

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

**BEFORE SHRI PAVAN KUMAR GADALE, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 786/MUM/2023 (A.Y. 2008-09)

Sky Gem CC – 2081, G Block Bharat Diamonds Bourse Bandra Kurla Complex Bandra (E), Mumbai -400051 PAN: AAYFS8765J	v.	DCIT, Central Circle-1(1) Room No. 905, 9 th Floor Pratishtha Bhavan Maharishi Karve Road Mumbai - 400020
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Suchek Anchaliya & Shri Tushar Nagori
Department Represented by	:	Ms. Kavita Kaushik
Date of Conclusion of Hearing	:	14.06.2023
Date of Pronouncement	:	19.07.2023

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against common order of Learned Commissioner of Income Tax (Appeals)-47, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 06.02.2023 for the A.Ys. 2008-09, 2010-11, 2011-12, 2012-13 and 2013-14.

2. Briefly stated the facts are that, assessee filed return of income on 27.09.2008 declaring income of ₹.1,41,980/- for the A.Y. 2008-09 and the return was processed u/s. 143(1) of Income-tax Act, 1961 (in short "Act"). The case was reopened u/s. 147 of the Act by issue of notice u/s.148 of the Act after recording the reasons. Notices u/s. 143(2) and 142(1) of the Act were issued and served on the assessee. In response, Authorised Representative of the assessee attended and submitted the relevant information as called for.

3. Assessee is engaged in the business of Diamond Manufacturing & Trading. A search and survey action was conducted in the case of Shri Bhanwarlal Jain group by DGIT (Investigation) Mumbai. Subsequently, Assessing Officer received information from the DGIT(Inv.), Mumbai about the accommodation entries provided by various dealers operated by Shri Bhanwarl Jain group and assessee was also one of the beneficiary from those dealers. The assessment was reopened u/s. 147 of the Act based on the information received from DGIT (Inv.), Mumbai, that the assessee has availed accommodation entries from Laxmi Trading Co. who are said to be providing accommodation entries without there being transportation of any goods. In the reassessment proceedings, the assessee was asked to prove the

genuineness of the purchases made from Laxmi Trading Co. In response, assessee filed its submissions vide letter dated 10.03.2016 and submitted that the purchases made are genuine.

4. Not convinced with the submissions of the assessee the Assessing Officer treated the purchases as non-genuine and he was of the opinion that assessee had obtained only accommodation entries without there being any transportation of materials and the assessee might have made purchases in the gray market. Accordingly, Assessing Officer treated the said purchases made for an amount of ₹.59,54,363/ as bogus and non-genuine purchases and added a sum of ₹.2,97,718/- being 5% of the purchases.

5. Further, Assessing Officer observed from the documents forwarded by the DGIT (Inv.) Mumbai, and details submitted by the assessee that during F.Y. 2007-08 assessee had taken fresh unsecured loan of ₹.12,50,000/- from Laxmi Trading Co., which is bogus concern of Bhanwarlal Jain and as assessee failed to provide the evidences whatsoever which would cumulatively prove all the three essential ingredients, such as, identity, creditworthiness, genuineness of the loan lenders, he held that the said unsecured loan cannot be accepted as

genuine borrowings of the assessee. Accordingly, an amount of ₹.12,69,726/- (loan ₹.12,50,000 + Interest ₹.19,726/-) is treated as deemed income of the assessee for the year under consideration and added to the total income of the assessee u/s 68 of the Act.

6. On appeal, the Ld.CIT(A) sustained the action of the Assessing Officer. Against this order of the Ld.CIT(A), assessee is in appeal before us.

7. Assessee has raised following grounds in its appeal: -

"1 On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in not considering that the assumption of jurisdiction by the Ld. Assessing Officer is bad in law as the conditions laid down under the Act for initiating reassessment proceeding u/s 147 of the Act have not been fulfilled.

2. On the facts and circumstances of the case and in law, the Ld. CIT (A) erred in confirming the addition of Rs.2.97,718/- being 5% of Rs. 59,54,363/- by treating genuine purchases made by the appellant in the normal course of business, as bogus purchase, without appreciating the fact that the appellant has submitted all relevant documentary evidences to substantiate the genuineness of the impugned purchases.

3. On the facts and circumstances of the case and in law, the Ld. CIT (A) erred in confirming the addition of Rs.12,69,726/- by treating genuine loan taken of Rs. 12,50,000/- and interest of Rs. 19,726/- thereon paid by the appellant, as unexplained source of income, without appreciating the fact that the appellant has submitted all relevant documentary evidences to substantiate the genuineness of the impugned transaction.

4. On the facts and in the circumstances of the case and in law, the Ld. CTT (A) erred in confirming the addition made by Ld. AO, without providing any opportunity of cross examination, without any

corroborative evidence and without providing copy of statements relied upon.

5. The appellant craves to add, alter, classify, reclassify, delete or modify any of the above grounds of appeal and requests to consider each of the above grounds without prejudice to one another."

8. With regard to Ground No. 1 which is relating to assumption of jurisdiction by the Ld. Assessing Officer is bad in law as the conditions laid down under the Act for initiating reassessment proceeding u/s 147 of the Act have not been fulfilled. In this regard, Ld. AR of the assessee submitted that assessee is a diamond trader and he brought to our notice Page No. 27 of the Paper Book which is "reasons for reopening" issued by the Assessing Officer in which Assessing Officer has discussed the reasons to believe that income has escaped for A.Y. 2010-11 whereas the issue involved is relating to A.Y. 2008-09. He submitted that the Assessing Officer initiated the proceedings only to make rowing enquiries. Further, he brought to our notice Page No. 30 of the Paper Book wherein the Assessing Officer has disposed of the various objections raised by the assessee for reopening the assessment.

9. On the other hand, Ld. DR objected the submissions of the Ld. AR and he submitted that Assessing Officer has dealt with the objections

raised by the assessee in his order. Therefore, he relied on the orders of lower authorities.

10. Considered the rival submissions and material placed on record, we observe from the record that Assessing Officer received information from investigation wing about the possible accommodation entries. At that point of time, Assessing Officer had reasons to believe that the income has escaped. Therefore, we are inclined to dismiss the Ground No.1 raised by the assessee.

11. With regard to Ground No. 2, relating to Ld. CIT(A) confirming the addition of ₹.2.97,718/- being 5% of ₹.59,54,363/-, Ld. AR of the assessee reiterated the submissions made before the Ld.CIT(A). Further, Ld. Counsel for the assessee submitted that assessee is in the business of Diamonds and the profit percentage in the diamond manufacturing business ranges from 1.0% to 3.0%. Ld. AR submitted that the profit percentage sustained by the Ld.CIT(A) is on higher side and prayed that the reasonable percentage may be adopted.

12. Ld. AR of the assessee submitted that Assessing Officer has considered the submissions and rejected the submissions and relevant documents submitted in support of the purchases made and he treated

the purchases as bogus purchases and estimated the income. In this regard he relied on the decision of the Coordinate Bench in the case of Indo Unique Trading Pvt. Ltd., v. DCIT in ITA.No. 6341/Mum/2016 dated 16.08.2017 and he brought to our notice Para No. 11 of the above order.

13. On the other hand, Ld. DR supported the orders of the authorities below.

14. Considered the rival submissions and material placed on record, we observe that the case of the assessee is reopened after the expiry of four years based on the information received from office of the Director of Income Tax (Investigation-II), Mumbai that assessee has indulged in receiving accommodation entries from the Banwarlal Jain Group. Even in this case, the Assessing Officer has recorded the reason that there was a failure on the part of the assessee to disclose fully and truly, however, he has not brought on any specific material in this regard. In the exactly similar case, the Coordinate Bench has decided the issue in the case of Indo Unique Trading Pvt. Ltd., v. DCIT in ITA.No. 6341/Mum/2016 dated 16.08.2017 in which it is decided as under: -

"10. We have heard rival contentions and perused the record. We notice that the assessing officer has reopened the assessment for the second time after expiry of four years

from the end of the assessment year, on the basis of information received from the investigation wing about the bogus nature of transactions entered by Shri Bhanwarlal Jain group. Even though the AO has mentioned the reasons that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment, yet he has not specified the manner of failure.

11. On the contrary, we notice that the assessee has proved the genuineness of purchases by obtaining confirmation letters in the form of affidavits from all the suppliers. The AO has done independent enquiry during the course of assessment proceedings by issuing notices u/s 133(6) of the Act to all the suppliers. We notice that the notices were duly served upon the suppliers and they have also responded by filing their replies duly confirming the transactions. The AO has rejected the replies by observing that the replies lacked details and they did not mention about the nature of transactions. In our view, the said observations are vague in nature. On the contrary, a perusal of the affidavits furnished by the suppliers would show that they have confirmed the sales effected by them to the assessee. Further they have also verified and signed the ledger account copies as available in the books of account. When the suppliers confirm that the transactions of sales made by them to the assessee are genuine, that too, in response to the notices issued by the AO u/s 133(6) of the Act during the course of assessment proceedings, in our view, the said replies cannot be rejected without bringing on record any material to show that they are not true. We notice that the AO did not bring any material on record and he simply relied upon the report given by the investigation wing. As per Ld A.R, the statement given by Shri Bhanwarlal Jain is a general statement only. The assessee, as stated earlier, has furnished confirmation of ledger accounts and also affidavits to prove the genuineness of transactions. We notice that the AO could not controvert those documents.

12. In view of the foregoing discussions, we are of the view that the assessee has duly discharged the burden to prove the genuineness of purchases. On the contrary, the AO has simply relied upon the report given by the investigation wing. In this view of the matter, we are of the view that no addition is called for on account of alleged bogus purchases. Accordingly we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the impugned addition.

13. Since we have decided the issue contested on merits in favour of the assessee, we do not find it necessary to adjudicate the issue urged on validity of reopening of assessment, as the same would be academic in nature.

15. Respectfully following the above said decision, we direct the Assessing Officer to delete the additions made in relation to estimation made on bogus purchases. Accordingly, Ground No. 2 of grounds of appeal raised by the assessee is allowed.

16. With regard to Ground No. 3 which is in respect of Ld.CIT(A) confirming the addition of ₹.12,69,726/-, as unexplained source of income. Ld. AR of the assessee brought to our notice findings of the assessing officer that, assessee has taken unsecured loans from the same party i.e., Laxmi Trading Co., with whom assessee has purchased goods to the extent of ₹.12.5 lakhs by relying on the statement of Shri Banwarlal Jain. Assessing Officer has disallowed the same by invoking provisions of section 68 of the Act and also disallowed the relevant interest paid by the

assessee. In this regard Ld. AR of the assessee submitted that the assessee has already proved the genuineness of the transactions by submitting the documents and assessee has already proved the identity, creditworthiness and genuineness as per provisions of section 68 of the Act by submitting the relevant information and documents before the assessing officer. Assessing Officer has merely relying on the statement of Shri Bhanwarlal Jain that it is a bogus accommodation entry, without going into the documents submitted by the assessee, disallowed the same. Further, he submitted that the assessee has settled the above said unsecured loans with the interest in the subsequent assessment year.

17. On the other hand, Ld. DR relied on the orders of the lower authorities and he brought to our notice Para No. 10.10 of the assessment order and he submitted that the whole transaction emanating from the party i.e Laxmi Trading Co., which is controlled by the Bhanwarlal Jain Group, therefore, it shows that the whole transaction entered by the assessee with this party is questionable and who provides accommodation entries. It is a proved fact that the whole transaction with this party is bogus transaction. He submitted that the assessing officer has discussed the modus operandi and relied on the decision of the Coordinate Bench in

the case of ITO *v.* M/s. Sai Everest Building & Development in ITA.No. 6489/Mum/2019 dated 18.05.2022.

18. In the rejoinder, Ld. AR relied on the case laws submitted in the compilation.

19. Considered the rival submissions and material placed on record, we observe that assessee has taken unsecured loans from Laxmi Trading Co., and submitted the confirmations letters from them which is placed on record at Page No. 41 of the Paper Book. At the same time, assessee also submitted bank statements and financial statements of Laxmi Trading Co., in the Paper Book and it is brought to our notice that assessee has repaid the unsecured loans on 11.04.2008 along with interest, the same is indicated in the bank statement of Laxmi Trading Co., (ING VYSYA BANK – Page No. 46 of the Paper Book]. Therefore, assessee has demonstrated that assessee has taken unsecured loans on 13.02.2008 and repaid the same on 11.04.2008 along with interest. Normally accommodation entries are taken and the unsecured loans remain unsettled for a long period of time. However, in the given case it is demonstrated that assessee has taken loan and repaid the same in the subsequent assessment year. Therefore, it is brought to our notice the transaction is genuine.

Therefore, we are inclined to accept the submissions of the assessee. Accordingly, Ground No. 3 raised by the assessee is allowed.

20. With regard to Ground No. 4 and 5, Ld. AR of the assessee submitted that these grounds are not pressed, accordingly, the same are dismissed as not pressed.

21. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 19th July, 2023.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai / Dated 19.07.2023
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum