

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : H : DELHI

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No.3665/Del/2019
Assessment Year: 2013-14

Jagat Jewels,
11/5-B, Pusa Road,
Metro Pillar No.132,
New Delhi.

Vs ITO,
Ward-50(3),
New Delhi.

PAN: AAJFB6203F

ITA No.4707/Del/2019
Assessment Year: 2013-14

ITO,
Ward-50(3),
New Delhi.

Vs. Jagat Jewels,
11/5-B, Pusa Road,
Metro Pillar No.132,
New Delhi.

PAN: AAJFB6203F

(Appellant)

(Respondent)

| | | |
|-----------------------|---|--|
| Assessee by | : | Shri Mayank Patawari, CA & Shri Shrey Sinha, Advocate |
| Revenue by | : | Ms Princy Singhla, Sr. DR |
| Date of Hearing | : | 11.05.2023 |
| Date of Pronouncement | : | 26.07.2023 |

ORDER

PER M. BALAGANESH, AM:

These cross appeals by the assessee in ITA No.3665/Del/2019 and by the Revenue in ITA No.4707/Del/2019 for AY 2013-14, arise out of the order of the Commissioner of Income Tax (Appeals)-35, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No.150/18-19, dated 26.02.2019 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 28.03.2016 by the Assessing Officer, Ward 50(3), New Delhi (hereinafter referred to as 'Id. AO').

2. The issue in dispute in assessee's appeal as well as in Revenue's appeal is only on account of disallowance made for unverifiable purchases.

3. We have heard the rival submissions and perused the material available on record. We find that the assessee is an ownership firm carrying on the business of trading in jewellery. The return of income for the AY 2013-14 was filed by the assessee firm on 14.09.2013 declaring total income of Rs.3,82,119/-. During the course of assessment proceedings, the entire books of account of the assessee together with the bills and supporting documents were called for by the Id. AO. The same were duly furnished by the assessee before the Id. AO. The Id. AO, on perusal of the books of account of the assessee and on the basis of information received from the Id. Commissioner of Income-tax, Central Circle-4, Surat, observed that the assessee firm had obtained accommodation entry in the form of bogus purchases through Shri Rajendra Jain, Shri Sanjay Choudhary and Shri Dharmichand Jain during FY 2012-13. Accordingly, the Id. AO sought to examine the veracity of the purchases made by the assessee from the following parties:-

| <i>S.No.</i> | <i>Particulars</i> | <i>Amount (Rs.)</i> |
|--------------|---|---------------------|
| 1. | <i>M/s Dharam Impex House No.5/981/982, First Floor, Office No.106, Saryu Chambers, Jadakhadi, Mahinderpura, Surat, Gujarat</i> | <i>25,74,990</i> |
| 2. | <i>M/s Chintamani Exports 12, Shakti Chambers, Raghunath Pura Main Road, Sural Gujarat</i> | <i>1,61,51,360</i> |
| 3. | <i>M/s Garima Exports 219, World Diamond Centre, Hathfalia, Mahidharpura, Surat, Gujarat</i> | <i>27,01,000</i> |
| 4. | <i>M/s Kushal Exports 103, Dev Sagar, Dalgiya Street, Near H.D.C, Mahidhra Pura, Surat, Gujarat</i> | <i>32,56,000</i> |
| 5. | <i>M/s Yogi Diamonds 12, Shakti Chambers, Raghunathpura Main Road, Sural, Gujarat</i> | <i>20,82,800</i> |

4. The assessee furnished the following details in respect of the aforesaid purchases to prove the genuineness of the same:-

- a) Ledger confirmation from the supplier;
- b) Return of income of the supplier;
- c) PAN of the supplier;
- d) Bank statement of the supplier in respect of M/s Dharam Impex and M/s Chintamani Exports;
- e) Certificate of Import-Export Code and Central Sales-tax Registration in respect of Dharam Impex;
- f) Gujarat VAT and Maharashtra VAT registration certificate of M/s Dharam Impex;
- g) VAT returns of all the parties;

- h) CST returns of M/s Chintamani Exports; and
- i) Affidavits duly notarized from all the aforesaid parties confirming the supply of diamonds duly mentioning the quantity, invoice number, date of invoice and value thereon and also confirming the fact of receipt of monies for the same from the assessee through regular banking channels. These affidavits are enclosed in pages 45-49 of the paper book.

5. The Id. AO disbelieved the entire documents filed by the assessee and proceeded to treat the purchases made from the aforesaid parties as bogus and disallowed a sum of Rs.2,67,66,150/- in the assessment.

6. Similarly, in respect of purchase made by the assessee from M/s Anshika Jewellers for Rs.84,82,500/-, the assessee furnished the primary details before the Id. AO such as ledger confirmation, purchase bills, bank statements, VAT report of VAT Department reflecting the purchase along with copy of D-VAT returns, copy of VAT report showing registration as active at the given address of the supplier. The Id. AO issued notice u/s 133(6) of the Act to M/s Anshika Jewellers and the said notice was returned unserved with the postal remarks, "locked" on several occasions. Accordingly, the Id. AO concluded that the existence of the said supplier is not proved by the assessee. Hence, he treated the purchases made from the said party in the sum of Rs.84,82,500/- as bogus and disallowed the same in the assessment.

7. Before the Id.CIT(A), the assessee furnished all the documents and pleaded that the evidences filed by him were not appreciated by the Id. AO. Accordingly, the Id. CIT(A) sought a remand report from the Id. AO. During the remand proceedings, the Id. AO, in respect of the purchases made from the first

five parties listed *supra*, made an independent inquiry by issuing notices u/s 133(6) of the Act to all those parties. All those parties directly responded before the Id. AO duly confirming the transactions carried out with the assessee by furnishing the necessary documentary evidences. The fact of enquiries conducted by the Id. AO and the documents submitted by those five suppliers are enclosed in pages 114 to 135 of the paper book.

8. It is a fact that the transactions carried out by the assessee on account of the first five parties listed *supra*, was treated as bogus by the Id. AO based on the statements recorded from Shri Rajendra Jain and Suredra Jain u/s 132(4) of the Act during the course of their search u/s 132 of the Act. Further, DCIT, Central Circle-4, Surat had also submitted a report that all the premises of the suppliers were found to be closed on the Inspector's visit thereof. The assessee submitted before the Id.CIT(A) that a search was conducted in Surat during assessment year 2008-09 on certain parties which is five years before the transactions carried out by the assessee in AY 2013-14. Hence, the search reports of AY 2008-09 belonging to a third party in Surat cannot be utilized for framing assessment for AY 2013-14 in the hands of the assessee. The assessee re-furnished the books of account for re-examination by the Id. AO in the remand proceedings. All the necessary details that were called for by the Id. AO in the remand proceedings were duly submitted before him. No discrepancies whatsoever were found by the Id. AO in the replies and documentary evidences filed by the assessee. All these persons whose statements were relied upon by the Id. AO were not even put to assessee for his rebuttal. No opportunity of cross-examination was provided to the assessee to examine these persons whose statements were relied upon by the Id. AO. The Id.CIT(A), however, simply ignored all these contentions of the assessee. The Id.CIT(A), however,

stated that the assessee had submitted all the relevant documentary evidences together with the affidavits from the suppliers confirming the entire transactions carried out with the assessee. But, he observed that the DCIT, Central Circle-4, Surat's report cannot be brushed aside despite the fact that the transactions were carried out through the regular banking channels. Accordingly, he proceeded to apply the gross profit reported by the assessee @ 19.84% to be the profit of the assessee in respect of these purchase transactions from five parties. Accordingly, he applied the gross profit rate of 19.84% on the value of disputed purchases from five parties in the sum of Rs.2,67,66,150/- and added the profit embedded in the value of such purchases at Rs.53,10,404/- (Rs.2,67,66,150/- x 19.84%) as income of the assessee.

9. In respect of the purchases made by the assessee during Anshika Jewellers, the Id.CIT(A) similarly applied the gross profit rate of 19.84% as profit embedded in the value of such purchases and added a sum of Rs.16,82,928/- (Rs.84,82,500/- x 19.84%) as income of the assessee.

10. Aggrieved by the aforesaid action of the Id.CIT(A), both the assessee as well as the Revenue are in appeal before us.

11. It is not in dispute that the assessee had made purchases from total six parties. It is not in dispute that apart from filing the relevant purchase details, corresponding sales details, VAT returns of suppliers, VAT registration certificates of suppliers, bank statements of suppliers, bank statements of the assessee evidencing payments made to suppliers through regular banking channels, purchase bills, the assessee had also furnished the stock register showing quantitative details of purchases and sales. Further, the assessee has also duly

submitted affidavits from the concerned suppliers confirming the entire transactions. Notices issued u/s 133(6) of the Act to the 5 suppliers were also duly responded by the concerned suppliers directly before the Id. AO in the remand proceedings duly confirming the fact of having transactions with the assessee. This fact is evident from the remand report issued by the Id. AO before the Id.CIT(A) which is enclosed in pages 74-75 of the paper book. Admittedly, the entire purchases and sales are duly reflected in the books of account regularly maintained by the assessee. No defects whatsoever were found either in the books of account produced by the assessee or in the documentary evidences submitted by the assessee or in the replies filed by the suppliers in response to the notice issued u/s 133(6) of the Act directly before the Id. AO. When all these facts are staring on us, there is absolutely no scope of disbelieving the purchases made by the assessee from the five suppliers merely based on search statements recorded from certain third parties at Surat during the course of search conducted in AY 2008-09 which are absolutely not relevant for framing the assessment in the AY 2013-14 in the hands of the assessee. Hence, we hold that the Id.CIT(A) erred in bringing to tax the profit element of 19.84% on the value of disputed purchases. In fact, no addition could be made in these peculiar facts and circumstances of the case in view of the fact that the purchases made by the assessee together with the corresponding sales thereon and the profits derived thereon (which includes profit on disputed purchase and undisputed purchase) have already been disclosed by the assessee in the returns of income. Hence, we hold that the purchases made from five suppliers totaling to Rs.2,67,66,150/- should be held as genuine.

12. With regard to the purchase made from Anshika Jewellers, it is not in dispute that the assessee has furnished confirmation and ledger from the said supplier, purchase bills, bank statement reflecting the payments made to them by regular banking channel, copy of VAT report of VAT Department reflecting the purchases along with copy of D-VAT returns, copy of VAT report showing registration of the said supplier as active at the given address, sales register evidencing the corresponding sales made out of disputed purchases and stock register showing quantitative details thereon. No adverse inferences were drawn on the aforesaid documentary evidence by the Revenue. When all these facts are staring on us, merely because the concerned supplier had not responded to the notice issued u/s 133(6) of the Act by the AO, the Id. AO was not justified in disbelieving the purchases made by the assessee. The assessee cannot be made responsible for producing the supplier in later years when transactions with the concerned supplier had been carried out in earlier years. In any case, non-production of a concerned supplier for examination by the assessee would not make the transaction ingenuine. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of *Orissa Corporation Ltd., reported in 159 ITR 78*. There are other means to verify the existence of the said supplier by the Revenue in the manner known to law. The assessee had duly discharged its primary onus to prove the veracity of the purchases. The corresponding sales is also duly disclosed by the assessee. Hence, there is absolutely no justification for making any addition by disbelieving the purchase made from Anshika Jewellers. Hence, we hold that no addition should be made by disbelieving the purchases from Anshika Jewellers. Accordingly, the grounds raised by the assessee are allowed and the grounds raised by the Revenue are dismissed.

13. In the result, the appeal of the assessee is allowed and the appeal of the Revenue is dismissed.

Order pronounced in the open court on 26.07.2023

Sd/-

(SAKTIJIT DEY)
VICE-PRESIDENT

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 26th July, 2023.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi