

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 245/JPR/2023
निर्धारण वर्ष / Assessment Years : 2014-15

Shri Khandelwal Diamonds Private Limited 205-206, C.K. House IInd Floor, Bichun Market, Kishanpole Bazar, Jaipur.	बनाम Vs.	DCIT, Circle-1, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAPCS 6518 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mukesh Khandelwal (C.A.)
राजस्व की ओर से / Revenue by : Shri C.P. Meena (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 15/06/2023
उदघोषणा की तारीख / Date of Pronouncement : 18/07/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee aggrieved from the order of the National Faceless Appeal Centre, Delhi [here in after "NFAC/Ld.CIT(A)"] for assessment year 2014-15 dated 22.03.2023, which in turn arise from the order dated 25.11.2016 passed under section 143(3) of the Income Tax Act, by ACIT, circle-1, Jaipur.

2. The assessee has marched this appeal on the following grounds:-

“1. That under the facts and circumstances of the case, the Id. CIT(A) has erred seriously on facts in sustaining the action of the Id. AO in considering purchases of a sum of Rs. 3,21,93,468/- made from 11 parties as bogus.

2. That under the facts and circumstances of the case, the Id. CIT(A) has erred seriously on facts in sustaining the action of the Id. AO in making an addition of Rs. 80,48,367/-, being 25% of alleged bogus purchases without any basis.”

3. The fact as culled out from the records is that that assessee Company has filed its e-return of income for the A.Y. 2014-15 on 24.09.2014 declaring total income of Rs.79,20,110/-. The assessee Company derives income from Business or Profession. The case was selected for manual scrutiny assessment. The notice u/s 143(2) of the IT Act, 1961 was issued on 30.09.2015 and served upon the assessee. Due to change of incumbent notice u/s 142(1) of the I.T. Act, 1961 along with questionnaire was issued on 30.09.2016. In compliance thereto, Id. AR of the assessee attended from time to time and filed written reply which were placed on the record and the case was discussed with them. As per the Search and seizure operation conducted over the group concern of Shri Bhanwarlal Jain Group is a leading entry provider

of Mumbai. The Group provides accommodation entries of bogus purchases through various benami concerns (70) operated and managed by Bhanwarlal Jain and his son. A search revealed various incriminating documentary evidences were seized. In addition, statement of various persons (who assist Bhanwarlal Jain in providing bogus purchases through benami concern to the beneficiaries) were recorded. All the above clearly established the modus operandi employed by Bhanwarlal Jain, in his operation accommodation entries pertaining to bogus purchases indulged in by the group approximate to Rs. 25,000/- crores were detected. The entire bogus nature of the transactions has also been admitted by Bhanwarlal Jain in his statement recorded under section 132(4) of the I.T. Act and relevant part of the statement was extracted in the assessment order. Thus, based on the information received it is observed that the assessee Khandelwal Diamonds Private Limited is one of the beneficiaries and has obtained accommodation entries in the form of bogus purchases of Rs. 3,21,93,468/- from the concerns mentioned below:

Sr. No.	Name of the bill provider	Amount in Rs.
1	Aastha Impex	42,85,800

2	Maan diamonds	41,80,685
3	Malhar Exports	8,83,215
4	Manas Gems Pvt. Ltd.	7,45,016
5	Meenakshi Diamonds Pvt Ltd.	21,17,728
6	Navkar diamonds	34,20,565
7	Pushpak Gems	18,33,060
8	Rajan Diamonds	35,53,259
9	Roshan Gems Pvt. Ltd	24,97,360
10	Sonam Gems Pvt Ltd.	22,54,500
11	Suman Exports	64,22,280
	Total	3,21,93,468/-

3.1 Based on the detailed discussion in the assessment order the Id. AO observed that the assessee is engaged in the business of purchase, sale, manufacturing and trading of gold jewellery with diamond and color stones, diamond and gems stones. During the year under consideration the assessee has purchased from the above parties amounting to Rs. 3,21,93,468/- based on the specific information by the DGIT(Investigation), Mumbai the case was selected for compulsory scrutiny. The Id. AO also noted that since the assessee concern is engaged in corresponding sales also, hence, the only possibility is of purchases being from a different

concern other than the concerns as listed here in above. Considering these aspect of the facts the Id. AO rejected the books of the assessee and estimated 25 % of the purchase claimed as income of the assessee for an amount of Rs. 80,45,367/-

4. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A). A propose to the grounds so raised by the assessee the relevant findings of the Id. CIT(A) is reproduced here in below:-

“5. The brief facts of case relevant to purpose of appeal are that the appellant, M/s Khandelwal Diamonds Pvt. Ltd., is engaged in the business of trading of gems, jewelry, diamonds, precious and semi-precious stones. It had filed its return of income for the A.Y. 2014-15 on 24.09.2014 declaring total income at Rs.79,20,110- The case of appellant was selected for manual scrutiny. The Assessment u/s 143(3) of the Act was finalized by AO, vide order dated 25.11.2016 wherein an addition of Rs. 80,48,367/- has been made on account of bogus purchase. Being aggrieved by the above, the appellant is in appeal against the said order u/s 143(3) of the Act.

5.2 I have carefully examined the facts of the case, finding of AO in assessment order, submission filed by the appellant and material available on record. The grounds are interlinked, therefore adjudicated together.

5.3 The appellant's case was selected for manual scrutiny on the basis of information that a search and seizure action under section 132 of the Act was carried out in the case of group concerns of Sh. Bhanwarlal Jain by Investigation Wing. Mumbai. In the said search and seizure action various incriminating documentary evidence were found and seized. During the course of search, it was found that this group was indulging in providing accommodation entries pertaining to bogus purchases to various parties through benami concerns operated and managed by Sh. Bhanwarlal Jain and his son. Sh. Bhanwarlal Jain also admitted the same in his statement on oath recorded during search

operation u/s 132(4). The statement of various people of this group, who were engaged in providing bogus purchases through benami concerns to the beneficiaries were also recorded. As per the information received by AO, the appellant M/s Khandelwal Diamonds Pvt. Ltd. was one of the beneficiaries and had obtained accommodation entries in the form of bogus purchases to the tune of Rs. 3,21,93,468/- from the following 11 parties during the FY 2013-14:

Name of the bill provider	Amount in Rs.
Aastha Impex	42,85,800
Maan diamonds	41,80,685
Malhar Exports	8,83,215
Manas Gems Pvt. Ltd.	7,45,016
Meenakshi Diamonds Pvt Ltd.	21,17,728
Navkar diamonds	34,20,565
Pushpak Gems	18,33,060
Rajan Diamonds	35,53,259
Roshan Gems Pvt. Ltd	24,97,360
Sonam Gems Pvt Ltd.	22,54,500
Suman Exports	64,22,280
Total	3,21,93,468/-

5.4 On verification of records, the AO after detailed discussion rejected the books of account u/s 145(3) and disallowed 25% of the said purchases making an addition of Rs.80,48,367/-. The conclusion was reached based on the following facts:

(1) A search and seizure action under section 132 of the Act was carried out in case of Sh. Bhanwarlal Jain Group by Investigation Wing, Mumbai wherein it is found that this group was an entry provider indulging in providing accommodation entries pertaining to bogus purchases to various parties. Sh. Bhanwarlal Jain admitted the same in the statement recorded u/s 132(4). The alleged suppliers/parties of the group concern have also admitted that they never sold any goods & were only issuing bogus sales invoices and charged commission in lieu of providing accommodation entries. The appellant M/s Khandelwal Diamonds Pvt. Ltd. was one of the beneficiaries.

(ii) The appellant was requested to produce the aforementioned 11 parties for verification to prove that the transactions were genuine but the appellant expressed its inability to produce them. Therefore, the appellant failed to discharge its onus to establish the existence of the concerns which allegedly sold the goods to it.

(iii) The AO has observed that assessee should have provided the correct business addresses where these entities are carrying on their business so that the Department could contact them for independent verifications but the appellant did not do so.

(iv) Payments by the a/c payee cheque does not make the purchase transaction genuine.

5.5 The AO has observed that the primary onus was on the assessee to establish the genuineness of the purchases claimed by it. Since the primary facts were in the knowledge of the assessee it was his duty to provide the correct address or contact modes of the alleged suppliers. If the investigation done by the department leads to doubt regarding the genuineness of the purchases it is incumbent on the assessee to produce the parties along with necessary documents to establish the genuineness of the transaction. The assessee failed to discharge its onus.

Considering the above facts, and placing reliance on various case laws, the AO rejected the books of account u/s 145(3). However, since the assessee was engaged in corresponding sales, the AO has disallowed an amount of Rs. 80,48,367/- being 25% of alleged purchases.

5.6 As can be seen, information was available before the AO as given by DGIT(inv) Mumbai, which demonstrated that the suppliers from whom the appellant claimed to have effected purchases are providing bogus bills & accommodation entries. Therefore, in the aforesaid context, the appellant was required to prove the genuineness of the purchases made from those parties. Merely filing bills, confirmation of account & payments by cheque does not tantamount to discharge of the onus cast on the appellant especially when the department had received specific material/information from the Investigation wing, wherein Sh. Bhanwarlal Jain the suppliers operating the benami concerns, on oath had admitted the fact that they have merely provided entry / issued bills without physically selling/delivering any goods. Further, it was the duty of the appellant to establish the existence of aforesaid suppliers. It is observed that the purchases made by the appellant from the concerned parties remained unverifiable due to non-production of the parties. Production of suppliers assumes importance in view of specific information with the Department that the concerned parties from whom the appellant claimed to have purchased the goods have actually admitted of providing accommodation entries & bogus purchase bills. Therefore, onus was on the appellant to satisfactorily prove that entire purchases are genuine by producing the alleged suppliers for verification. But the appellant failed to do so.

5.7 It has been held in a plethora of decisions that payment by a/c payee cheque is not sufficient to prove a transaction as bonafide. Merely because the money is transferred through the bank account does not prove that the money is explained. The appellant has submitted that Sh. Bhanwar Lal Jain or any of the person whose statements were being relied upon by the Id. AO, was neither prop nor partner/director in alleged bogus concerns and all such parties had given their confirmations about selling the goods to the appellant. The contention is not accepted as during the course of Search & Seizure in the case of Bhanwar Lal Jain Group it has been established that Shri Bhanwarlal Jain was providing accommodation entries through various concerns which were operated/controlled by him and his son, Filing confirmations therefore does not serve any purpose as the real nature of the transactions as established during the course of search was to provide accommodation entries to reduce taxable profits.

5.8 The onus was on the appellant to prove the identity of the so-called suppliers and genuineness of transactions, when the purchases were claimed to have been made from them. Show cause notice was sent by the AO to the appellant to produce the alleged suppliers. However, the appellant has expressed its inability to produce them. This combined with the fact that the alleged aforementioned parties have been declared as being engaged in issuing bogus sale invoices by the DGIT (Inv), Mumbai, leads one to conclude that the purchases from these aforementioned parties are not established. The purchases have failed to stand the test of scrutiny, as the appellant has failed to establish that the transactions are genuine. It is clear that these expenses have been debited in the books of account to reduce profit. In the face of these facts, the AO has rightly rejected the books of account and taking into account facts and circumstances of the case made disallowance of 25% of total purchase of Rs. 3,21,93,468/- amounting to Rs. 80,48,367/- on account of inflation of purchases and suppression of profits.

5.9 The appellant has claimed that the material relied upon i.e. statements of Shri Bhanwarlal Jain and group and opportunity to cross examine the parties was not given. The contention of the appellant is examined. At this juncture it would be relevant to take note of the decision of the High Court of Delhi in Suman Poddar Vs ITO which was affirmed by the Hon'ble Supreme Court in (2019) 112 taxman.com 330: "The first, issue which has been raised by the assessee that it has not been confronted with the statements of various parties relied upon by the Assessing Officer. The assessee has also contended that opportunity of cross-examining those parties/persons was not provided

to the assessee. According to the assessee, this resulted in the violation of the principles of natural justice and thus assessment should be held void ab initio. However, in our opinion, not providing opportunity of cross-examination may be in the nature of irregularity which is curable but not an illegality leading to annulling of the assessment.”

In this case, information has been provided by the DGIT(Inv), Mumbai after crystallization and in-depth investigation. It is observed that the AO has issued notices under sections 143(2), 142(1) of the Act, show cause and the appellant has been directed to furnish the documents. The appellant has complied with the directions, appeared before the assessing officer and submissions have been made consequent to which the assessment has been completed. Therefore, merely by mentioning that material relied upon was not shared/opportunity for cross examination was not given can in no manner advance the case of the appellant. In *State Bank of Patiala v. S.K. Sharma* AIR 1996 SC 1669, the Hon'ble Supreme Court has pointed out that violation of any and every procedural provision cannot be said to automatically vitiate the domestic enquiry held against the delinquent employee or the order passed by the disciplinary authority except in cases falling under no notice, no opportunity and no hearing categories. Further it was held that if no prejudice is established to have resulted from such violation of procedural provisions no interference is called for, against the ultimate orders. The test laid down was whether the person has received a fair hearing considering all things as the ultimate test is always the test of prejudice or the test of fair hearing. Further the Hon'ble Supreme Court pointed out a distinction between a case of no opportunity and a case of no adequate opportunity and while examining the latter case, it was held that the violation has to be examined from the stand point of prejudice, in other words the Court or the tribunal has to see whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answers to the said query.

As to whether and under what circumstances the right of cross examination can be demanded as a vested right, in *Bakshi Ghulam Mohammad* the Hon'ble Supreme Court held that the right of hearing cannot include the right of cross examination and the right must depend upon the circumstances of each case and must also depend on the statute under which the allegations are being enquired into.

In this case, the appellant has not been able to specifically point out as to how it was prejudiced on account of non-furnishing of the statements on oath and on failure to provide the opportunity of cross examination. The appellant has failed to prove the test of prejudice or that the test of

fair hearing has not been satisfied. Non-furnishing of the material relied upon and providing opportunity for cross-examination has in no manner prejudiced the rights of the appellant to discharge the onus cast upon him. It is not in dispute that whatever information which was required to be made known to the appellant has been informed by issuance of a notice to which to the appellant has responded by submitting replies. Therefore, in the absence of any prejudice caused to the assessee on account of non-furnishing of the material relied upon or giving opportunity for cross examination, the appellant cannot claim that there has been violation of principles of natural justice and the right to defend itself was in any manner affected.

5.10 As held by several courts, the department is not required to lead clinching evidence to prove that purchases are bogus. The onus of proof at all relevant times rests upon the assessee. It is for the assessee to establish by evidence that a particular allowance is justified. 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 the facts and circumstances / situations of the case as held by the Hon'ble Gauhati High Court in the case of Assam Pesticides & Agro Chemicals V. CIT (1997) 227 ITR 846, 851, 852 (Gauh). In the case of CIT Vs Golcha properties (Pvt.) Ltd. 227 ITR 301 (Raj), the Hon'ble Rajasthan High Court has held that the genuineness of transaction could be decided on the basis of primary facts on records.

5.11 Further, the appellant has submitted that it has declared a GP rate of 11.97% and an NP rate of 8.70% for the assessment year under consideration and therefore, relied on the CBDT instruction numbering 2/2008 dated 22-02-2008 wherein it has been stated that for benign assessment procedure of a diamond trader if the trader declares profit 6% or more of turnover then the same deserves to be accepted. I have perused the said circular. It has been explicitly mentioned in para 'D' that:

D. The procedure shall not apply to an assessee for an assessment year-

- (iv) Where assessment is being made pursuant to a-
 - i. search and seizure action under section 132; or
 - ii. requisition made under section 132A; or
 - iii. survey action 133A.
- (v) where 50 per cent or more of the income from such business of an assessee is claimed as deduction under Chapter-III or under Chapter VI-A of the Income-tax Act.
- (vi) where there is information regarding escapement of income.

In this case, appellant's case was selected for manual scrutiny on the basis of information that a search and seizure action under section 132 of the Act was carried out wherein it was revealed that appellant was one of beneficiary of receiving accommodation entries in form of bogus purchase and income had escaped assessment. Therefore, appellant case falls in above exception and instruction numbering 2/2008 dated 22-02-2008 does not apply.

5.12 Keeping in view the facts in entirety, as discussed above and appellants failure to establish that the purchases are genuine it is held that the books of the appellant were not tenable as per provisions of section 145(3) of the Act, and 25% amounting to Rs. 80,48,367/- of the alleged purchases of Rs.3.21.93,468/- added back by the AO to the business income of the appellant are held to be justified and addition on this account stands confirmed. Accordingly, grounds of appeal raised by the appellant are dismissed.”

5. As the assessee did not find any favor from the finding from the first appellate authority and feeling dissatisfied from the order of the Id. CIT(A), assessee has filed the present appeal as per grounds so raised and reiterated in para 2 above. The Id. AR of the assessee in support of the grounds so raised, filed a detailed submission which is reproduced here in below:-

“Brief facts of the case :-

Assessment proceedings :

The appellant company has been engaged into trading of diamond, gold jewellery etc. For the year under consideration it had filed its ITR on 24.09.2014 declaring an income of Rs. ,79,20,110. The case was selected for scrutiny and notice u/s 143(2) was issued on 30.09.2015. During the assessment proceedings the only point of examination was about the purchases made by the appellant from 11 parties. A search was undertaken by the investigation wing of Mumbai in the case of Bhanwar Lal Jain group of cases. The said Shri Bhanwar Lal Jain has been alleged to be an accommodation entry provider. In the search it came to the notice of the investigation wing that Shri Bhanwar Lal Jain

was controlling various concerns which were issuing bills to various parties in India as accommodation entries. The appellant had also been alleged to have purchased diamond from eleven concerns alleged to be belonging to Bhanwar Lal Jain group. The Id. AO without sharing any information in her possession and merely relying on the information received from investigation wing rejected the books of account u/s 145(3) and disallowed a sum of Rs. 80,48,367 being 25% of purchases of Rs. 3,21,93,468 made from eleven concerns alleged to be belonging to Bhanwar Lal Jain group by relying on the judgement of the Hon`ble Gujarat High Court rendered in the case of Sanjay Oilcake Industries (2008) (10 DTR 153).

First Appeal :

An appeal was preferred to the Ld. CIT (A) who concurred with the view of the Id. AO sustained the order.

Grounds of Appeal :

At this juncture the appellant would like to take one additional ground which is legal in nature and which is being taken for the first time. As the issue is legal in nature and all facts thereto are arising out of assessment order and no further investigations are required to be carried it is sincerely requested to kindly admit the same in accordance with the judgement of the Hon`ble Supreme Court in the case of NTPC Ltd. (229 ITR 383).

The said new ground is as under :-

Ground No. 3 : That the Id. AO has erred seriously on facts in applying the provisions of section 145(3) of the Income Tax Act, 1961 without proving any mistake on the part of the appellant. Such illegal action of the Id. AO may kindly be quashed.

The Id. AO states in her concluding para of the order at second last page of the order that since the assessee is engaged into sales of diamond and hence the only possibility is of purchases being made from a different concern other than the fifteen parties listed above and consequently purchases made from above 11 parties are treated as bogus purchases and the assessee`s books are therefore rejected u/s 145(3) for the same reason.

The Id. AO has stated above facts without :-

- Confronting the appellant with the material in her possession which has been considered by her as adverse.

- Confronting the appellant with the statements of parties recorded during the course of search and which have been relied upon by him.
- Allowing any opportunity of cross examination of persons whose statements have been relied upon by her for which demand was raised by the appellant during assessment proceedings
- Verifying that the assessee has maintained complete quantitative details of the items purchased and sold by it (APB 66) and all such details were appearing in the audit report filed with the department
- Pointing out any mistake in the records of the appellant which indicate that the accounts were not reliable and she has relied merely on the information in her possession as received from investigation wing of Mumbai

The above approach of the Id. AO shows that she guided herself only with the information received from investigation wing of Mumbai and she had pre decided in her mind that 25% disallowance is to be made in the case. In this way her application of provisions of section 145(3) is illegal and unjustified and deserves to be quashed.

Ground No. 1 : That under the facts and circumstances of the case, the Id. CIT (A) has erred seriously on facts in sustaining the action of the Id. AO in considering purchases of a sum of Rs. 3,21,93,468 made from 11 parties as bogus.

The Id. AO has considered the purchases made by the appellant from 11 parties as bogus merely on the basis of the information passed on to her by Investigation wing of Mumbai. The appellant had submitted copies of the purchase bills, confirmation of the parties etc. (APB 2-34A) but she has not made any comments on such vital documents and she insisted on production of all such parties which was an impossible task for the appellant. She did not share the documents in her possession, statements of the parties searched and even failed to produce all such parties before the appellant for cross examination. She even did not share the outcome of independent enquiries conducted by her about such alleged bogus parties. The Id. AO did not have any thing in her possession to prove such purchases as bogus. Therefore her action is not in accordance with law and deserves to be quashed.

Ground No. 3 : That under the facts and circumstances of the case, the Id. CIT (A) has erred seriously on facts in sustaining the action of the Id. AO in making an addition of Rs. 80,48,367, being 25% of alleged bogus purchases without any basis.

The Id. AO has relied on the judgment of the Hon`ble Gujarat High Court in the case of Sanjay Oil Cake Industries v/s CIT (2008) (10 DTR 153) for making an addition @ 25% of the purchases from 11 parties which have been alleged to be bogus. Such action of the Id. AO is without any basis or any evidence in her possession to make an upfront disallowance of 25%. She forgot to take into consideration the following facts :-

- The appellant has dealt with diamond and jewellery during the year under consideration. Out of total turnover of Rs. 8.98 Crores it has declared turnover in diamond at Rs. 4.74 Crores and has declared a turnover of Rs. 4.24 Crores in jewellery. Complete details of the same are appearing at APB 66.

The position of Gross Profit declared in both the segments is as under :-

Segment	Turnover	GP Amount	GP Percentage
Diamond	4,73,96,735	48,70,727	10.28%
Jewellery	4,24,27,580	58,88,593	13.88%
TOTAL	8,98,24,315	1,07,59,320	11.98%

The purchases doubted by the Id. AO are only for purchase of diamonds for which copies of all the bills are enclosed in paper book. The appellant has already declared a GP rate of 10.28% in the diamond business which is more than reasonable in diamond trade. By making addition of Rs. 80,48,367 the Id. AO has raised the GP upto Rs. 1,29,19,094 i.e. GP Rate of 27.26% which is not possible by any stretch of imagination..

Regarding such addition reliance is placed on the following judgements of the Hon`ble ITAT :-

i. Sanghavi Exports International P Ltd. v/s DCIT (Mumbai ITAT) (Case Law APB 1-9) : In this case the said party is into diamond export business. Its purchases from 11 parties belonging to Bhanwar Lal Jain group was doubted and the Id. AO made addition of the whole amount of purchases u/s 69C. On appeal the Id. CIT (A) deleted addition u/s 69C and restricted the addition to 3% of the purchases made from such 11 parties. On further appeal the Hon`ble ITAT after observing that the assessee had declared a GP rate of 7.17% which is reasonable deleted the addition of 3% also as made by Id. CIT (A). This cited case has exactly similar circumstances as that of present appellant and hence it is submitted that no further addition was required to be made by the Id. AO and the Id. CIT(A) when the assessee has already declared sufficient gross profit in diamond trade.

ii. Vama International v/s ITO (Mumbai ITAT) (Case Law APB 10-28) : The assessee is into diamond trade. Based on the information about search in the case of Bhanwar Lal Jain group the AO reopened the assessments for the AY 2011-12, 2012-13 and 2013-14 and even after submitting all details such as copy of bills, confirmation, bank statement of the supplier, their ITR etc. the Id. AO made 12.50% addition on the amount of purchases from the concerns controlled by Bhanwar Lal Jain in the AY 2012-13 and 2013-14 and in case of AY 2011-12 made 100% addition in the returned income. In first appeal the Id. CIT (A) sustained the findings of the Id. AO but restricted the addition in all the three years @ 12.50% of the amount of purchases made from such concerns. On further appeal the Hon`ble ITAT deleted the whole addition by observing that the assessee has already declared an overall GP of 6.04% which is more than the reasonable GP. In the case in hand also the GP declared by the appellant is on very good footings and no disallowance was required to be made.

iii. Rajendra Prasad Chaudhary v/s ACIT (Jaipur ITAT) (Case law APB 29-39) : The assessee is into diamond trade and 148 proceedings were initiated by Id. AO on the basis of information received from investigation wing of Mumbai. The Id. AO made addition @ 25% on purchases made from concerns of Bhanwar Lal Jain group as per their routine exercise. However the Id. CIT(A) restricted the GP rate to 8.50% (without confirming any addition made on estimated by Id. AO) and on further appeal this bench of Hon`ble ITAT deleted the whole addition. Relevant observations of the Hon`ble ITAT on the issue of GP rate are in pare 12 of the order (at Case law index APB 37-38) wherein the profit rate declared by the assessee at 7.32% and 7.80% has been considered reasonable. On the footings of GP rate the case of the present appellant is on far better footing as it has already declared profit over 10% in diamond trade.

The appellant has declared an NP of Rs. 78,92,898 (Profit before tax as per APB 57) on a turnover of Rs. 8,98,24,315 yielding an NP rate of 8.79% which is more than reasonable in the trade of diamond. The fact of declare GP and NP rate have been completely ignored by the Id. AO as well as Id. CIT(A).

The appellant also relies on instruction no. 2/2008 dated 22.02.2008 issued by CBDT (APB 65) wherein a GP rate of 6% has been deemed reasonable in diamond trade. Although this instruction was issued for the assessments made during the FY 2008-09 but this shows that the CBDT is conscious about the reasonableness of profit earned in diamond industry. It can not be anticipated that reasonable GP rate which was 6% during PY 2008-09 would rise to higher rate in future in this competitive world. The Id. CIT (A) has stated about applicability of this instruction in the case of the appellant at para 5.11 of his order at page 22 wherein he states that since the case of the appellant was

selected manually on the basis of search in the case of Bhanwar Lal group and hence this instruction is not applicable in the case of the appellant as mentioned in the instructions itself. The instruction although states about such exclusion but it is not clear whether this exclusion is for searched person or for other persons also. From a plain reading it shows that this exclusion clause is applicable for the persons who have been searched and is not applicable on other persons. Therefore the conclusion of the Id. CIT (A) for applicability of this instruction is not correct and deserves to be quashed.

The appellant had submitted all possible evidences in its possession to prove that all such purchases are genuine. Such documents include bills of purchases, confirmed account statements etc. (APB 2-34A) which satisfies the prima facie burden of the appellant. The assessee has maintained complete books of accounts as desired by law including quantitative stock etc. which have not been doubted by the Id. AO and hence her action in making addition @ 50% of such alleged bogus purchases is wrong and unjustified. The appellant has enclosed copies of account statement of all the suppliers (including these 11 parties), its Balance Sheet and Profit & Loss Account for the past three years for your kind verification.

You are sincerely requested to allow the appeal of the appellant and oblige.”

5.1. To support the contentions so raised and in addition to the written submission the Id. AR of the assessee has also submitted a paper book containing following documents which reads as under:-

S. No.	Particulars	Page No.
1.	Details of Supplier	1
2.	Confirmation of account, bills of alleged bogus suppliers,	2-34A
3.	Details of Purchases during the previous year 2013-14	35-36
4.	Account Statement of all suppliers for the relevant PY	37-57
5.	Balance Sheet & P & L Account for the year ended 31.03.2014	58-60
6.	Balance Sheet & P & L Account for the year ended 31.03.2013	61-62
7.	Balance Sheet & P & L Account for the year ended 31.03.2012	63-64

8.	Instruction No. 2/2008 dated 22.02.2008	65
9.	Quantitative Details of items traded during the relevant PY	68

5.2 The Id. AR of the assessee has relied upon the following judgments: -

1. DCIT vs. M/s Sanghavi Exports International Pvt. Ltd. in ITA No. 3305 & 3375/Mum/2017 dated 21.08.2018.
2. M/s Vama International vs. ITO in ITA No. 7315, 7316 & 7317/Mum/2016 dated 15.02.2018.
3. Shri Rajendra Prasad Choudhary vs. ACIT in ITA No. 1495 & 1496/JP/2018 dated 12.06.2019.
4. Smt. Kanta Choudhary vs. ITO in ITA No. 878/JP/2018 dated 06.12.2018.

5.3 In addition to the written submission so filed by the Id. AR of the assessee, he has vehemently argued that though the Id. AO alleged that the assessee has made the purchases which are termed as from the entry provider but at the same time he has agreed that the assessee has sold the goods also and therefore, he has estimated the profit @ 25 % ignoring the facts of the case. It is not disputed by the Id. AO that the assessee has not sold the goods which alleged to be purchased from the bogus bill provider but at the same time he observed that the assessee has taken the bill from those parties but the goods have been received from the different party as the sales is not disputed. Thus, the Id.AR of the

assessee submitted that the dealing of the assessee in diamonds and jewellery is not doubted. The profit of diamonds business and the date of the jewellery is tabulated and disclosed @ 10.28% and 13.88% respectively, which are higher in terms of percentage for the various decision relied upon hereinabove and therefore there is no requirement to reject the books result declared by the assessee. The Id. AR of the assessee in support of the additional ground so raised in this appeal as ground No. 3 that while rejecting the books of accounts, the Id. AO has not pointed out any single defect and has simply relied upon the material or the information received from the search which was carried out in Bhanwar Lal Jain Group in Mumbai. The Id. AR of the assessee also submitted that relied upon the material or the statement is not enough and he has not ever said with the name of the assessee and without sharing that the information and without pointing out any single defects in the books of accounts, the rejection of books of account are not in accordance with law. The Id. AR of the assessee further submitted that even the books of account is to be rejected, the Id. AO bound to issue the show cause notice and should also demonstrate as to why he wanted to apply the GP rate and thereby intend to estimate the income of the assessee. As it is

seen that there is no such show cause notice of estimation was ever been given to the assessee. The Id. AR of the assessee further submitted that he was not given to the said specific show cause notice for rejection of books of account and even otherwise the order after rejection of books of account is required to be passed u/s 144 of the Act whereas in the case of the assessee the order has been passed u/s 143(3) of the Act. Therefore the rejection of books of account is not as per provisions of the Act and also not correct on fact as the assessee was neither given any material relied upon nor was one any single defect in the books of account in support of the alleged peculiar purchases. The Id. AR of the assessee in the assessment proceedings submitted copy of invoices, copy of confirmation of account this primary details submitted were enough ever been confronted to be incorrect and there is no whisper in the assessment order as to incorrect of these information simply there is an information from the investigation wing the books which are maintained in the regular course of business and same are audited by an independent Chartered Accountant the same cannot be rejected. To support, this contention, the Id. AR of the assessee relied upon on the written submission filed so far and the various decisions and he

has on facts differentiated the relied upon decisions by the Id. DR as the same are on different finding and facts. In those case relied upon by the AO/DR wherein there is recorded the finding that the purchases recorded in the books are bogus based on the material placed on record whereas in this case the Assessing Officer in the assessment order recorded that finding that the purchases are in fact bogus but the material are received from the other person this it self proves that though it is alleged that the bills recorded in the books if found bogus the consequent goods have been received and the sales is also recorded in physical of those goods. Not only that in this case there is no finding that the bills and confirmation are also bogus or incorrect on the merit of the case. The Id. AR of the assessee relied upon the judgment of the Coordinate Bench of Mumbai and ITAT, Jaipur wherein the GP rate was accepted at lower than what is disclosed by the assessee. The Id. AR of the assessee further submitted that since the Board has categorically admitted that 6% GP rate to be fair enough if declared by the diamonds dealers whereas in this case for the year under consideration the assessee has disclosed GP @ 10.28%. The findings of the Id. CIT(A) that this instruction is not applicable is against the facts on record. Therefore on these issues, the Id.

CIT(A) has erred in holding that the case of the assessee falls in the exception criteria. Based on this arguments, the Id. AR of the assessee submitted that the appeal of the assessee should be decided on technical ground. Even on merits there is sufficient material on record by the lower authorities and thereby he has supported his arguments.

6. Per contra, the Id. DR relied on the case laws cited here in below and submitted that the assessee is involved in bogus purchase for which the findings of the lower authorities were relied upon by the Id. DR and considering the aspect that the confirmation and bills were not disclosed or contended upon by the AO the matter send back to the AO. The case that is relied upon to support the contentions so raised are :-

- N.K. Proteins Ltd. vs. DCIT (2017) 84 taxmann.com 195 (SC)
- N.K. Industries Ltd. vs. DCIT (2016) taxmann.com 289 (Gujarat).
- Sanjay Oilcake Industries vs. CIT (2009) 316 ITR 274 (Gujarat)

7. In the rejoinder, the Id. AR of the assessee submitted that the year under consideration is the assessment year 2014-15 and there is no merit in the arguments of the Id. DR to send it back to

the file of the AO to decide it as afresh. Because there will not be any more requirement of findings of facts because the material is already available in the original assessment proceedings which the Id. AO has not investigated on account of reasons best known to him. Therefore, he prayed that the issue of estimation of profit may be decided by bench based on the arguments and material advanced in this appeal and prayed for the justice.

8. We have heard the rival contention, perused the material available on record and gone through the judgment relied upon by both the parties to drive home to their respective contentions advance before us. Brief facts of the case is that the assessee is engaged in the business of the purchase, sale manufacturing and trading of gold jewellery with diamond and color stones, diamond and gems stones. The case of the assessee was reopened based on the information received pursuant to the search and seizure action u/s. 132 of the Act in the case of Bhanwarlal Jain Group. In that search it was gathered that group provides accommodation entries of bogus purchases through various benami concerns operated and managed by Bhanwarlal Jain and his son. A search revealed various incriminating documentary evidences were

seized. In addition, statement of various persons (who assist Bhanwarlal Jain in providing bogus purchases through benami concerns to the beneficiaries) were recorded. Mr. Bhanwarlal Jain in his statement accepted to the fact that he was engaged in providing bills and his reply relied upon by the Id. AO in his order is reproduced as under :

“I do agree that import of diamonds is made on behalf of various certain local parties who do not wish to show such imports in their books of accounts. On receiving the consignment, the material is handed over to real importer out of books. However, in the books of the concerns managed and controlled by me and my son Shri Rajesh Jain, the said consignment still appear as stock since the material has been sold to the real importer out of books. To show sales against the bogus stock outstanding in Books, bogus sale, bill are issued to parties against their purchases made in cash. These parties who take accommodation entry from your concerns make payment through RTGS. This RTGS is in turn used to make payment to the foreign parties from whom import has been made. The parties who have been given payment for such bogus purchase through RTGS want their cashback. In the meantime, the real importer on whose behalf import has been made, make the payment for the said import through cash transaction. The cash thus received from the real importer is used to pay back the parties from whom RTGS has been received against bogus accommodation entry.”

9. Thus, he has agreed that he deals with two parties once who import and take the goods without bill and other who takes the bill and does not take the goods. Even the Id. AO has accepted the fact the assessee has purchased the goods in cash and taken the bill from the alleged firm of Mr. Bhanwarlal Jain partly to the extent

of Rs. 3,21,93,468/- and has added lumpsum amount of 25 % calculated on these purchases as income. Thus, bench noted that the Id. AO has not disputed the fact that the assessee has received the goods from supplier who did not give the bill and has received the bill who did not supply the goods so though the purchase are made from a person who give the goods but not a bill and received a bill from the party who did not give the goods. So receipt of the goods is not disputed but the only dispute is as to real cost of purchase in this case whether the same is inflated or at the same as it prevalent in the market. The Id. AR of the assessee to substantiate this view heavily relied upon the details of the quantity filed at paper book page 66 and vehemently argued that the since the sales and quantity records are not found incorrect the consequent observation of the estimating the profit @ 25 % is also incorrect. As the decision relied upon in the case there were issue as to quality of the goods and in fact in some cases observed that the goods in fact not been purchased and the case law cited related to the food and oil industries where the price or very low. Whereas the case of the assessee relates to the costlier jewellery items where the profit margins are very thin and thought cut competition exist and thus profit margin are very less. Even this

issue is examined by the board and issued the instructions no. 2/2008 dated 22.02.2008 and the same is reproduced to understand the issue on hand :

INSTRUCTION NO. 2/2008
SECTION 143 OF THE INCOME-TAX ACT, 1961 - ASSESSMENT -
'BENIGN ASSESSMENT PROCEDURE' FOR ASSESSEES ENGAGED IN
DIAMOND MANUFACTURING AND/OR TRADING

