

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI**

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 812/MUM/2023
(Assessment Year: 2012-13)**

Arunkumar Gopaldas Agrawal,
1801, Wallace Apartment Sleater Road,
Grant Road, Mumbai - 400007
[PAN: AAAPA9707G]

Appellant

**Assistant Commissioner of Income Tax
19(1), Mumbai**

Matru Mandir, Room No. 203, Grant Road,
Mumbai - 400007

Vs

..... **Respondent**

**ITA No. 986/MUM/2023
(Assessment Year: 2012-13)**

**Deputy Commissioner of Income Tax
19(1), Mumbai,**

Matru Mandir, Room No. 203, Grant Road,
Mumbai - 400007

..... **Appellant**

Arunkumar Gopaldas Agrawal,
1801, Wallace Apartment Sleater Road,
Grant Road, Mumbai - 400007
[PAN: AAAPA9707G]

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri R.K. Sinha
For the Respondent/Department : MS Sanyogita Nagpal

Date

Conclusion of hearing : 20.07.2023
Pronouncement of order : 25.08.2023

ORDER

Per Rahul Chaudhary, Judicial Member:

1. These are cross-appeals pertaining to Assessment Years 2012-13

arising from the order, dated 30/01/2023 passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2012-13, whereby the Ld. CIT(A) had partly allowed appeal of the Assessee against the Assessment Order, dated 30/03/2015, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Appellant has raised following grounds of appeal in ITA No. 812/Mum/2023:

- "1. On the facts and circumstances of the case and in law the Learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs. 1,39,08,789/- (being 12.5% of Rs. 11,12,70,313 out of purchases) in respect of purchases made from alleged bogus parties without appreciating that the said purchases were duly supported by all the documents like purchase invoices, payment by banking channels, confirmation and affidavits submitted by parties.*
- 2. On the facts and circumstances of the case and in law the Learned Commissioner of Income Tax (Appeals) erred in not considering the data collected from customs department which had revealed that all the said 70 concerns have genuinely been importing diamonds for the last many years. This fact is mentioned at para 5.17 of the assessment order itself. This information has greater evidentiary value as compared to the general remark made by the assessing officer in the assessment order and the entire addition needed to be deleted.*
- 3. On the facts and circumstances of the case and in law the Learned Commissioner of Income Tax (Appeals) erred in relying upon the decision of Hon'ble Gujarat High Court, in the case of Simit P Seth (356 ITR 451) for confirming the addition to the extent of Rs.1,39,08,789/- [Le. 12.5% of Rs. 11,12,70,313/-] without appreciating the evidences produced by the appellant to prove the genuineness of the purchases made.*

4. *On the facts and circumstances of the case and in law the Learned Commissioner of Income Tax (Appeals) erred in not appreciating the argument that the assessing officer had failed to provide any information or documents and failed to consider the request of the appellant to provide an opportunity to cross-examine the parties on whose statements the assessing officer had relied upon.*
5. *On the facts and circumstances of the case and in law the Learned Commissioner of Income Tax (Appeals) erred in not appreciating the argument that the assessing officer had wrongly rejected the books of accounts and made the addition. The entire addition needed to be deleted as the Assessing Officer had not pointed out any defect in the books of account.*

2.1. The Revenue has raised following grounds of appeal in ITA No. 986/Mum/2023:

- "1. *Whether on the facts and circumstances of the case and in law the Ld. CIT(A) has erred in restricting GP addition at 12.5% on the bogus purchases without appreciating the fact that the AO has rightly disallow the bogus purchases and made 100% addition in assessment order.*
2. *The appellant prays that the order of the Ld. CIT(A) on the above grounds be set aside and that of the AO be restored."*

3. The relevant facts in brief are that the Assessee is an individual resident engaged in the business of manufacture, import, trading and export of precious and semi-precious stones. The Assessee filed return of income for the Assessment Year 2012-13 on 30/07/2012 declaring total income of INR 21,27,133/-. The case of the Assessee was selected for scrutiny and the statutory notices were issued. During the course of assessment proceedings, the Assessing Officer noted that the Appellant had made purchases from the following parties which were part of benami concerns of

Bhanwarlal Jain Group engaged in providing accommodation entries of bogus purchase:

SNo.	Name of the Hawala Party	Amount (INR)
1	M/s Mohit Enterprises	94,96,806
2	M/s Mahalaxmi Gems Pvt. Ltd.	5,23,56,727
3	M/s Megha Gems	2,56,69,280
4	M/s Pushpak Gems	2,37,44,500
Total		11,12,70,313

4. Taking into consideration, the report of the Investigation Wing, Mumbai in the case of Mr. Bhanwarlal Jain and his group concerns and their modus operandi explained therein, the Assessing Officer formed a view that the Assessee has obtained accommodation entries for bogus purchases. Accordingly, notice was issued to the Assessee to show cause why books of account of the Assessee should not be rejected under Section 145(3) of the Act. In response, the Assessee filed submissions, details and documents to establish that the purchases were genuine. However, the Assessing Officer was not convinced and proceeded to disallow deduction for purchases aggregating to INR 11,12,70,313/- holding the same to be bogus purchases vide Assessment Order, dated 30/03/2015 passed under Section 143(3) of the Act.
5. Being aggrieved, the Assessee preferred appeal against the Assessment Order, dated 30/03/2015. The CIT(A) concluded that only the profit element embedded in bogus purchase transactions could be brought to tax in the present case. The percentage of disallowance of bogus purchases/accommodation entries would depend upon facts and circumstances of each case. Keeping in view, the totality of facts and surrounding circumstances, and applying the test of human probabilities the CIT(A), vide order,

dated 30/01/2023, restricted the disallowance to 12.5% of bogus purchases by placing reliance upon the decision of the Hon'ble Gujarat High Court in the case of Commissioner of Income Tax Vs. Simit P. Sheth : [2013] 356 ITR 451 (Gujarat).

6. Both, the Assessee as well as the Revenue are in appeal before us against the order passed by the CIT(A). The Assessee was not satisfied with the relief granted by the CIT(A) and is in appeal before us against the order of CIT(A) confirming the addition/disallowance to the extent of 12.5% of bogus purchases. On the other hand, the Revenue is aggrieved by the order of CIT(A) deleting the addition/disallowance to the extent of 87.5% of bogus purchases. The grounds raised by the Assessee and the Revenue in the cross appeals are reproduced in paragraphs 2 and 2.1 above. Since all the grounds are connected, the same are being taken up together.
7. The Ld. Authorised Representative for the Assessee reiterated the submissions made before the lower authorities and vehemently contended that the purchases were genuine. The Ld. Authorised Representative for the Assessee submitted that the Assessee had filed all the relevant details and documents during the course of assessment proceedings. In this regard, reliance was placed on paragraph 7 of the Assessment Order. The Ld. Authorised Representative for the Assessee submitted that the Assessee had filled all relevant details and documents giving particulars of purchases along with copies of retail invoices, copies of bank statements and payments through banking channel, confirmatory statements of accounts in the books of accounts of the Assessee & the suppliers/vendors, brokerage ledger, and details of closing

stock during the course of assessment proceedings. However, the Assessing Officer failed to consider the same and made the addition on account of bogus purchases by relying upon report of the Investigation Wing. The Ld. Authorised Representative for the Assessee submitted that very foundation on which the decision of the Assessing Officer was incorrect. Elaborating upon this, the Ld. Authorised Representative for the Assessee submitted that the Assessing Officer had, in paragraph 5.17 of the Assessment Order, mentioned that the Mr. Bhanwarlal Jain and his associate concerns had imported diamonds which were cleared by the custom house agents which is contrary to the conclusion that the aforesaid concerns were merely acting as entry operators. He submitted that purchases of INR 11,12,70,313/- were declared as bogus by the Assessing Officer without confronting the Assessee with the material/information received from the Investigation Wing and without granting the Assessee an opportunity of cross-examining the persons whose statement were recorded by the investigation wing. While the CIT(A) had reduced the addition to 12.5% of the purchases the same was very high. Keeping in view the fact that Value Added Tax (VAT) is allowable in Mumbai/Maharashtra at the rate of 1% whereas in Surat/Gujarat the diamond sector is exempt from payment of VAT. In the case of Simit P. Sheth (supra), the rate of 12.5% was arrived at by taking into accounts savings on account of VAT profit element made by the persons making purchases from grey market. The Ld. Authorised Representative for the Assessee vehemently submitted that the Assessee had submitted complete record of the diamond purchase from parties and subsequent movement of the quantity purchase including issuing rough diamond for cutting and polishing, receipt back of the

cut/polished diamonds and stock records. The Ld. Authorised Representative for the Assessee further submitted with the Assessing Officer had rejected books of accounts simply for the reasons that purchases were not verifiable even though the Assessee maintained proper books of accounts. He also placed reliance on the judgment of the Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax, Surat-1 Vs. Tejua Rohitkumar Kapadia: [2018] 94 taxmann.com 325 (SC).

8. Per contra, the Ld. Departmental Representative placed reliance upon the assessment order and submitted that Assessee had failed to prove that the purchases were genuine. The Assessing Officer had sufficient circumstantial evidence to conclude that the purchases were not genuine. The Ld. Departmental Representative submitted that the Revenue was not required to lead clinching evidence to prove that the purchases were bogus. The parties from which purchase were made formed part of Bhanwarlal Jain Group, a known entry operator. In this regard, he placed reliance upon the decision of the Mumbai Bench 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. He submitted entire amount of purchases were correctly disallowed by the Assessing Officer and that the CIT(A) erred in restricting the addition/disallowance to 12.5% of the purchases.
9. We have considered the rival submission and perused the material on record. The Assessee claimed deduction for expenses incurred for purchase of rough diamonds and was, therefore, required to place on record all details and documents to show that the purchase transactions were genuine. The Assessee placed on record

purchase invoices and details of payments made through banking channel along with extract of bank statements and confirmations from the vendors/suppliers. On perusal of the same the Assessing Officer noticed that out of total purchases of INR 11,33,97,450/- for which deduction was claimed by the Appellant during the relevant previous year, the purchases aggregating to 11,12,70,313/- were made from concerns forming part of Bhanwarlal Jain Group. As per the report of the investigation wing, Bhanwarlal Jain controlled and managed 70 concerns including M/s Mohit Enterprises, M/s Mahalaxmi Gems Pvt. Ltd., M/s Megha Gems, and M/s Pushpak Gems (hereinafter collectively referred to as 'the **Sellers**'). The case of the Assessee is that the Sellers were engaged in genuine business and that the material on the basis on which conclusion was reached by the Assessing Officer that the Sellers were engaged in providing accommodation entries was not given to the Assessee. The Assessee has also contended that the material on which the Assessing Officer placed reliance was not given to the Assessee. In this regard we note that the report of the Investigation Wing in came up for consideration before 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. The Tribunal, in paragraph 2.18 of the decision, observed that the assessing officer had noted that in effect, the Bhanwarlal Jain Group provided three types of accommodation entries viz. (i) accommodation entry for loans and advances; (ii) accommodation entry for bogus purchases; (iii) Imports made on behalf of real importers. After taking into consideration the factual and legal position, the Tribunal returned the following findings:

"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)

10. Thus, the Tribunal held that the all the 70 concerns of the Bhanwarlal Jain Group were benami concerns engaged in providing accommodation entries for bogus purchases on commission basis. Thus, the contention of the Assessee that the purchases made from the Sellers, forming part of Bhanwarlal Jain Group, represented genuine business cannot be accepted. Give the facts of the case, the onus was on the Assessee to prove the genuineness of the purchases. The substance of the information contained in the Investigation Wing Report was put to the Assessee and full particulars of the case that the Assessee was expected to meet was

also communicated. Further, ample opportunity was granted to meet such case and produce necessary details/documents in support of claim for deduction was also provided. In response, the Assessee furnished purchase invoices, stock-statement, extract of bank statement showing payments, balance confirmation etc. However, the Assessing Officer was not convinced and concluded that the Assessee had merely taken bills from the Sellers. Though the Assessee had made entry in stock statement, the Assessee was not able to furnish explanation regarding manufacturing process and consumption/yield. Therefore, the Assessing Officer rejected the books to the extent of purchases recorded therein. A copy of the aforesaid documents relied upon by the Assessee have also been placed before us as part of the paper-book. However, the same do not inspire confidence being standard document prepared for all purchases. The purchase invoices and the documents relating to processing of the rough diamonds give only general detail of the diamonds. This becomes evident on perusal of the sales invoices issued by the Assessee itself where details of the diamonds are given. Therefore, we do not find infirmity in the order passed by the Assessing Officer in rejecting the books of accounts to the extent of purchases are recorded therein in terms of Section 145(3) of the Act as the Assessing Officer was not satisfied about the correctness of the books. The judgments on which reliance has been placed by the Assessee do not apply to the case of the Assessee given the peculiar facts of the case noted hereinabove. Therefore, we confirm the finding returned by the Assessing Officer and the CIT(A) and hold that the Assessee failed to prove that the purchases made from the Seller were genuine.

11. We note that the Assessing Officer had disallowed the entire

amount of purchases whereas the CIT(A) restricted the addition to profit element embedded in purchase transactions. We do not find any infirmity in the order passed by the CIT(A) in holding that the entire amount of purchases cannot be added in the hands of the Assessee in view of the fact that the Assessing Officer has accepted the sales made by the Assessee.

12. As regards estimation of profit element at the rate of 12.5%, the Learned Authorised Representative for the Assessee had stated that the addition sustained by the CIT(A) was on a higher side given the fact that the Assessee had disclosed gross profit rate of 5.26%. However, we note that majority of the purchases made are alleged bogus purchases and therefore, the gross profit margin earned by the Appellant for normal sales are nether reliable nor clearly discernable. We note that in Instruction No. 2/2008, dated 22/02/2008, on Benign Assessment Procedure for Assessee Engaged in Diamond Manufacture and Trading Industry, profits at the rate of 6% were stated to be acceptable. In view the aforesaid rate of 6% represents a fair estimate of profits embedded in bogus purchase transactions. In the present case, the Assessee has already disclosed gross profit at the rate of 5.26%. Therefore, we restrict the addition to difference between the aforesaid rate of 6% and the gross profit rate of 5.26% declared by the Appellant and delete the balance addition that was sustained by the CIT(A). Our view draws strength from the decision of the Mumbai Bench of the Tribunal in the case of Deputy Commission of Income Tax – CC 3(1), Mumbai vs. Lucent Diamond: [ITA Nos. 1833, 2099 & 2100 (MUM.) OF 2019 C.O. NOS. 08 & 09.(MUM.) of 2021, 03/05/2021] reported in [2021] 128 taxmann.com 262 (Mumbai - Trib.).

13. In view of the above, Ground No. 1 raised by the Assessee is partly allowed while Ground No. 2 to 5 raised by the Assessee are dismissed. Whereas Ground No. 1 and 2 raised by the Revenue in the cross appeal are dismissed.
14. In result, the appeal preferred by the Assessee is partly allowed and while the appeal preferred by the Revenue is dismissed.

Order pronounced on 25.08.2023.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 25.08.2023
Alindra, PS

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

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