

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI**

**BEFORE,
DR. B.R.R.KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.5964/Del/2019
(ASSESSMENT YEAR 2007-08)**

Shree Krishna Jewellers Rasik Makkar N-59, Greater Kailash-1 New Delhi-110 048 PAN-AATFS 2960C (Appellant)	Vs.	Income Tax Officer Ward -47(4) New Delhi (Respondent)
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Appellant by	None
Respondent by	Mr. Anuj Garg, Sr. DR
Date of Hearing	03/08/2023
Date of Pronouncement	09/08/2023

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal filed by Assessee against the order passed by the Learned Commissioner of Income Tax (Appeals)-16, New Delhi ["Ld. CIT(A)", for short], dated 22/04/2019 for Assessment Year 2007-08.

2. The following grounds raised by assessee in this appeal:

"1. That the Assessment Order dated 30.03.2015 passed u/s 147 of the L. T. Act 1961, by Income Tax Officer, Ward-47(4), Range-47, CIT-16, New Delhi, is bad in law, facts & equity.

2. That on the facts and circumstances of the case the said Officer erred in rejecting the objections of the Appellant raised for re-opening of the assessment u/s 147 without giving any reasons and without any basis.

3. That on the facts and circumstances of the case the said Officer erred in re-opening the assessment of the Appellant without independently forming a belief that the income has escaped assessment and instead blindly followed the instructions of the investigation for re-opening the assessment of the Appellant.

4. That on the facts and circumstances of the case the said Officer erred in making an addition of Rs. 63,00,167/- on account of bogus purchases, without any basis and without providing any opportunity.

5. That on the facts and circumstances of the case the said Officer erred in making an adhoc addition for entire purchases made from M/s AVI Exports and M/s Vitrag Jewel as bogus purchases, on the information received from the Investigation Wing of the Department.

6. That on the facts and circumstances of the case the said Officer erred in relying upon the statements made by the owners of M/s AVI Exports and M/s Vitrag Jewel to the Investigation Team from Mumbai, and no opportunity was given to the Appellant to cross examine them.

7. That on the facts and circumstances of the case the said Officer erred in not accepting the statements, confirmations and affidavits of the aforesaid suppliers which was submitted to the said officer by the Appellant and also sent by them directly to the said officer.

8. That without prejudice to the above grounds, disallowances and additions to the returned income is highly excessive and much beyond the requirements of the case.”

2. Brief facts of the case are that, an assessment order came to be passed on 30/03/2015, by making an addition of Rs. 63, 00,167/- on the ground that, the assessee made purchase of Rs. 63,00,167/- (90% of Rs. 70,00,185/- i.e. cost of diamonds) from sources outside the books of accounts and the same

has been held to be an adjustment entry. Aggrieved by the assessment order dated 30/03/2015, the assessee preferred an appeal before the CIT(A), the ld. CIT(A) dismissed the Appeal filed by the assessee on 22/04/2019. Aggrieved by the order of the CIT(A) the assessee preferred the present appeal on the grounds mentioned above.

3. None appeared for the assessee though the notice issued by the registry served on the assessee, thus, we are constrained to decide the Appeal after hearing the Ld. Departmental Representative and on verifying the records.

4. The Ld. Departmental Representative submitted that during the relevant Financial Year, the assessee had made total purchase of Rs. 70,00,185/- from certain firms indulged in providing accommodation entries therefore, the said purchase is bogus and the same is only adjustment entries, further submitted that the assessee had admitted that he does not have any show room or store at hand and only the paper work is being carried on in respect of number of firms. Therefore, the ld. CIT(A) rightly upheld the Assessment order which requires no interference and thus submitted that the Appeal requires to be dismissed.

5. Heard the Ld. DR and perused the materials on record. The Ld. CIT(A) while deciding the issues, observed and concluded as under:-

“The above statements of the proprietor of M/s Vitrag Jewels clearly prove that this concern was doing the business of providing accommodation entries controlled by a different person. The proprietors claim that he did not know the clientele of the concern of which he is a proprietor. Thus the evidence of TAN, Sales Tax Registration PAN etc. have no value so far as genuineness of the transactions are concerned

The above facts would clearly show that Sh. Mudit P. Karnawat was a benami person and the affairs of the firm were being controlled by some other person(s). The said arm did not have any stock in physical form nor there do any show room to display the products. Even a small pansari who does the business some type of organizational set up However, in the case of M/s Vitrag Jewels, there was no member of staff and the proprietor had no knowledge of the affairs of the firm Sh. Mudit P. Karnawat was only a dummy person.