INSTRUCTION NO. 2/2008, DATED 22-2-2008

The undersigned is directed to state that the 'Benign Assessment Procedure', in the case of assessee engaged in diamond business as announced by Hon'ble Finance Minister in his Budget Speech on 28-2-2007 shall be as under :—

A.	The procedure will apply to assessee engaged in the business of manufacturing and/or trading of diamonds (referred to below as such business).
B.	If an assessee has shown a sum equal to or higher than 6 per cent of his total turnover from such business as his income under the head 'Profits and gains of business or profession' for a particular assessment year, the Assessing Officer shall accept his trading results.
C.	(i) The assessee shall be required to maintain separate books of account of such business.
	(ii) Acceptance of profit at 6 per cent or above as per para (B) for a particular assessment year will not be a precedent for that assessee or for any other assessee.
D.	The procedure shall not apply to an assessee for an assessment year—
	(iv) where assessment is being made pursuant to a—
	(i) search and seizure action under section 132; or
	(ii) requisition made under section 132A; or
	(iii) survey action 133A
	(v) where 50 per cent or more of the income from such business of an assessee is claimed as deduction under Chapter III or under Chapter VI-A of the Income-tax Act;
	(vi) where there is information regarding escapement of income.
E.	The rate of profit as a percentage of turnover would be reviewed annually on the basis of revenue generation and results of scrutiny

	assessments, searches and surveys made during the year.
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2. The above instruction is issued under section 119(1) of the Income-tax Act, 1961 and would be applicable for assessments made during financial year 2008-09. The instruction may be brought to the notice of all concerned in your Region.

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10. Based on the above instruction Id. AR stated that the board has clarified that the profit in this business if disclosed @ 6 % whereas in the case of the assessee the profit is disclosed at higher rate and therefore, the assessment made by the Id. AO and confirmed by the Id. CIT(A) is against the instructions of the board. On this aspect of the case we are in agreement of the contention of the assessee that the rate of the profit is more than 6 % then in that case the same should have been accepted. At the same time we are of the considered view that the contention of the Id. DR and that of the lower authorities that the assessee is coming under the exemption category as given in D above. But bench observed that in the exemption will apply only if the assessment of the assessee consequent to his own search whereas the search is not conducted with the business of the assessee. Even the books of account were not found defective and the Id. AO accepted that in fact the assessee has purchased the goods and the same is not doubted. Therefore, now only issue that what will be the rate of profit in present set of facts and material placed on record. As the

Id. AO has not found any defects and in the books of accounts maintained which are audited. The assessee has placed on record the quantitative details and bills and consequent payment details which are not found faults by the lower authorities. Merely the Bhanwarlal Jain accepted that he is involved in giving the diamond in cash as well as by issuing the bogus bill too the lower authorities have confirmed the estimation of the profit. It is not disputed that the profit declared by the assessee for the diamond and jewellery business declared @ 11.98 %. Whereas the instruction of the board as reiterated here in above suggest that the profit declared 6 % by the assessee should be considered while accepting the income of the assessee dealing in diamonds. On going through the statement of Mr. Bhanwarlal Jain he has not stated that he is not engaged in the business of diamond but accepted the fact that he is giving the delivery of the diamond out of books and also issue invoice so where he gives diamond, he did not give bill and where he gives bill did not give diamond. The fact that the assessee has purchased the diamond is not disputed by the Id. AO. The bench so note that the Id. AO he invoked the provision of section 145(3) of the Act but the assessment is passed u/s. 143(3) and not show cause notice to justify the rate of profit estimation was given to the

assessee. On going through the overall facts, instruction of CBDT and the fact that the quantity of purchase and sales is not doubted, the books were not found defective and the order is passed u/s. 143(3) of the Act we are of the considered view that the assessee has duly discharged its burden of proving the genuineness of book results. The assessing officer has not done any independent and proper investigation. He simply relied upon he statement of third party who also stated that he is involve in the diamond business though the modus operadi is different. Thus, merely the third person stated that he is involved in issuing accommodation bill, the book results declared by the assessee which is higher then the industry norms prescribed by the board the action of the assessing officer in estimating the profit over and above the books results confirmed by the Id. CIT(A) is not in accordance with the law. As the judgment relied upon by the revenue has different facts and circumstance whereas the Id. AR of the assessee has relied upon the following judgment of the co ordinate benches wherein the facts were identical and additions were deleted :

1. DCIT vs. M/s Sanghavi Exports International Pvt. Ltd. in ITA No. 3305 & 3375/Mum/2017 dated 21.08.2018.
2. M/s Vama International vs. ITO in ITA No. 7315, 7316 & 7317/Mum/2016 dated 15.02.2018.

3. Shri Rajendra Prasad Choudhary vs. ACIT in ITA No. 1495 & 1496/JP/2018 dated 12.06.2019.

4. Smt. Kanta Choudhary vs. ITO in ITA No. 878/JP/2018 dated 06.12.2018.

Respectfully following and taking the consistent view of the matter as taken in the above cases having similar set of facts we vacate the addition of Rs. 80,48,367/-. Based on this observation the appeal of the assessee is allowed.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 18/07/2023.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 18/07/2023

*Santosh.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Khandelwal Diamonds Pvt. Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- DCIT, Circle-1, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 245/JPR/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar