.

12. Hearing in the appeal was fixed for 27.06.2022, 06.10.2022 and 05.04.2023. None appeared for the assessee, though Ld. Sr. DR was present on all the hearings. We, therefore, proceed to decide the appeal ex-parte, on merits after hearing the Ld. Sr. DR who supported the orders of the Ld. AO/CIT(A).

13. We have gone through the material available in the records and considered the submissions of the Ld. Sr. DR. It is observed that during re-assessment proceedings, the assessee had filed objections for initiation of proceedings by issue of notice under section 148 of the Act and the Ld. AO met the objections by passing a speaking order on 05.11.2017 in accordance with the decision of Hon'ble Supreme Court in GKN Drive Sharft (India) Ltd. vs. ITO 259 ITR 19 (SC). The contention of the assessee that the Ld. AO

issued notice purely on borrowed satisfaction of DCIT, Central Circle-4, Surat without application of independent mind has also been found to be without merit by the Ld. CIT(A). The reopening of assessment has taken place after following due procedure as per law. We decline to interfere.

14. As regards the impugned addition to the income of the assessee, the finding of the Ld. AO/CIT(A) is that the assessee did purchase goods without bills from some other suppliers otherwise sales could not be effected and that he has been benefitted by providing margin of grey market. It was in this backdrop that the Ld. AO/CIT(A) instead of treating the entire impugned purchases as bogus and adding the same to the income of the assessee restricted the addition to 25% of such purchases following the decision in Vijay Protein Ltd.(supra) and Sanjay Oil Cake Industries (supra). The above findings remain uncontroverted before us. We find no infirmity in the order of the Ld. CIT(A) and sustain the same.

15. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 18th May, 2023.

**sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

**sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 18/05/2023

Veena

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

| | |
|---|--|
| Date of dictation | |
| Date on which the typed draft is placed before the dictating Member | |

| | |
|---|--|
| Date on which the typed draft is placed before the Other Member | |
| Date on which the approved draft comes to the Sr. PS/PS | |
| Date on which the fair order is placed before the Dictating Member for pronouncement | |
| Date on which the fair order comes back to the Sr. PS/PS | |
| Date on which the final order is uploaded on the website of ITAT | |
| Date on which the file goes to the Bench Clerk | |
| Date on which the file goes to the Head Clerk | |
| The date on which the file goes to the Assistant Registrar for signature on the order | |
| Date of dispatch of the Order | |