

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No. 227/SRT/2023 (AY: 2013-14)
(Hearing in Virtual Court)

Vishal Range Diam Pvt. Ltd., 10, R.T. Chamber, Dalagia Maahola, Mahidharpura, Surat-395003. PAN: AADCV 6738 J	Vs.	I.T.O., Ward 2(1)(1), Surat.
APPELLANT		RESPONDEDNT

Assessee by	Shri Mehul Shah, CA
Department by	Shri Vinod Kumar, Sr.DR
Date of Institution of appeal	03/04/2023
Date of hearing	12/06/2023
Date of pronouncement	12/06/2023

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 Commissioner of Income Tax (Appeals)-4, Surat [in short the Id. CIT(A)] dated 07/03/2022 for the Assessment Year (AY) 2013-14. The assessee has raised following grounds of appeal:-

- “1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in issuing notice u/s 148 and passing order u/s 143(3) r.w.s. 147 of the IT Act.
2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in making addition of Rs. 1,00,00,675/- for alleged purchase u/s. 68 of the Act.
3. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in making addition of Rs.50,000/- for alleged unexplained expenditure, being alleged commission paid for taking entry for bogus purchase.

4. *On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has adjudicated the order without giving the opportunity of personal hearing to the assessee.*
5. *It is therefore prayed that assessment framed u/s. 143(3) r.w.s. 147 of the Act may kindly be quashed.*
6. *It is therefore prayed that addition made by assessing officer and confirmed by CIT (A) may please be deleted.*
7. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*

2. Brief facts of the case are that the assessee is a Company and engaged in the business of purchase and sale of diamonds. The assessee filed its return of income for A.Y. 2013-14 on 25/09/2013 declaring NIL income. The case of assessee was reopened under Section 147 of the Income Tax Act, 1961 (in short, the Act). Notice under Section 148 of the Act was served upon the assessee on 22/03/2018. In response to notice under Section 148, the assessee filed revised return of income on 20/04/2018 declaring NIL income. The case of assessee was reopened on the basis of information that a search and seizure action was carried out at Bhanwar Lal Jain group at Mumbai, wherein was he was found operating 70 benami concerns in the name of their employees as a Director, Partner and proprietor for providing accommodation entries without actual delivery of goods. The name of assessee was also found in the list of beneficiary who have availed accommodation entry of bogus purchases. The assessee has shown purchases of Rs. 60.00 lacs from Meridian Gems and Rs. 40.00 lacs from Rahul Exports. On the basis of such information,

the Assessing Officer after recording reasons, issued notice under Section 148 of the Act to the assessee.

3. During the assessment, the Assessing Officer asked the assessee to substantiate the genuineness of purchases from Meridian Gems and Rahul Exports. The assessee filed its reply dated 28/11/2018. Contents of reply of assessee is recorded in para 4 of assessment order. The assessee in its reply submitted that their purchases are genuine and supported by valid invoices. Copies of invoices were furnished. The assessee stated that invoices bear the VAT number and address of the purchased parties. Both the purchase parties are assessed to tax and payments were made to them through account payee cheques. The assessee also furnished account confirmation and submitted that they have proved identity and genuineness of purchases. The assessee requested for furnishing copy of statement of Bhanwar Lal Jain. The reply of assessee was not accepted by Assessing Officer by taking a view that Bhanwar Lal Jain in his statement on oath categorically admitted that he and his associates were indulged in providing accommodation entries in lieu of commission. The Assessing Officer by referring the modus operandi of entry provider and by referring the decision of various Tribunals and Courts treated the entire purchases as unexplained under Section 68 of the Act. The Assessing Officer further noted that the entry provider admitted the fact that commission were paid for providing entry, in cash. The Assessing Officer

thereby made further addition @ 0.05% as unexplained expenditure on the total amount of purchases of Rs. 1.00 Crore (Aprox) and worked out payment of commission at Rs. 50,000/- thereby made further addition thereof in the assessment order dated 30/11/2018 passed under Section 143(3) r.w.s. 147 of the Act.

4. Aggrieved by the addition in the assessment order, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee challenged the validity of reopening as well as additions on merit. The validity of reopening was upheld by the Id. CIT(A) by referring the decision of Hon'ble Jurisdictional High Court in Peass Industrial Engineers Pvt. Ltd. (2016) 73 taxmann.com 185 (Guj), Pushpak Bullion (P) Ltd. (2017) 85 taxmann.com 84 (Guj) and the decision of Hon'ble Supreme Court in Purushottam Das Bangur & Anr 224 ITR 362 (SC). The Id CIT(A) held that Jurisdictional High Court in Peass Industrial Engineers Pvt. Ltd.(supra) held that information from Investigation Wing regarding bogus entries was sufficient for reopening the assessment.
5. On merit, the Id. CIT(A) held that the entry provider in his statement under Section 132(4) of the Act stated that they were providing accommodation entries. During the search, no evidence of any sale or purchase of diamonds was found and there was no stock at their premises. The evidence found during the search, proved that the assessee was one of the beneficiary of accommodation entries. Mere

payment through banking channel is not sufficient to prove the genuineness of transaction. The Id. CIT(A), thus confirmed both the additions made by the Assessing Officer. Further aggrieved, the assessee has filed present appeal before the Tribunal.

6. We have heard the submissions of learned Authorised Representative (Id. AR) of the assessee and the learned Senior Departmental Representative (Id. Sr. DR) for the revenue and have perused the orders of the lower authorities carefully. At the outset of hearing, the Id. AR of the assessee submits that this Bench in a number of decisions in cases of beneficiaries of similar purchases either from Bhanwar Lal Jain or Rajendra Jain, whose cases were reopened by the Income tax Department, on the basis of information from Investigation Wing, upheld the addition to the extent of 6% of the transaction, by taking a view that only profit element embedded on such / similar transactions can only be added and not the substantial part of transaction. The Id. AR of the assessee submits that though its purchases are genuine yet to avoid long drawn litigation, he has no objection if 6% of the alleged/bogus purchases is restricted against the assessee.

7. On the other hand, the Id. Sr. DR for the revenue submits that the entire purchases shown by the assessee are not genuine, the assessee has only availed accommodation entry without actual delivery of goods. The Investigation Wing of Income Tax Department made a full-fledged

investigation against the entry provider who himself has admitted of providing accommodation entry without actual delivery of goods. The lower authorities rightly sustained the addition of 100% of expenditure of such purchases.

8. We have considered the submissions of both the parties and perused the record as well as orders of lower authorities. We find that grounds No. 1,4 and 5 of the appeal relates to validity of reopening and issuance of notice under Section 148 of the Act. We find that no submission on such grounds of appeal was made by Id. AR of the assessee at the time of making his submission, therefore, these grounds of appeal are treated as not pressed and accordingly dismissed, being not pressed.
9. Ground No. 2 of the appeal relates to sustaining the addition of Rs. 1.00 crore (Approximately) under Section 68 of the Act. As recorded above, the Assessing Officer after making reopening, made addition of 100% of purchases shown from two entities namely Meridian Gems and Rahul Exports which were managed by Bhanwar Lal Jain and his associates. We find that before the Assessing Officer, the assessee filed certain evidence which consists of invoices, account confirmation and bank statement showing the payment of such purchases. The Assessing Officer has not made any investigation nor given any finding on such document nor discarded such evidences. Sales of assessee was not disputed. Books of account of assessee was not rejected. It is settled position that no sales

is possible in absence of purchases. The additions are solely based on the information from investigation wing on third party. The Id. CIT(A) also confirmed the action of Assessing Officer almost on similar observation by relying upon the report of Investigation Wing. In our view, when the purchases are suspicious and sales is not disputed nor books of account are rejected, particularly when payments are made through banking channel, only profit element embedded on such transaction is held to be sufficient to avoid the possibility of revenue leakage. There are numerous decisions of Superior Courts that such purchases are shown only to inflate the profit. Further considering the fact that in a number of cases, this Combination has in similar cases, upheld, disallowed or increased the disallowance to the extent of 6% of similar purchases. One of the decision of this combination is upheld by Hon'ble Jurisdictional High Court in PCIT Vs Surya Impex (2023) 148 taxmann.com 154 (Guj). Therefore, taking a consistent view, the Assessing Officer is directed to restrict the purchases from two entities namely Meridian Gems and Rahul Exports to the extent of 6% of such purchases. In the result, ground No. 2 of the appeal is partly allowed.

10. Ground No. 3 of the appeal relates to confirming the addition with regard to commission payment of Rs. 50,000/-. We find that the Assessing Officer made addition without bringing any material on record that the assessee paid commission on purchases to the persons from whom the

purchases were shown. No investigation of fact was carried out by the Assessing Officer. Considering the fact that we have already restricted the addition of purchases to the extent of 6% i.e. at the rate of profit element embedded in such transaction, therefore, such restriction will cover all the possibility of revenue leakage, hence, the Assessing Officer is directed to delete the same.

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

Order pronounced on 12/06/2023 in open court.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 12/06/2023
**Ranjan*

Copy to:

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

By Order

Sr. Private Secretary, ITAT Surat