As per order sheet entry dated 10.02.2015 and 09.03.2015 assessee was asked to produce both the persons before the undersigned. In reply to that assessee made his request that he is unable call them here and the department may issue summons u/s 131 of the Income Tax Act, 1961 as per the reply filed by the assessee on 09.03.2015. As per reply dated 17.03.2015 the assessee submitted his reply at serial no. 03 is reproduced as under-

"As already informed to you, our letter doted 09.03.2015, the Prop. Vitrag Jewells, Kaushal Exports & AVI Exports have refused to attend your office on our request and have stated

that they have already sent their confirmations of their dealings with us We have submitted confirmations of the parties to you earlier. As they stay in Surat/Mumbai and you have all the resources at your disposal to summon them, so we request you that in case you still need their personal presence, then please summon them to your office."

The submission of the assessee read carefully but found not acceptable. The request of the assessee to issue summons by the department cannot be accepted as under the Civil Procedure Code, the authorities cannot call any person for cross examine living beyond 250 KMs and therefore, I am under legal compulsion to not accede the request of the assessee.

Now coming to the merits of the matter, it will be appropriate to mention certain facts regarding the initiation of proceedings u/s 147 of the Income tax Act. The assessee deals in Gold and Diamond Jewellery. Surat is a big hub of raw diamond. The diamond dealers comes from various parts of the country to Surat and purchase raw diamond from the grey market and make payments to them in cash. Thereafter, they require proper documents to bring it in their books of accounts. The assessee makes payments to the parties from whom the raw diamond is purchased. Since the material is purchased, the payment has to be made through banking channels to escape from the provisions of section 40A [3] of the Income Tax Act and it is very clear from the chart diagram on page no. 02 in Block (E) i.e. concerns purchasing diamonds in cash from grey market and taking bogus purchase bills to regularized the purchases in books of accounts as stated by Sh. Rajendra S. Jain in his statement recorded on oath during the search as under-

"The concerns in Block E are the concerns that require bogus purchase bills for diamonds; however our concerns have bogus stock of diamonds in our books of accounts, which are shown to be purchase/imported from foreign concerns. Therefore, the diamonds shown to be purchase/imported from foreign concerns by us are again shown to be sold to the independent concerns mentioned in Block-(E). These concerns on Block E take purchase bills from our concerns Block C without actual delivery of diamonds. The payment made through cheque or RTGS by these concerns Block E get utilized for the payments made in foreign currency to the foreign concerns mentioned in Block B, as per the terms designed and under intimation to the key person controlling the concerns of Block D. Against the payment made by concerns of Block E through cheque or RTGS, the cash component generally settled by the key persons controlling the concerns of Block D, directly or indirectly by taking services of Angadia."

During the relevant financial year the assessee made total purchases of Rs. 70, 00,185/- from the above said firms indulged in providing accommodation entries. The above facts would clearly go to prove that these were only adjustment entries. It may be noted that no business man would like to give a categorical statement that he is doing the business of providing accommodation entries. It was also admitted by him that he does not have any show room or stock at hand and only the paper work is being carried on in respect of number of firms. If the entire facts are taken in totality, it will clearly go to prove that these are only adjustment entries. I, therefore, hold that the assessee has made purchases of Rs. 63,00,167/- [Rs. 90% of Rs. 70, 00,185/- i. e the cost of diamonds] from sources outside the

books of accounts and, therefore, held to be an adjustment entry and the said amount will be added towards the income of the assessee from Undisclosed sources. I have given the margin of 10% as in the grey market goods are transacted at the lower price than market price.

(Addition Rs. 63, 00,167/-)”

4. It is found from the record that the assessee had shown to have made total purchase of Rs. 70,00,185/- from certain firms which are indulged in providing accommodation entries, further the assessee himself admitted that he does not have any show room or stock at hand and only paper work is being carried on in respect of number of firms and by taking the facts and circumstances we find no error or infirmity in the order of the CIT(A), considering the fact that the assessee has failed to appear either to argue or to produce any material to contradict the findings of the Lower Authorities, we find no merit in the grounds of Appeal, accordingly the Appeal filed by the assessee is dismissed.

5. In the result, the Appeal filed by the assessee is dismissed.

Order pronounced in open Court on 09th August, 2023

Sd/-
(DR. B.R.R.KUMAR)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: 09/08/2023

Pk/R.N, Sr.ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI