IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 787/MUM/2023	**ITA No. 788/MUM/2023**
(Assessment Year: 2010-11)	**(Assessment Year: 2011-12)**
ITA No. 789/MUM/2023	**ITA No. 790/MUM/2023**
(Assessment Year: 2012-13)	**(Assessment Year: 2013-14)**

Sky Gem,
CC 2081, G Block, Bharat Diamond Bourse,
Bandra Kurla Complex,
Mumbai - 400051
[PAN: AAYFS8765J] ..... **Appellant**

Vs

DCIT, Central Circle 1(1),
Pratistha Bhawan,
Mumbai - 400020

..... **Respondent**

Appearance

For the Appellant/Assessee	**:**	Shri Suchek Anchaliya
For the Respondent/Department	**:**	Shri Paresh Deshpande

Date

Conclusion of hearing	**:**	28.06.2023
Pronouncement of order	**:**	23.08.2023

O R D E R

Per Rahul Chaudhary, Judicial Member:

1. This is a batch of four appeals pertaining to Assessment Years 2010-11 to 2013-14 preferred by the Assessee against the common order, dated 06/02/2023, passed by the Ld. Commissioner of Income Tax (Appeals) 47, Mumbai [hereinafter referred to as 'the CIT(A)'] All the appeals involve identical issues the same were heard together and are being disposed by way of a common order.

ITA No. 787/MUM/2023 (Assessment Year: 2010-11)

2. We would first take up appeal for the Assessment Year 2010-11 which has been preferred by the Assessee challenging the common order, dated 06/02/2023, passed by the CIT(A) whereby, inter alia, the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 30/03/2016, passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

3. The Appellant has raised following grounds of 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.15,46,747/- being 3% of Rs. 5,15,58,261/- by treating genuine purchases made by the appellant in the normal course of business, as bogus, 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. 61,00,000/- by treating genuine loan taken 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. CIT (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"

4. The relevant facts in brief are the Appellant, partnership firm

engaged in the business of manufacture and trading of diamonds, filed return of income for the Assessment Year 2010-11 declaring income of INR 35,85,042/-. The return was processed under section 143(1) of the Act. Subsequently the case of the Appellant was reopened and notice under Section 148 of the Act was issued on 04/03/2015. In response to the aforesaid notice, the Appellant filed letter stating that the original return filed on 26/09/2010 be treated as a return filed in response to notice issued under Section 148 of the Act and requested for a copy of reasons recorded for reopening the assessment. The reasons recorded for reopening the assessment were provided to the Appellant on 16/10/2015 against which objections were filed by the Appellant vide letter dated 19/10/2015. The Assessing Officer rejected the objections raised by the Appellant vide order, dated 04/12/2015, and completed the assessment under Section 143(3) read with Section 147 of the Act at the assessed income of INR 1,12,31,790/- after making (a) addition of INR 15,46,747/-, being profits embedded in non-genuine purchases of INR 5,15,58,261/- computed at the rate of 3% of such non-genuine purchases; and (b) addition of INR 61,00,000/- under Section 68 of the Act being aggregate amount of unsecured loans taken by the Appellant during the relevant previous year treated by the Assessing Officer as unexplained cash credit.

4.1. Being aggrieved the Appellant preferred appeal before the CIT(A) challenging the validity of reassessment proceedings as well as the additions made on merit. Vide order dated 06/02/2023, the CIT(A) dismiss the appeal preferred by the Assessee.

4.2. Therefore, being aggrieved, the Appellant has preferred the present

appeal before us.

5. We have heard both the sides at length on the issue of validity of reassessment proceedings and on merits of the additions made. We have also perused the material placed on record. We find that the reassessment proceedings have been initiated within a period of 4 years from the relevant assessment year as the notice under Section 148 of the Act for initiating the reassessment proceedings under Section 147 of the Act for the Assessment Year 2010-11 has been issued on 04/03/2015. The reasons recorded for reopening the assessment read as under:

> *"Specific Information has been received from the office of Director of Income Tax (Investigation- 11), Mumbai vide letter dated 10.03.2014 that the assessee has indulged in receiving accommodation entries from the Bhanwarlal Jain group which is a leading entry provider of Mumbai. The group provides accommodation entries of bogus unsecured loans and bogus purchases through 70 benami concerns operated and managed by Bhanwarlal Jain and his sons. During a search & seizure action in the case of Bhanwarlal Jain group carried out by Investigation wing, Mumbai several incriminating documentary evidences have been found and statements of various key persons involved have been recorded.*
>
> *In view of the detailed enquiries made by the Directorate, it is evident that the assessee has taken accommodation entries from the Bhanwarlal Jain group. Hence, I have reason to believe that income has escaped assessment for A.Y. 2010-11 in the case of the assessee within the meaning of section 147 of the Income Tax Act, 1961."*

5.1. The reasons recorded state that the Appellant has indulged in receiving accommodation entries from Bhanwarlal Jain Group - a leading accommodation entry provider of Mumbai engaged in providing accommodation entries of bogus unsecured loans and

bogus purchases through 70 benami concerns. However, the reasons recorded provide no details or information regarding the accommodation entries actually obtained by the Appellant and/or their link with the escapement the income. Even the order, dated 04/12/2015, passed by the Assessing Officer rejecting the objections filed by the Appellant against the reopening of the assessment, does not state the accommodation entries taken by the Appellant. However, in relation to the nature of accommodation entries, the said order states as under:

> *"as per information available, the undersigned holds a reasonable belief that you have taken unsecured loan entries from been concerns of Bhanwarlal Jain Group to introduce bogus loan into your books of accounts."*

5.2. The details of alleged accommodation entries taken by the Appellant were neither set out in the reasons recorded nor in the order, dated 04/12/2015, passed by the Assessing Officer rejecting the objections against reopening the assessment. The basic requirement of Section 147 of the Act is that the Assessing Officer should apply mind to the tangible material before recording reasons. Further, the reasons recorded must demonstrate a link between the tangible material and the formation of the reasons to believe that income has escaped assessment. The Hon'ble Bombay High Court has while examining the case of re-opening assessment in a case where assessment was previously framed under Section 143(3) of the Act in the case of Hindustan Lever Ltd. vs. R.B. Badkar 268 ITR 332 (Bom)., held as under:

> *"20. The reasons recorded by the Assessing Officer nowhere state that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that*

assessment year. It is needless to mention that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. It is for the Assessing Officer to reach to the conclusion as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestation of mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment. The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral submission, otherwise, the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches to the Court, on the strength of affidavit or oral submissions advanced.

21. Having recorded our finding that the impugned notice itself is beyond the period of four years from the end of the assessment year 1996-97 and does not comply with the requirements of proviso to section 147 of the Act, the Assessing Officer had no jurisdiction to reopen the assessment proceedings which were concluded on the basis of assessment under section 143(3) of the Act. On this short count alone the impugned notice is liable to be quashed and set aside."

5.3. Thus, it has been held by the Hon'ble Bombay High Court that the reasons are to be read as they have been recorded by the Assessing Officer. Neither any addition/substitution can be made to

the reasons recorded nor can any inference be drawn. Therefore, the reasons recorded must be self-explanatory disclosing application of mind by the Assessing Officer. The reasons recorded should also be clear and not suffer from any vagueness. Further, the reasons recorded must identify the link between the tangible material and formation of belief that income as escaped assessment in order to guard against arbitrary exercise of reopening of assessment.

5.4. In the present case, the reassessment proceedings have been initiated on the basis of information received from Investigation Wing which can, in our view, constitute a tangible material for reopening the assessment. However, mere reference to such information in the reasons recorded, without any indication of application of mind to such information in reasons recorded, does not satisfy the requirement of Section 147 of the Act. On perusal of reasons recorded we find that the same are general in nature giving no information about the accommodation entry - its number, nature, or quantum. The reasons recorded do not state how many accommodation entries were taken or the aggregate amount involved. Whether as per the information received by the Assessing Officer the Appellant has taken accommodation entry for bogus purchases or bogus unsecured loan was also not mentioned. The reasons recorded are also silent as to the link between such alleged accommodation entry/entries and the formation of belief by the Assessing Officer that the income has escaped assessment.

5.5. During the course of the hearing the Learned Departmental Representative made an attempt to salvage the situation. The Ld. Departmental Representative submitted that the Assessing Officer

has made reference to the same and had stated in the reasons recorded that on the basis of the aforesaid information the Assessing Officer has formed a belief that income has escaped assessment. Therefore, the reasons recorded show the link between the information received and the reasons recorded. Thus, fulfill the requirements of Section 147 of the Act. Further, Ld. Departmental Representative, without prejudice to the contention that the reasons recorded fulfill the requirement of Section 147 of the Act, contended that voluminous information was received by the Assessing Officer as a result of the investigation into the operation of the Bhanwarlal Jain Group.

5.6. While practical difficulties may be faced by the assessing officers while dealing with the voluminous information received from the Investigation Wing, we note that the provisions contained in Section 147 of the Act do not provide for any latitude to the assessing officers in such a situation. In our view, the reasons recorded must disclose the basic details/nature of the tangible material on the basis of which Assessing Officer has formed the belief that income has escaped assessment. As, in case we hold otherwise, the opportunity granted to the assessee to file objections against reopening of assessment and the requirement of the assessing officer to dispose the same by speaking order, as mandated by the judgment of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd**.** Vs. ITO: (2003) 259 ITR 19 (SC), would get reduced to an empty formality.

5.7. In view of the above, we hold that the reasons recorded fail to satisfy the requirements of Section 147 of the Act and therefore, the Assessing Officer did not have jurisdiction to initiate

reassessment proceedings and pass the consequent reassessment order for the Assessment Year 2010-11. Accordingly, the reassessment proceedings initiated under Section 147 of the Act vide notice dated 04/03/2015 issued under Section 148 of the Act as well as the consequent re-assessment order dated 30/03/2016 stand quashed.

ITA No. 788/MUM/2023 (Assessment Year: 2011-12)

6. Next we would take up appeal for the Assessment Year 2011-12.

7. The appeal for the Assessment Year 2011-12 arises from common order dated 06/02/2023 which in-turn arose from the Assessment Order dated 28/03/2016, passed under Section 143(3) read with Section 147 of the Act.

8. The Appellant has raised following grounds of appeal:

"1. On the facts and in the circumstances of the case and in law, the Ld. CIF (A) erred i considering that the assumption of jurisdiction by the Ld. Assessing Officer is had in law as the conditions laid down under the Act for initiating reassessment proceeding w/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. 41,92,324/-being 5% on purchase of rough diamonds of Rs. 1,37,80255- and 3% on purchase of polished diamonds of Rs. 11,67,76,188 by treating gemaine purchases made by the appellant in the normal course of business, as bogus, 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 in the circumstances of the case and in law, the Ld. CIT (A) med in confirming the addition made by Ld. AO, without providing any opportunity of cuss examination, without any corroborative evidence and without providing copy of stuements

relied upon."

9. We note that reasons recorded for reopening the assessment for the Assessment Year 2011-12 are identically worded when compared to reasons recorded for reopening assessment for the Assessment Year 2010-11. Since the reassessment proceedings were initiated in identical facts and circumstances by assigning identical reasons, both the sides agreed that our findings/adjudication in appeal for the Assessment Year 2010-11 would apply mutatis mutandis to the appeal for the Assessment Year 2011-12. Accordingly, adopting the reasoning given in paragraph 5 to 5.7 above while adjudicating appeal for the Assessment Year 2010-11, we hold that the reasons recorded for reopening assessment for the Assessment Year 2011-12 fail to satisfy the requirements of Section 147 of the Act and therefore, the Assessing Officer did not have jurisdiction to initiate reassessment and pass the consequent reassessment order for the Assessment Year 2011-12. Accordingly, the reassessment proceedings initiated under Section 147 of the Act vide notice dated 04/03/2015 issued under Section 148 of the Act as well as the consequent re-assessment order dated 28/03/2016 stand quashed.

ITA No. 789/Mum/2023 (Assessment Year 2012-13)

10. Next we would take up appeal for the Assessment Year 2012-13.

11. The appeal for the Assessment Year 2012-13 arises from common order dated 06/02/2023 which in-turn arose from the Assessment Order dated 30/03/2016 passed under Section 143(3) of the Act.

12. The Appellant has raised following grounds of appeal:

"1. On the facts and circumstances of the case and in law, the Ld. CIT (A) erred in confirming the addition of Rs. 44,66,235/- being 5% on purchase of rough diamonds of Rs. 1,98,23,995/- and 3% on purchase of polish diamonds of Rs. 11,58,34,551/- by treating genuine purchases made by the appellant in the normal course of business, as bogus purchases, without appreciating the fact that the appellant has submitted all relevant documentary evidences to substantiate the genuineness of the impugned purchases.

2. On the facts and circumstances of the case and in law, the Ld. CIT (A) erred in confirming the addition of Rs. 1,85,00,000/- by treating genuine loan taken 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.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT (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."

13. The relevant facts in brief are that assessment was framed on the Appellant vide assessment order dated 30/03/2016, passed under Section 143(3) of the Act after making (a) addition of INR 44,66,235/- being profits embedded in the alleged bogus purchases computed at the rate of 3% and 5% of the alleged bogus purchases of rough diamond (INR 1,98,23,995/-) and polished diamond (INR 11,58,34,551/-), respectively; and (b) addition of INR 1,85,00,000/- being aggregate amounts of unsecured loan taken by the Appellant during the relevant previous year held by the Assessing Officer to be unexplained cash credit under Section 68 of the Act.

13.1. In appeal the CIT(A) confirmed the additions made by the Assessing Officer by adopting the reasoning given while confirming

addition for the Assessment Year 2010-11; and dismissed the appeal preferred by the Appellant vide common order dated 06/02/2023.

13.2. Being aggrieved, the Appellant in now before us in appeal on the grounds reproduced in paragraph 12 above.

Ground No. 1

14. Ground No. 1 pertains to addition of INR 44,66,235/- made by the Assessing Officer on account of alleged bogus purchases made from the following parties:

Sr. No.	Name of the Party	PAN	Purchase Amount
1	Aastha Impex	AEOPL0917R	1,49,15,255
2	Impex Gems	AHNPJ4936G	1,79,84,724
3	Marvin Enterprises	AAOFM3214C	2,11,16,528
4	Mayur Exports	ABXPJ03747F	2,50,14,544
5	Navkar India	AAHFN4207H	1,50,40,690
6	Suman Export	AKNPC1507H	4,15,86,805
		Total	13,56,58,546

14.1. We note that the Assessing Officer had concluded that the Appellant taken bills for purchase of diamonds from the accommodation entry providing concerns forming part of the Bhanwarlal Jain Group with the object of reducing gross profits while actually making the purchases of diamond/s from grey market. The Assessing Officer was of the view that in such a situation only the profits margin embedded in such transactions could be brought to tax in the hands of the Appellant. The Assessing Officer estimated such profit margin to be 3% in case of purchase of polished diamonds and 5% in case

of purchases made on rough diamonds. Thus, the Assessing Officer made an addition of INR 44,66,235/- computed as under:

Sr. No.	Type of Diamonds	Total Amount of Transaction	Addition @	Amount to be Added
1	Rough Diamond	1,98,23,995	5%	9,91,199
2	Polished Diamond	11,58,34,551	3%	34,75,036
Total		13,56,58,546		44,66,235

14.2. Being aggrieved the Appellant preferred appeal before CIT(A). It was contended on behalf of the Appellant that all the information/documents to prove the genuineness of the purchase transaction were filed by the Appellant before the Assessing Officer. In respect of each of the purchases made, the Appellant had placed Copy of ITR Acknowledgment, Copy of Financial Statements, Accountant Confirmation, Purchase Invoice and relevant extract of Bank Statement pertaining to each of the suppliers/vendors before the Assessing Officer during the assessment proceedings. A statement showing each alleged bogus purchase along with corresponding sales was also furnished by the Appellant. It was submitted before the CIT(A) that the purchases made by the Appellant were at arm's length and the payment of purchase consideration was made by way of account payee cheques. The bank statements of the Appellant as well as the supplier/vendors reflecting the payment through banking channel were also placed before the Assessing Officer. In response to the notices issued by the Assessing Officer under Section 133(6) of the Act, the suppliers/vendors filed replies and confirmed the genuineness of the purchase transactions with the Appellant. However, the CIT(A)

was not convinced and taking note of the fact the suppliers/vendors formed part of Bhanwarlal Jain Group, and Appellant had failed to produce the suppliers/vendors personally before the Assessing Officer during the assessment proceedings, the CIT(A) confirmed the addition made by the Assessing Officer holding that purchases were bogus.

14.3. Before us the Learned Authorised Representative for Appellant reiterated the contentions raised before the Assessing Officer and the CIT(A). Learned Authorised Representative for Appellant vehemently contended that the purchases were genuine and all supporting document were filed during the assessment proceedings. Apart from the failure on the part of the Assessing Officer to produce the suppliers/vendors, the Appellant has complied with all the directions issued by the Assessing Officer during the assessment proceedings and furnished all the details and documents. Even the notices issued by the Assessing Officer under Section 133(6) of the Act were duly responded by the suppliers/vendors. Learned Authorised Representative for Appellant further submitted that in view of the gross profit margins already declared by the Appellant no further addition could be made.

14.4. Per contra the Learned Departmental Representative relied upon the assessment order and submitted that the entities from which purchase was made were part of the Bhanwarlal Jain Group and were actively involved in providing accommodation entires. The fact that the Appellant had failed to produce the parties before the Assessing Officer clearly shows that the purchases were bogus. Learned Departmental Representative also placed reliance on the decision of the Tribunal in the case of Bhanwarlal M. Jain Vs. DCIT

Central Circle- 1(3): ITA No.98-104, 108-114, 2669, 3509/Mum/2018, dated 06/08/2021 and submitted that Mr. Bhanwarlal Jain had admitted to providing accommodation entries with the help of 70 benami concerns.

14.5. We have considered the rival submission and perused the material on record. In the case of Bhanwarl M. Jain (supra), the Mumbai Bench of the Tribunal has held that Mr. Bhanwarlal Jain was engaged in providing accommodation entries through 70 benami concerns. The relevant extract of the aforesaid decision of the Tribunal reads as under:

> *"6. Going by the factual matrix as enumerated in preceding paragraphs, we find that the attitude of the assessee during the course of assessment proceedings was totally non-cooperative. In fact, the assessee remained absent during search proceedings for 3 days. The summons were not complied with and no explanation was furnished on incriminating material. Pertinently, voluminous hand written estimation sheets have been found at various premises of the assessee. The sheets have been admitted to be in the hand writing of assessee's son as well as an employee of the assessee. These sheets contain parallel cash accounts. The entries in the estimated sheets were in the nature of square-off transaction wherein cash received from one party was paid back to another party through Angadiya Account. The pen drive contained calendar year-wise names of beneficiaries, the amount of cash, details of brokerage and commission etc. It also contained complete details of Angadiya Account since 2004 in electronic form. The parallel account maintained on the pen-drive pertained to various concerns, 70 to be precise, being managed and controlled by assessee group. The password of the pen drive was cracked with the help of software programmers. After decrypting the data, print outs were taken and matched with the estimation sheets as well as other data gathered during the course of search action from various premises, disclosed as well as secret. The data was found to be identical. The complete correlation was established between the parallel books of accounts found on the pen drive with books of 70 concerns being managed and controlled by the assessee. It transpired*

that the daily accounts were first written manually on estimation sheets and thereafter entered into pen-drive electronically. So much so, identical pen drive was found from the possession of Shri Rohit Birawat at CST Terminus who was apprehended by the search team while attempting to flee from Mumbai to Rajasthan with incriminating material.

7. *All these facts have been admitted not only by the assessee but also by his son as well as trusted employees in various statements as recorded on oath u/s 132(4) at various points of time. The statements were recorded in the presence of independent witnesses. The contents of the statement were said to be duly explained to the assessee at the time of recording thereof.*

8. *In the backdrop of such clinching and overwhelming evidences, no substance could be found in the plea that the pen-drive did not belong to the assessee or the same was not found from assessee's premises particularly when the contents of the pen drive completely matched with incriminating material found during the course of search operations. The seizure of the same was duly recorded in the Panchnama which was vouched by independent Panchas. The vital link was established between the pen drive and the estimate sheets as well as the regular books of benami concerns being run by the assessee. Therefore, we do not find any substance in this plea as raised by Ld. AR before us and therefore, we reject the same.*

9. *So far as the other arguments are concerned, we find that that the assessee was running more than 70 benami concern under name-sake directors / partners /proprietors. These persons were acting as per the direction of the assessee against remuneration. Most of them, in their statement u/s 132(4), made admission of those facts. They also made admission that they assisted / abetted the assessee in the business of providing accommodation entries. Their PAN Cards, IDs, blank signed cheque books etc were found at centralized premises. They were visiting the centralized premises to sign the blank cheque books as per the directions of the assessee. All these persons had superficial knowledge about nature of business being conducted by their respective concerns. Further, most of these persons were residing at premises owned by the assessee group. The books of accounts of all these entities were being maintained at two premises in a centralized manner. The books were found in the same computer and audited by common*

Auditor. The auditor admitted to have signed the financial statements as per the directions of Shri Lunkaran Parasmal Kothari without verifying the books of accounts. This is further fortified by survey action at BKC, Mumbai wherein more than 30 firms were found to be operating from common premises. All the 70 entities were found to have common features in their respective financial statements. All these factors strongly prove the allegations of the department that all the concerns were being run by the group in a combined manner with a view to provide accommodation entries to various beneficiaries against commission.

10. So far as the retraction of the statement made by the assessee is concerned, we find that the retraction was made after more than 8 months and the same was devoid of any material evidence. The statements were made on oath u/s 132(4) and heavy onus was on assessee to rebut the same with cogent material while retracting the same. However, nothing of that sort as done by the assessee, has been shown before us. Glaring contradictions as well as similarities has been found in the retraction affidavits. As rightly held by lower authorities, the retraction was nothing but mere after-thought and tutored statement to thwart the process of investigation. The retraction was bereft of any material evidence and therefore, the same was to be completely ignored.

11. The aforesaid factual matrix as well as findings would lead to inescapable conclusion that all the 70 entities under consideration were being managed and controlled by the assessee group and therefore, lower authorities were quite justified in estimating commission income earned by the assessee group from all these benami concerns." (Emphasis Supplied)

14.6. We note that even after the above decision of the Tribunal none of the persons, who were stated in the records to be persons in the management and control of the aforesaid 70 concerns belonging to Bhanwarlal Jain Group, have come forward to claim that they were in actual and beneficial owners of the said concerns exercising actual and beneficial management and control. There is nothing on record to persuade us to take a view different from the one taken

by the Tribunal in the case of Bhanwarlal M. Jain (Supra). The Assessing Officer and the CIT(A) have returned concurrent findings that the parties from which alleged purchases were made by the Appellant were part of the aforesaid 70 benami concerns. Further, the Appellant had expressed inability to produce the parties before the Assessing Officer. In view of the aforesaid, we are not inclined to accept that the contention of the Appellant that the purchases were genuine.

14.7. We note that the Assessing Officer had in the present case concluded that only the profit element embedded in the bogus purchases, estimated at 3% for polished diamonds or 5% for rough diamonds, can be brought to tax. However, in our view, the application of the aforesaid rates to make the addition may not yield desirable results in all cases. Both, an assessee grossly understating profits (at say 1%) and another assessee marginally understating profits (at say at 4%), would suffer addition at the rate of 3% of bogus purchases irrespective of the profits disclosed. Therefore, subject to the availability of reliable information, the profit margin disclosed by the Appellant on normal sales *(which would vary depending upon the industry in which an assessee operations and the state of business operations of the assessee)* would be a relevant factor to be considered while estimating profit element embedded in bogus purchases. At this juncture it would pertinent to consider the judgment of the Hon'ble Bombay High Court in the case of The Principal Commissioner of Income Tax-17 Vs. Mohommad Haji Adam & Co.: Income-Tax Appeal Nos. 1004, 1012, 1013, 1059, 1064, 1075, 1095 And 1204 of 2016, 11/02/2019 reported in [2019] 103 taxmann.com 459

(Bombay)[11/02/2019]. In that case the Revenue was aggrieved by the decision of Tribunal whereby the addition on account of bogus purchases to the difference between the gross profit rates of genuine sales and bogus sales. Before the Hon'ble Bombay High Court the Revenue had contended that entire purchases should be added. The Hon'ble Bombay High Court rejected the contention of Revenue and declined to frame question of law. While dismissing the appeal preferred by the Revenue on this issue, the Hon'ble Bombay High Court held as under:

> *"8. In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of N.K. Industries Ltd. (supra) cannot he applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under—*
>
> > *" So far as the question regarding addition of Rs. 3,70,78,125/- as gross profit on sales of Rs. 37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot*

be punished since sale price is accepted by the revenue. Therefore, even if 6% gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66%. Therefore, considering 5.66% of Rs. 3,70,78,125/- which comes to Rs. 20,98,621.88 we think it fit to direct the revenue to add Rs. 20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said question is answered partially in favour of the assessee and partially in favour of the revenue."

9. In these circumstances, no question of law, therefore, arises. All Income Tax Appeals are dismissed, accordingly. No order as to costs."

14.8. On perusal of the above it is clear that the Hon'ble Bombay High Court declined to frame question of law and was not required to examine the issue of estimation of profits in case of bogus purchases. Thus, the aforesaid judgment laid down the preposition that in case of bogus purchases where sales are accepted by the Revenue, entire amount of purchases cannot be added. *[refer to Principal Commissioner of Income-tax v. Batliboi Environmental Engineering Ltd.[2022] 141 taxmann.com 245 (Bombay)].*

14.9. However, we note that the Hon'ble Bombay High Court did observe that the Tribunal correctly restricted the additions limited to the extent of bringing the gross profit rate on alleged bogus purchases at the same rate of other genuine purchases. While observing as aforesaid the Hon'ble Bombay High Court provide a valid parameter for determining the amount of profits embedded in bogus purchases which could be adopted to determine the quantum of addition in a case of bogus purchases representing the benefit drawn by an assessee in making purchases from grey market. However, an assessee cannot as a matter of right claim that the additions on account of purchases should be restricted to the difference between

the profit margin on purchases from grey market and the normal sales accepted by the Revenue and no more. It is trite of law that a judgment cannot be read divorced from the context in which the precise questions had came up for consideration. The Hon'ble Supreme Court had, in the case of CIT Vs. Sun Engineering Works (1992) 198 ITR (SC), observed as under:

> "37. The principle laid down by this Court in *V. Jaganmohan Rao's* case (*supra*) therefore, is …….Such an interpretation would be reading that judgment totally out of context in which the questions arose for decision in that case. It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a latter case, the Courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings. In *H.H. Maharajadhiraja Madhav Rao Jiwaji Rao Scindia Bahadur* v. *Union of India* [1971] 3 SCR 9 this Court cautioned:
>
> > *'It is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment'.*
>
> *38. xx xx"*

14.10. In the case of of Mohommad Haji Adam & Co (Supra) the question of law proposed by the Revenue were as under:

> *"(a) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in not confirming the addition made by the Assessing Officer on account of bogus*

purchases shown to have been made through hawala transactions from certain parties who were only providing accommodation sale bills?

(b) Whether on the facts and in the circumstances of the case and in law, where evidently no purchases were made from these parties who were issuing only bogus accommodation bills and this finding has been accepted by the CIT(A) and the ITAT, the ITAT, without any evidence, was justified in presuming that there must have been purchases and thereupon giving huge relief to the assessee ?

(c) Whether on the facts and in the circumstances of the case and in law, the order of the Hon'ble ITAT is perverse as no reasonable person acting judicially and properly instructed in the relevant law could arrive at such a finding on the evidence on record?"

14.11. The contention of the Revenue was that entire amount of bogus purchases should be disallowed. This was rejected by the Hon'ble High Court. On perusal of the judgment it is clear that no arguments advanced or considered in relation to the issue of estimation of profit element embedded. The issue of perversity raised by the Revenue was examined and answered in view of the facts of that case in favour of the assessee. Finally, the Hon'ble Bombay High Court dismissed the appeal of the Revenue holding that no question of law arose in the said appeal. It is well-settled that a precedent is an authority only for what it actually decides and not for what may remotely or even logically follow from it [Goodyear India Ltd. v. State of Haryana [1991] 188 ITR 402 (SC)]. Therefore, we conclude that reliance placed by Appellant on the judgment of the Hon'ble Bombay High Court in the case of Mohommad Haji Adam & Co (supra) as regards computation of profit element embedded in purchases made from grey market is misplaced. Accordingly, we reject the contention of the Appellant

that the addition made by the Assessing Officer should be restricted to the amount of different between the profits declared on purchases made from grey market and the profits on normal purchases accepted by the Revenue and no more. This issue of estimated profits embedded in purchases from grey market would have to be decided keeping view the facts and circumstances of each case.

14.12. On perusal of record we find that the Appellant has disclosed overall gross profit margins of 5.25% as per tax audit report [placed at page 14 of the paper-book]. However, the gross profit margin rate in respect of alleged bogus purchases comes to 7.26% [as per working placed at page 141 of paper-book] which is more than the overall gross profits by 2%. The aforesaid gross profit margin of 7.26% declared by the Appellant is even more than the acceptable gross profit margin rate of 6% specified in Instruction No. 2/2008, dated 22/02/2008, dealing with the Benign Assessment Procedure for assessees engaged in diamond manufacture and trading industry. Therefore, in the facts and circumstances of the present case, further additions made by the Assessing Officer at the rate of 3%/5% of bogus purchases cannot be sustained. Thus, addition of INR 44,66,235/- made by the Assessing Officer and sustained by the CIT(A) is deleted and Ground No. 1 raised by the Appellant is allowed.

Ground No. 2

15. During the assessment proceedings, the Assessing Officer noticed that the Appellant had taken unsecured loans from entities forming part of Bhanwarlal Jain Group and made an addition of INR 1,85,00,000/- under Section 68 of the Act holding the same to be

unexplained cash credit. The CIT(A) also confirmed the addition. Therefore, the Appellant in now in appeal before us.

15.1. We have heard the rival submission and perused the material on record. A perusal of documents including ledger account and bank statement placed on record shows that the unsecured loans were taken and repaid on the following dates:

Party Name	Loan Received		Loan Repaid		Paper-book Page No.
	Date	Amount	Date	Amount	Bank Statement
Impex Gems	24.06.2011	115,00,000	27.06.2011	35,00,000	144
Mahalaxmi Gems Private Limited	24.02.2012	20,00,000	27.02.2012	20,00,000	156
Mukti Exports	24.06.2011	50,00,000	27.06.2011	50,00,000	164
	Total	185,00,000	Total	185,00,000	

15.2. During the course of hearing the Learned Authorised Representative for Appellant had contended that the loans were genuine taken were normal business loans and taken to meet the temporary requirement of funds. On perusal of the material on record, we find that account confirmations, ledger account and the relevant extract of the bank statement of the lenders corroborating the aforesaid averments made by the Ld. Authorised Representative for the Appellant were placed before the Assessing Officer during the assessment proceedings. A perusal of the extract of bank statement of the lenders furnished by the Appellant shows that there were no cash deposit/withdrawal during that limited period. Since the Appellant had placed the aforesaid information/documents along

with the financial statements of the lenders before the Assessing Officer, the Appellant had, in our view, discharged the primary onus cast upon the Appellant under Section 68 of the Act. The Assessing Officer brushed aside the documents/details furnished by the Appellant by merely stating that the lenders-concerns giving loan to the Appellant were part of the Bhanwarlal Jain Group and that the Appellant had failed to provide any evidence of identity & creditworthiness of the lender and the genuineness of the transaction. We note that the assessment order as well as the order passed by the CIT(A) are silent as to inquiry, if any, conducted by the Assessing Officer. There is no reference to any material on the basis of which additions under Section 68 of the Act were made by the Assessing Officer. From the facts and circumstances of the case and the material on record, it cannot be inferred that the Appellant had introduced its own unaccounted cash income in books as unsecured loans. To the contrary, the material on record supports the stand of the Appellant that the unsecured loans were taken to meet the temporary business requirement and repaid by the Appellant, generally during the relevant previous year. Thus, the funds stayed with the Appellant for a period of less than a year. In view of the aforesaid, addition of INR 1,85,00,000/- made by the Assessing Officer under Section 68 of the Act cannot be sustained and is therefore, deleted. Thus, Ground No. 2 raised by the Appellant is allowed.

Ground No. 3

16. Ground No. 3 raised by the Appellant pertains to the lack of opportunity granted by the Assessing Officer to cross examine etc. and the same is disposed off as being infructuous.

ITA No. 790/Mum/2023 (Assessment Year 2013-14)

17. Next we would take up appeal for the Assessment Year 2013-14.

18. The appeal for the Assessment Year 2013-14 arises from common order dated 06/02/2023 which in-turn arose from the Assessment Order dated 30/03/2016 passed under Section 143(3) of the Act.

19. The Appellant has raised following grounds of appeal:

> *"1. On the facts and circumstances of the case and in law, the Ld. CIT (A) erred in confirming the addition of Rs. 54,18,861/- being 5% on purchase of Rs. 10,83,77,230/- by treating genuine purchases made by the appellant in the normal course of business, as bogus purchases, without appreciating the fact that the appellant has submitted all relevant documentary evidences to substantiate the genuineness of the impugned purchases.*
>
> *On the facts and circumstances of the case and in law, the Ld. CIT (A) erred in confirming the addition of Rs. 6,30,00,000/- by treating genuine loan taken 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.*
>
> *3. On the facts and in the circumstances of the case and in law, the Ld. CIT (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."*

20. The relevant facts in brief are that assessment was framed on the Appellant vide assessment order dated 30/03/2016, passed under Section 143(3) of the Act after making (a) addition of INR 54,18,861/- being profits embedded in the alleged bogus purchases computed at the rate of 5% of the alleged bogus purchases of diamond (INR 10,83,77,230/-); and (b) addition of INR

6,30,00,000/- being aggregate amounts of unsecured loan taken by the Appellant during the relevant previous year held by the Assessing Officer to be unexplained cash credit under Section 68 of the Act.

20.1. In appeal the CIT(A) confirmed the additions made by the Assessing Officer by adopting the reasoning given while confirming addition for the Assessment Year 2010-11; and dismissed the appeal preferred by the Appellant vide common order dated 06/02/2023.

20.2. Being aggrieved, the Appellant is now before us in appeal on the grounds reproduced in paragraph 19 above.

Ground No. 1

21. Ground No. 1 pertains to addition of INR 54,18,861/- made by the Assessing Officer on account of alleged bogus purchases made from the following parties:

Sr. No.	Name of the Party	PAN	Purchase Amount
1	Mayur Exports	ABXPJ03747F	3,95,07,038
2	Mohit Enterprises	ACRPK1211G	3,14,41,139
3	Prime Star	AAHFP4334R	3,74,29,053
		Total	10,83,77,230

21.1. We note that the Assessing Officer had concluded that the Appellant taken bills for purchase of diamonds from the accommodation entry providing concerns forming part of the Bhanwarlal Jain Group with the object of reducing gross profits while actually making the purchases of diamonds from grey market. The Assessing Officer was of the view that in such a situation only the profits margin

embedded in such transactions could be brought to tax in the hands of the Appellant. The Assessing Officer estimated such profit margin to be 5% in case of purchases of rough diamonds from grey market. Thus, the Assessing Officer made an addition of INR 54,18,861/- [10,83,77,230 x 5%]. The CIT(A) confirmed the addition made by the Assessing Officer. Therefore, the Appellant is before us.

21.2. Since the grounds raised in appeal for the Assessment Year 2013-14 were identical to the grounds raised in the appeal for the Assessment Year 2012-13, both the sides adopted the submissions made in relation to appeal for the Assessment Year 2012-13 and agreed that our findings and adjudication in relation to appeal for the Assessment Year 2012-13 shall apply mutatis mutandis to appeal for the Assessment Year 2013-14. Accordingly, adopting the reasoning given in paragraph 14 to 14.6 above while adjudicating corresponding Ground No. 1 raised in appeal for the Assessment Year 2012-13, the contention of the Appellant that the purchases were genuine cannot be accepted. As regards estimation of profit margin embedded in purchases from grey market are concerned, on perusal of record we find that the Appellant has declared gross profit rate of 6.26% in respect of alleged bogus purchases. The aforesaid profit margin is higher than the margin of 6% specified in Instruction No. 2/2008, dated 22/02/2008 dealing with the Benign Assessment Procedure for assessees engaged in diamond manufacture. However, gross profit rate of 6.26% is still less than the gross profit rate of 6.30% as per the tax audit report, which gets further increased to 6.31% in case the profit margin on account of alleged bogus purchases is excluded. Thus, gross profit

margin declared by the Appellant on normal sales is 6.31%. Keeping in view the fact and circumstances of present case and the judgment of the Hon'ble Bombay High Court in the case of Mohommad Haji Adam & Co (supra) we hold that aforesaid rate of 6.31% represents fair estimate of profits embedded in purchases from grey market. However, since the Appellant has already disclosed profit margin of 6.26%, we restrict the addition to the difference between the aforesaid gross profit margin rate on normal sales (i.e. 6.31%) and the gross profit margin rate of 6.26% declared by the Appellant and delete that balance amount of addition sustained by the CIT(A). Thus, Ground No. 1 raised by the Appellant is, thus, partly allowed.

Ground No. 2

22. During the assessment proceedings, the Assessing Officer noticed that the Appellant had taken unsecured loans from entities forming part of Bhanwarlal Jain Group and made an addition of INR 6,30,00,000/- under Section 68 of the Act holding the same to be unexplained cash credit. The CIT(A) also confirmed the addition. Therefore, the Appellant in now in appeal before us.

22.1. Ground No. 2 raised in the present appeal is identical to Ground No. 2 raised in appeal for the Assessment Year 2012-13. We note that addition of INR 6,30,00,000/-was made by the Assessing Officer under Section 68 of the Act in respect of unsecured loans taken from various parties during the relevant previous year. We note that all the relevant details/documents were filed by the Appellant before the Assessing Officer. No further enquiry/verification was carried out by the Assessing Officer. Further, the unsecured loans were also repaid by the Appellant. A perusal of documents including

ledger account and bank statement placed on record shows that the unsecured loans were taken and repaid on the following dates:

Party Name	Loan Received		Loan Repaid		Paperbook Page No.
	Date	Amount	Date	Amount	Bank Statement
Kothari & Co.	03.12.2012	60,00,000	23.01.2013	60,00,000	111
Laxmi Diamods	29.11.2012	50,00,000	26.12.2012	50,00,000	120
Malhar Exports	26.07.2012 16.08.2012	30,00,000 5,00,000	21.01.2013	35,00,000	130
Meenakshi Exports	28.05.2012	60,00,000	31.03.2013	60,00,000	138
Navkar Diamond	23.11.2012	55,00,000	12.01.2013	55,00,000	148
Parvati Exports	25.09.2012	160,00,000	02.01.2013 28.01.2013	56,00,000 104,00,000	157 158
Prime Star	26.07.2012	110,00,000	07.11.2012 09.02.2013 22.02.2013 27.02.2013 (part)	20,00,000 50,00,000 20,00,000 20,00,000	98 100 101 102
Suman Exports	04.10.2012	100,00,000	14.06.2013	100,00,000	-
	Total	630,00,000	Total	630,00,000	

22.2. The facts and circumstances being identical to Assessment Year 2012-13, adopting the reasoning given in paragraph 15 to 15.2 above while allowing Ground No. 2 raised in appeal for the Assessment Year 2012-13, we allow Ground No. 2 raised in the

present appeal and delete the addition of INR 6,30,00,000/- made by Assessing Officer under Section 68 of the Act. Thus, Ground No. 2 raised by the Appellant is allowed.

Ground No. 3

23. Ground No. 3 raised by the Appellant pertains to the lack of opportunity granted by the Assessing Officer to cross examine etc. and the same is dismissed in view of our adjudication of Ground No. 1 raised in present appeal.

24. In result, appeals 787, 788 and 789/Mum/2023 pertaining to Assessment Years 2010-11 to 2012-13 are allowed, while appeal for the Assessment Year 2013-14 is partly allowed.

Order pronounced on 23.08.2023

Sd/-	***Sd/-***
(B.R. Baskaran)	**(Rahul Chaudhary)**
Accountant Member	**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 23.08.2023
Alindra, PS

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai