

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER**

ITA Nos.3683, 3684, 3685 & 3686/M/2018

Assessment Years: 2008-09, 2009-10, 2010-11 & 2013-14

Dy. Commissioner of Income Tax-5(1)(1), Room No.568, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. Goenka Diamonds & Jewels Ltd. 1305, Panchratna, Opera House, Mumbai-400 004 PAN: AAACG 7934Q
(Appellant)		(Respondent)

ITA Nos.3019, 3020, 3021, 3022 & 3023/M/2018

Assessment Years: 2008-09, 2009-10, 2010-11, 2012-13 & 2013-14

M/s. Goenka Diamonds & Jewels Ltd. 1305, Panchratna, Opera House, Mumbai-400 004 PAN: AAACG 7934Q	Vs.	Dy. Commissioner of Income Tax-5(1)(1), Room No.568, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Dharmesh Shah, A.R.
Revenue by : Dr. Kishor Dhule, D.R.

Date of Hearing : 08 . 05 . 2023

Date of Pronouncement : 08 . 05 . 2023

ORDER

Per Bench :

For the sake of brevity aforesaid cross appeals emanated from same impugned orders passed by Ld. Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] are being taken up for disposal by way of composite order.

2. Appellant M/s. Goenka Diamonds & Jewels Ltd. (hereinafter referred to as the assessee) and appellant Dy. Commissioner of Income Tax-5(1)(1), Mumbai (hereinafter referred to as the Revenue) by filing aforesaid cross appeals sought to set aside the impugned orders even dated 26.02.2018 passed by the Ld. CIT(A), on identically worded grounds except the difference in amount of addition/disallowance inter-alia that:

Grounds of Revenue are taken from
ITA No.3683/M/2018 for A.Y. 2008-09

ITA No.3683/M/2018

“1. Whether on the facts and in the circumstances of the case, the Ld.CIT(A) erred in estimating the profit embedded in accommodation entries of purchase 86.51 of the purchase amount of Rs. 20,33,76,341/- against the addition of Assessing Officer estimating profit @25% of the purchase and giving relief of Rs.3,76,24,773/- out of the addition of Rs.5,08,44,325/- made by the AO @25% of the accommodation purchases entries amounting to Rs. 20,33,76,341/- taken by the assessee from party involved in providing accommodation entries.

2. Whether on the facts and in the circumstances of the case, the Ld.CIT(A) erred in appreciating the fact that the assessee could not produce the parties from whom the purchases amounting to Rs. 20,33,76,341/- were made and thereby failed to establish the genuineness of the said purchases and, hence, the addition made by the Assessing Officer with reference to the suspect purchase deserved to be upheld.

3. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) erred in appreciating the fact that the addition was made on account of accommodation entries of bogus purchases from the concern controlled and managed by Praveen Kumar Jain Group who were involved in issuing non-genuine/bogus sale/bogus purchase bills without giving actual delivery of goods against certain commission.

The appellant prays that the order of the Ld. CIT(A) be set aside and the order of the AO be restored.

The appellant craves leave to amend or alter any ground or add any other grounds which may be necessary.”

Grounds of Assessee are taken from
ITA No.3019/M/2018 for A.Y. 2008-09

“1. In the facts and in the circumstances of the case, the Ld AO erred in initiating re-assessment proceeding and the learned CIT(A) erred in not quashing the said re assessment proceeding

2. In the facts and in the circumstances of the case, the Ld AO erred in initiating re assessment proceeding by changing the opinion after accepting the book result while completing the assessment order u/s 143(1)/143(3) of the Income Tax Act, 1951 and the CIT(A) erred in not quashing the said re-assessment proceeding.

3. In the facts and in the circumstances of the case, the Ld AO erred in making addition at 25% of purchase made from so called suspicious dealer amounting to Rs.5,08,44,235/- and the learned AO erred in restricting the said addition to 65% of the purchase made from so called suspicious dealer at Rs.1,32,19,501/- instead of deleting the entire addition made by the AO.

4. In the facts and in the circumstances of the case, the Ld. AO erred in levying interest u/s 234B of the Act.

5. The appellant craves leave to add, amend, alter or delete any or all grounds of appeal.

6. The appellant prays for appropriate relief.”

3. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the assessee is a public limited company into the business of trading and manufacturing of precious and semi precious stones, diamonds, studded gold jewellery as an exporter/trader. During the years under consideration the assessee filed return of income which was processed but subsequently the case was reopened after initiating proceedings under section 147/148 of the Income Tax Act, 1961 (for short ‘the Act’) on the basis of information received from Directorate General of Income Tax (Investigation), [DGIT (Inv.)], Mumbai that during the years under consideration the assessee has taken accommodation entries of bogus purchases to the tune of

Rs.20,33,76,341/-, 1,26,36,76,339/-, Rs.1,22,87,28,673/- & Rs.35,01,15,872/- for A.Y. 2008-09, 2009-10, 2010-11 & 2013-14 respectively. For A.Y. 2012-13 the assessee claimed exemption to the tune of Rs.7,23,64,657/- under section 10AA, claimed expenses of directors' remuneration to the tune of Rs.1,01,40,000/- which was disallowed. Declining the contentions raised by the assessee the Assessing Officer (AO) proceeded to re-assess the income of the assessee at Rs.17,73,21,100/-, Rs.60,40,53,990/-, Rs.85,42,44,460/- under section 143(3) read with section 147 of the Act for A.Y. 2008-09, 2009-10 & 2010-11 respectively and at Rs.47,56,94,200/- & Rs.30,71,09,990/- for A.Y. 2012-13 & 2013-14 respectively under section 143(3) of the Act.

4. The assessee carried the matter before the Ld. CIT(A) by way of challenging the assessment orders by filing appeals who has partly allowed the same. Feeling aggrieved with the impugned orders passed by the Ld. CIT(A) the assessee as well as the Revenue have come up before the Tribunal by way of filing the present cross appeals.

5. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

6. At the very outset, it is brought to the notice of the Bench by the Ld. A.R. for the assessee by moving an application dated 08.05.2023 that on the basis of petition filed by the assessee before the National Company Law Tribunal (NCLT), Jaipur Bench order

dated 09.12.2022 and 12.04.2023 have been passed vide which moratorium under section 14 of the Insolvency and Bankruptcy (I&B) Code, 2016 is invoked and also brought on record copy of the order dated 09.12.2022 and consequently Corporate Insolvency Resolution Process (CIRP) has been initiated against the corporate debtor and the petition filed by the assessee is admitted by returning following findings:

“14. Consequences of initiation of CIRP shall be inter-alia as follows:

14.1 The Interim Resolution Professional proposed by the Applicant is Mr. Vishal Bidawatjika, an Insolvency Professional (IP) registered with ICSI Insolvency Professional Agency having Registration No. IBBI/IPA- 001/1P-P00125/2017-18/10267 is hereby appointed as the IRP to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of IBC, 2016, including the issue of the publication in widely circulated Newspaper as contemplated under the provisions of IBC, 2016 and calling for the claims from the creditors of Corporate Debtor and collation of the same shall be done. The IRP has to file Authorisation for Assignment within three days from the date this Order is uploaded on the e-portal.

14.2 Further, as a sequel of admission, a moratorium, as envisaged under Section 14 of IBC, 2016, is invoked concerning the Corporate Debtor, which will be in vogue during the Corporate Insolvency Resolution Process of the Corporate Debtor. The IRP shall carry out CIRP strictly per the timelines specified and as envisaged under the provisions of IBC, 2016 concerning the Corporate Debtor.

14.3 The said IRP shall act strictly in compliance with the provisions of IBC, 2016 and defray his expenses to be incurred and fees on the account. 14.4 The Applicant shall deposit Rs, 5,00,000.00 (Rupees Five Lakh Only) in the account of the IRP within three days for initial expenses of the CIRP including the cost of paper publication, which will be apportioned as per the provisions of the Code and reimbursed to the Applicant upon formation of the Committee of Creditors.

14.5 The IRP shall duly file a status report from time to time appraising this Adjudicating Authority about the progress of CIRP unfolded in relation to the Corporate Debtor. In terms of Sections 17 & 19 of IDC, 2016, all personnel of the Corporate Debtor, including promoters and the Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

15. In terms of Section 7 of IBC, 2016, this Order shall be communicated to the Applicant, Corporate Debtor, and the Interim

Resolution Professional (IRP) appointed by this Adjudicating Authority to carry out the CIRP at the earliest, not exceeding three days from today.”

7. In view of the order passed by the Hon’ble NCLT, we are of the considered view that since proceedings under I & B Code have already been initiated and moratorium has been invoked, all the proceedings against the corporate debtor the assessee in this case including execution of any judgment, decree or order of any court of law, tribunal, arbitration panel or other authority, present appeals in the present format are not maintainable having not been filed by the Interim Resolution Professionals (IRP) who can file appeal with approval of committee of creditors. Moreover, none has come present on behalf of IRP to assist the Bench to proceed further in these appeals, hence aforesaid appeals are liable to be dismissed being not maintainable at this stage.

8. Resultantly, aforesaid cross appeals filed by the assessee as well as the Revenue are dismissed being not maintainable with liberty to file fresh appeals in the correct format, duly verified by the person authorized to file the return of income or to get the present appeal restored by moving an application. However, nothing expressed herein shall affect the aforesaid cross appeals on merits.

Order pronounced in the open court on 08.05.2023.

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

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

Mumbai, Dated: 08.05.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.