

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA Nos. 3851 & 3852/Mum/2019
(Assessment Years: 2008-09 & 2009-10)

M/s. C Mahendra Exports Limited Tower C Office No. 6011, Bharat Diamond Bourse BKC, Mumbai-400 051	Vs.	DCIT 14(1)(2) Mumbai
PAN/GIR No. AACCC 9633 L		
(Appellant)	:	(Respondent)
Assessee by	:	Shri Bharat Kumar
Revenue by	:	Shri K. C. Selvamani
Date of Hearing	:	31.07.2023
Date of Pronouncement	:	23.08.2023

ORDER

Per Kavitha Rajagopal, J M:

These appeals have been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals)-21, Mumbai passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Years ('A.Y.' for short) 2008-09 and 2009-10.

2. The appeals are time barred by four days and the assessee had filed an affidavit for condoning the said delay. We find that there was sufficient cause for the delay, hence, we hereby condone the delay in filing the present appeal.

3. As the facts are identical, we hereby pass a consolidated order by taking ITA No. 3851/Mum/2019 as the lead case.

ITA No. 3851/Mum/2019

4. The assessee has challenged the grounds of addition amounting to Rs.42,30,72,132/- being 100% of the amount of alleged bogus purchase made from various parties. The assessee had also challenged the ground of not giving sufficient opportunity by the Id. CIT(A), thereby violating the principles of natural justice.

5. The brief facts are that the assessee company is engaged in the business of manufacturing, trading and exporting of cut and polished diamonds. The assessee has filed its return of income dated 30.09.2008, declaring total income at Rs.Nil under the normal provisions of the Act after claiming deduction u/s. 10B of the Act amounting to Rs.26,63,63,580/- and book profit of Rs.40,14,87,463/- u/s. 115JB of the Act. The assessee's case was selected for scrutiny and the assessment order dated 14.02.2002 was passed u/s. 143(3) of the Act determining the total income at Rs.9,11,21,154/- under the normal provisions of the Act and book profit at Rs.40,25,90,555/-. Subsequent to this, the assessee's case was reopened u/s. 147 of the Act vide notice u/s. 148 dated 25.02.2015 for the reason that the A.O. received information from DIT-II, Mumbai that the assessee was one of the beneficiary of bogus purchase from the entities managed by Shri Bhawarlal Jain who was an accommodation entry provider based on the search and seizure action carried out in the case of Shri Bhanwar Lal Jain group on 03.10.2013. The A.O. then passed the assessment order dated 28.03.2016 u/s. 143(3) r.w.s. 147 of the Act determining the total income at Rs.51,41,93,290/-. The A.O. without rejecting the books of accounts had made addition on the bogus purchase made by the assessee from around 8 entities managed by Shri Bhanwar Lal Jain.

6. The assessee was in appeal before the first appellate authority challenging the impugned addition made by the A.O.
7. The ld. CIT(A), on the other hand, has held both the sales as well as the purchase to be bogus and made 100% addition on the alleged bogus purchases u/s. 69C of the Act as unexplained expenditure.
8. Further aggrieved the assessee is in appeal before us, challenging the order of the ld. CIT(A).
9. The learned Authorised Representative ('ld. AR' for short) for the assessee contended that the A.O. had not doubted the sales made by the assessee and only the corresponding purchases were held to be bogus by the A.O. The ld. AR further stated that the ld. CIT(A) has erred in holding both the sales and the purchases to be bogus. The ld. AR also contended that the assessee has furnished the stock register, bank register, copies of bills, affidavit, etc. during the assessment proceeding and the payments for the impugned purchase was made by account payee cheques and the same was not considered by the lower authorities. The ld. AR further stated that the A.O. has merely relied on the statement of Shri Bhanwar Lal Jain and had not given an opportunity of cross examining while making the impugned addition. The ld. AR relied on various decisions to support the assessee's claim.
10. The learned Departmental Representative ('ld.DR' for short), on the other hand, controverted the said fact and vehemently opposed to the submission made by the ld. AR.

The Id. DR stated that the assessee has not made any purchases from these bogus entities and there was also no actual delivery of goods and the same was corroborated further by the statement of Shri Bhanwar Lal Jain recorded u/s. 131 of the Act. The Id. DR further contended that the Id. CIT(A) has rightly held both the purchases and sale transaction to be bogus and the assessee has not discharged the onus cast upon it to prove the identity, creditworthiness of the parties and genuineness of the transaction. The Id. DR relied on the order of the lower authorities.

11. We have heard the rival submissions and perused the materials available on record. It is observed that the Tribunal vide an *ex parte* order dated 24.03.2022 has decided the appeal against the assessee and the same was recalled by miscellaneous petition filed by the assessee. It is observed that pursuant to a search and seizure operation carried out in the case of Shri Bhanwar Lal Jain where the statement of oath u/s. 131 were recorded purportedly stating that the accommodation entries were provided to various parties in the name of 68 entities tabulated in the assessment order which was run by son-in-law of Shri Bhanwar Lal Jain namely Shri Nitin Amarchand Shah. The A.O. has reopened the assessee's case for the reason that out of 68 entities, the assessee has obtained bogus purchase from 8 entities listed below:

<i>Sr. No.</i>	<i>Name of the concerns</i>	<i>A.Y.</i>	<i>Amount (Rs.)</i>
1	<i>Jewel Diamond</i>	<i>2008-09</i>	<i>Rs.10,29,52,557</i>
2	<i>Kothari & Co.</i>	<i>2008-09</i>	<i>Rs.2,20,83,208</i>
3	<i>Little Diamond</i>	<i>2008-09</i>	<i>Rs.6,60,36,587</i>
4	<i>Meridian Gems</i>	<i>2008-09</i>	<i>Rs.2,82,05,363</i>
5	<i>Minal Gems</i>	<i>2008-09</i>	<i>Rs.7,90,90,390</i>
6	<i>Mouli Gems</i>	<i>2008-09</i>	<i>Rs.8,07,79,442</i>
7	<i>Rose Gems Pvt. Ltd.</i>	<i>2008-09</i>	<i>Rs.28,06,751</i>
8	<i>Sankhala Exports P. Ltd.</i>	<i>2008-09</i>	<i>Rs.4,11,17,334</i>
			<i>Rs.42,30,72,132</i>

12. The statement of Shri Bhanwar Lal Jain explains the modus operandi of carrying out these bogus transactions. The assessee contended that the same is not a bogus transaction for the reason that for every purchase there has been a corresponding sale and the payment made for such purchases were by account payee cheque duly reflected in the bank statements and books of accounts. The payments for the sales were also made through proper banking channels. The assessee further stated that the purchase and sales are duly recorded in the assessee's stock register and the books were also audited u/s. 44AB of the Act. The assessee further contended that the entire details of the purchase made from these 8 entities were given to the A.O. which includes the name and address of the party, confirmation from parties, copy of bills, mode of payment and other details. The assessee contended that it had discharged the primary onus casted upon by it. The assessee had relied on various decisions of the Hon'ble High Courts, wherein it was held that if the sales are genuine then the corresponding purchase should have been made from the grey market for which only the addition on the profit embedded in such profit should be added and not the entire purchases.

13. In our considered opinion, it is observed that the A.O. has not rejected the books of account and has held only the purchases to be bogus. On the contrary, the Id. CIT(A) has held both the sales as well as the purchases to be bogus. The assessee without prejudice ground has stated that if the purchase is held to be bogus, only the profit embedded in the said purchase should be added as opposed to the entire purchase.

14. From the facts of the present case, we deem it fit to restore this issue back to the file of the A.O. with a direction to verify both the sale transaction as well as the purchase transaction made by the assessee during the impugned year. The A.O. has failed to consider these during the assessment proceeding. It is also evident that the A.O. has placed reliance merely on the statement of Shri Bhanwar Lal Jain which the assessee alleges that no opportunity was given to cross examine Shri Bhanwar Lal Jain. It is pertinent to note that the onus is casted upon the assessee to present the said party before the A.O. to prove that the purchase transaction made with these entities are genuine, not giving an opportunity to cross examine the parties whom the assessee has made purchase does not cause prejudice to the assessee in any manner whatsoever may be. Hence, this issue is remanded back to the file of the A.O. for verifying the facts specified above.

ITA No. 3852/Mum/2019

15. This appeal filed by the assessee for A.Y. 2009-10 is also on identical facts and the observations held in ITA No. 3851/Mum/2019 holds good and apply *mutatis mutandis* to this appeal also.

16. In the result, both the appeals filed by the assessee are allowed for statistical purpose.

Order pronounced in the open court on 23.08.2023.

Sd/-

(Prashant Maharishi)
Accountant Member

Mumbai; Dated : 23.08.2023
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai