

आयकर अपीलिय अधिकरण  
मुंबई पीठ "एस एम सी" , मुंबई  
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
आअसं. 1617/मुं/2023 (नि.व 2008-09)  
ITA NO.1617/MUM/2023(A.Y 2008-09)

Purna Purshottam Exports,  
Gala No.329, Vardhman Industrial Estate,  
Behind Petrol Pump, SV Road,  
Dahisar East, Mumbai 400 068

PAN: AAIEFP-8085-E

..... अपीलार्थी /Appellant

बनाम Vs.

Income Tax Officer 32(2)(5) ,  
Mumbai.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri K. Gopal

प्रतिवादी द्वारा/Respondent by : Shri Sunny Kachhwaha

सुनवाई की तिथि/ Date of hearing : 25/07/2023

घोषणा की तिथि/ Date of pronouncement : 25/07/2023

आदेश/ ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-48, Mumbai [ in short 'the CIT(A)'] dated 05/04/2023 for the Assessment Year 2008-09.

2. Shri K. Gopal appearing on behalf of the assessee submitted that, the assessee is engaged in the business of polishing and trading of diamonds. The assessment for Assessment Year 2008-09 in the case of assessee was reopened on the ground that the assessee has indulged in obtaining accommodation entries from M/s. Sparsh Exports Pvt. Ltd., a group concern of Rajendra Jain. According to the Assessing Officer, the assessee obtained bogus entries to the

tune of Rs.13,00,556/- during the Financial Year 2007-08. The Assessing Officer made addition on the entire alleged bogus purchases. The assessee carried the issue in appeal before the CIT(A). The CIT(A) confirmed the assessment order, hence, the present appeal.

3. The Id.Counsel for the assessee submitted that the sales declared by assessee have been accepted by the Assessing Officer, without purchases there cannot be sales. Therefore, entire alleged bogus purchases cannot be added. The Id.Counsel for the assessee pointed that the assessee has declared G.P of 5.95% for the period relevant to Assessment Year 2008-09. In the preceding Assessment Year the G.P was far less. The Id.Counsel for the assessee pointed that G.P in diamonds trade generally ranges between 3% to 5%, he prayed for restricting the addition on alleged bogus purchases by estimating G.P as per industry norms.

4. Per contra, Shri Sunny Kachhwaha representing the Department vehemently defended the impugned order and prayed for dismissing appeal of the assessee. The Ld. Departmental Representative submitted that assessee has failed to discharge its onus in proving genuineness of the purchase transactions. Referring to the assessment order he pointed that Rajendra Jain in the statement recorded during search action u/s. 132 of the Income Tax Act, 1961 [ in short 'the Act'] on 03/10/2013 have admitted the fact that he is in the business of providing accommodation entries through group concerns including proprietorship firms, partnership firms and various companies. M/s. Sparsh Exports Pvt. Ltd., is one of such company floated by Rajendra Jain group. He supported the impugned order and prayed for dismissing appeal of the assessee. He further placed reliance on the decision in the case of N.K. Proteins Ltd. vs. DCIT reported as 250 Taxman 22(SC).

5. Both sides heard, orders of authorities below examined. The assessee in appeal has raised seven grounds. In ground No.1 & 2 of appeal, the assessee has assailed reopening of assessment. The Id.Counsel for the assessee stated at Bar that he is not pressing ground No.1 and 2. In view of the statement made by Id.Counsel for the assessee, ground No.1 and 2 of appeal are dismissed as not pressed.

6. The ground No.3 to 6 of appeal are in respect of single issue i.e. addition of Rs.13,00,556/- made on account of bogus purchases. The addition has been made in the hands of assessee for obtaining accommodation entries to the tune of Rs.13,00,556/- from M/s. Sparsh Exports Pvt. Ltd., a group concern of Rajendra Jain. Undisputedly, the assessee failed to discharge its onus in proving genuineness of purchases made from said company. Thus, the Assessing Officer made addition of the entire such purchases. It is equally true that the Assessing Officer accepted sales declared by the assessee. No discrepancy was pointed by the Assessing Officer with respect to the inventory. Thus, without purchases there cannot be sales. The possibility of assessee procuring diamonds from grey market cannot be ruled out. The Hon'ble Bombay High Court in the case of PCIT vs. Paramshakhti Distributors Pvt. Ltd. in Income Tax Appeal No.413 of 2017 decided on 15/07/2019 has held that in such like transactions entire purchases cannot be added. It is only the profit embedded in purchases covered by bogus bills that can be added. Taking into consideration entire facts, the suppressed profit on bogus purchases is estimated at 4%. The Assessing Officer is directed to restrict addition on bogus purchases, accordingly. Consequently, ground No.3 to 6 of appeal are partly allowed.

7. The ground No.7 is general in nature, hence, require no separate adjudication.

8. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open Court on Tuesday the 25<sup>th</sup> day of July, 2023.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 25/07/2023

Vm, Sr. PS (O/S)

**प्रतिलिपि अग्रेषित**Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)/  
Sr.Private Secretary  
**ITAT, Mumbai**