

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

**BEFORE SHRI KULDIP SINGH, HON'BLE JUDICIAL MEMBER AND  
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NO. 310/MUM/2022 (A.Y. 2015-16)**

M/s. Meenaxi Diamonds Pvt. Ltd., 228-229 Majestic Shopping Centre Opera House, Mumbai - 400004  <b>PAN: AAFCM0371A</b>	v.	ACIT - Central Circle – 1(3) Pratishtha Bhavan Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

**ITA NO. 382/MUM/2022 (A.Y. 2015-16)**

M/s. Milan & Co. 3-M, Ambika Darshan Moti Dadiya Sheri Surat, Gujarat – 395003  <b>PAN: AARFM9959R</b>	v.	ACIT - Central Circle – 1(3) Pratishtha Bhavan Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

**ITA NO. 356/MUM/2022 (A.Y. 2015-16)**

M/s. Meridian Jewellery Pvt. Ltd., 316, Panchratna Opera house, Mumbai - 400004  <b>PAN: AAACD9904F</b>	v.	ACIT - Central Circle – 1(3) Pratishtha Bhavan Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

**ITA NO. 311/MUM/2022 (A.Y. 2015-16)**

M/s. Roshan Gems Pvt. Ltd., 204, Vaibhav Chambers Rughnathpura Main Road Surat, Gujarat - 395003  <b>PAN: AAFCR0659G</b>	v.	ACIT - Central Circle – 1(3) Pratishtha Bhavan Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee Represented by</b>	:	<b>Shri Suchek Anchaliya</b>
<b>Department Represented by</b>	:	<b>Smt Mahita Nair</b>
<b>Date of Hearing</b>	:	<b>06.09.2023</b>
<b>Date of Pronouncement</b>	:	<b>15.09.2023</b>

**ORDER**

**PER BENCH**

**1.** These appeals are filed by different assessees of same group/family against different orders of the Learned Commissioner of Income Tax (Appeals)-47, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 30.12.2021 for the A.Y.2015-16.

**2.** Since the issues raised in all the appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed off by this consolidated order. We are taking Appeal in

ITA.No.310/MUM/2022 Assessment Year 2015-16 in the case of M/s.Meenaxi Diamonds Pvt. Ltd., as a lead appeal.

**ITA.NO. 310/MUM/2022 (A.Y. 2015-16)**

**3.** At the time of hearing, Ld. AR of the assessee submitted that assessee is one of the alleged group Companies of Shri Bhanwarlal Jain and similar to these facts in connected case in the case of M/s. A2 Jewels wherein protective additions were made in all these companies and substantive additions were made in the hands of Shri Bhanwarlal Jain. Since the substantive additions were made in the hands of Shri Bhanwarlal Jain, the Hon'ble ITAT in the case of M/s. A2 Jewels and other companies cases, the protective additions were deleted. Accordingly, he brought to our notice findings of the ITAT in the case of Bhanwarlal M. Jain *v.* DCIT in ITA.No. 2669/Mum/2018 dated 06.08.2021 and in the case of M/s. A2 Jewels *v.* ACIT in ITA.No. 487/Mum/2022 dated 10.11.2022 and he prayed that the issues involved in all the above said four appeals are squarely covered.

**4.** On the other hand, Ld. DR brought to our notice Page No. 50 and Para No. 9 of the Ld.CIT(A) order in which Ld.CIT(A) has pointed out

certain incomes which were not part of the additions made in the hands of Shri Bhanwarlal Jain. Therefore, the income which is not covered in the substantives additions made in the hands of Shri Bhanwarlal Jain that should also be considered in the appeals under consideration. Accordingly, she relied on the findings of the lower authorities.

**5.** On the other hand, in the rejoinder, Ld. AR of the assessee submitted that the issue raised by the Ld. DR also covered by the earlier decisions of this bench and accordingly, he prayed that the issue raised by the Ld.CIT(A) is similar to the issue raised in the present case. He submitted that the issues already addressed by the Hon'ble ITAT and prays that the findings of the ITAT may be sustained.

**6.** Considered the rival submissions and material placed on record, we observe that the issue raised in these appeals are similar to the issue raised in the case of M/s. A2 Jewels in ITA.No. 487/Mum/2022 dated 10.11.2022 and the decision of the Coordinate Bench is as under: -

*"10. Considered the rival submissions and material placed on record, we observed that similar issues were considered and adjudicated by the Coordinate Bench in the case of M/s. Sonam Gems Pvt. Ltd., v. ACIT (supra) and decided the issue in favour of the assessee, while holding so, the Coordinate Bench held as under: -*

"4. We have heard the rival submissions and perused the materials available on record. The assessee had filed its original return of income on 5.10.2015 declaring total income of Rs 60,380/- Subsequently, the Id. AO received information from the investigation wing of the Income tax department, Mumbai that assessee is one of the concern controlled and managed by Shri Bhanwarlal Jain who used this concern for providing accommodation entries of purchase / sale of diamonds, unsecured loans and advances etc. The Id. AO reopened the assessment by way of issue of notice u/s 148 of the Act on 5/9/2018 after recording reasons for reopening of the assessment. The reassessment u/s 143(3) r.w.s. 147 of the Act was completed on 20/11/2019, wherein the Id. AO made an addition of Rs 19,78,180/- had been added on account of alleged undisclosed commission income in the hands of the assessee on protective basis, for providing accommodation entries in the form of purchases and loans on behalf of Shri Bhanwarlal Jain and the same income was assessed in the hands of Shri Bhanwarlal Jain on substantive basis. In addition to the above, we find that the Id. AO had also made addition on account of Gross Profit in the sum of Rs 4,01,58,089/- being 11.93% of total turnover of RS 35,44,40,325/- on account of alleged low profit shown by the assessee in comparison with other entities Gross Profit.

4.1. We find that the Id. CIT(A) confirmed the protective addition of Rs 19,78,180/- in order to protect the interest of the revenue and to keep the matter alive and also sustained the addition made on account of gross profit in the sum of Rs 4,01,58,089/-, which was done by the Id. AO after rejecting the books of accounts of the assessee.

4.2. We find that the Id. AR before us argued the grounds on merits first, therefore, we have taken up the grounds raised on merits for adjudication. As far as the addition made in the sum of Rs 19,78,180/- towards commission income for providing accommodation entries, we find that the very same sum has been already added in the hands of Shri Bhanwarlal Jain on substantive basis, on which fact, there is absolutely no dispute. We find that in the assessments framed in the hands of the assessee herein pursuant to search for Asst Years 2008-09 to 2014-15, similar protective addition on account of commission income for providing accommodation entries was deleted by the Id. CIT(A) in the hands

*of the assessee and the revenue did not even challenge the same further before this tribunal. We further find that the Id. AO in para 6 of his order had emphatically mentioned that all the activities during the previous year relevant to the block period are identical to that of the assessee's activities during the previous year under consideration. While this is so, there is no reason for the Id. CIT(A) to take a divergent stand of confirming the protective addition of commission income in the hands of the assessee herein for the Asst Year 2015-16. Moreover, for the same block period pertaining to Asst Years 2008-09 to 2014-15, we find that this tribunal in ITA No. 2669/Mum/2018 dated 6.8.2021 had estimated the commission income in the hands of Shri Bhanwarlal Jain on substantive basis. Hence consistently, the substantive addition has always been made only in the hands of Shri Bhanwarlal Jain for this commission income. Hence there could be no confusion that would lie in the mind of the revenue, as to in whose hands this commission income should be assessed, in order to justify its protective addition. Hence we direct the Id. AO to delete the protective addition of commission income of Rs 19,78,180/- made in the hands of the assessee herein for the Asst Year 2015-16.*

5. *With regard to the addition of Gross profit made in the sum of Rs 4,01,58,089/- on account of alleged low gross profit declared by the assessee, we find that the Id. AO had estimated the gross profit of the assessee by taking a view without prejudice to the addition of alleged undisclosed commission income. This addition was solely made on the basis that the assessee had shown less gross profit as compared to the other alleged concerns of Shri Bhanwarlal Jain. We find that the very same issue was subject matter of adjudication by this tribunal in the case of Rose Impex vs ACIT in ITA No. 622/Mum/2021 dated 29.3.2022, which is one of the alleged concerns of Shri Bhanwarlal Jain. The relevant operative portion of the said tribunal order is reproduced hereunder:-*

8. *However, the A.O has made another addition on the ground that gross profit rate declared by the assessee in the year under consideration is too low i.e 1.19% as compared to the gross profit percentage declared by other such concern of the Shri Bhanwarlal Jain group. The A.O adopted average gross profit rate of 11.5% and made addition for the difference in gross profit rate of 10.31% [11.5 (-) 1.19]*

*and computed addition of rs.2,71,98,014/-. Before us, the Id. Counsel of the assessee has submitted that on one side, on the basis of evidences found during the course of survey/search in the case of Shri Bhanwarlal Jain, the A.O has treated the assessee as not engaged in genuine business of the trading of diamond and held to be accommodation entry provider and assessed on protective basis. Whereas on the other hand, the A.O is making addition treating the business of trading of diamond recorded in books of account as genuine and making addition for low gross profit rate. The Id. CIT(A) has also confirmed this addition to compensate low gross profit rate. The Id. Counsel of the assessee submitted that the Income-Tax authorities cannot blow hot and cold in the same breath. According to him if Income Tax Department has accepted the assessee as controlled and managed by Shri Bhanwarlal Jain for providing accommodation entries, then addition to compensate gross profit rate is not justified. The Id. D.R also could not controvert the fact that the assessee has been held a concern controlled by Shri Bhanwarlal Jain engaged only for providing accommodation entry bills. In our opinion such circumstances, the lower authorities are not justified in sustaining the addition to cover the low gross profit rate on the basis of books of account of the assessee which has not been accepted by the department and percentage commission has been assessed treating the purchase and sales recorded in books of accounts. Similarly commission income has also been estimated on the unsecured loan advanced by the assessee also. We have noted that in the case of Bhanwarlal Jain, the department has taken stand that accommodation entries have been provided through the assessee concern. The revenue has to take one stand and cannot treat the assessee simultaneously as accommodation entry provider as well as genuine concern engaged in trading of the diamond. In view of the above discussion, we set aside the finding of the Id. CIT(A) on the merit of the addition and direct the A.O to delete the addition of Rs.2,71,98,014/-.*

*5.1. Respectfully following the aforesaid order of this tribunal, we delete the addition made on account of Gross profit of Rs*

4,01,58,089/- in the hands of the assessee herein for the Asst Year 2015-16.

6. We further find from the perusal of the order of the Id. CIT(A) that an addition towards commission income of Rs 2,65,830/- being 0.075% of total sales turnover was converted from protective to substantive basis by the Id. CIT(A). We find that the total sales turnover figure is Rs 35,44,40,325/-. We find that the Id. AO had sought to add commission income @ 0.075% on this turnover on the premise that no addition of commission income has been made for accommodation entry of sales. We find from the perusal of the assessment order that the Id. AO had already estimated the commission income on this sales figure also which is very much evident from the table prepared by the Id. AO in para 12 of his order. Commission on bogus sales is already added in the sum of Rs 2,65,830/- by the Id. AO and the said figure is duly included in the total commission income figure of Rs 19,78,180/- made by the Id. AO on protective basis. Hence adding the very same sum again would only result in double addition and hence directed to be deleted herein.

6.1. Moreover, we find that the Id. CIT(A) had sought to make this addition of Rs 2,65,830/- on substantive basis. In our considered opinion, conversion of protective addition into substantive addition would tantamount to enhancement of income made by the Id. CIT(A), which could be done only after issuance of enhancement notice to the assessee. Admittedly, no such enhancement notice in terms of section 251(2) of the Act has been given to the assessee by the Id. CIT(A). On this count itself, this addition made on substantive basis in the sum of Rs 2,65,830/- towards commission on bogus sales is deleted.

6.2. Further we find that the Id. CIT(A) by placing reliance on the order of this tribunal in the case of Shri Bhanwarlal Jain in ITA No. 2669/Mum/2018 dated 6.8.2021 had incorrectly concluded that the said order of Shri Bhanwarlal Jain did not consider the addition on account of commission on sales, and accordingly made substantive addition in the hands of the assessee. This is factually incorrect in as much as we find that this tribunal had duly considered the addition on account of alleged commission on sales in the order of Shri Bhanwarlal Jain in Page 30 under point 2 of the table under the caption "Accommodation entries of bogus purchases provided by

*assessee". If entries of bogus purchases are provided by assessee, then the same represents sales made by assessee. This has not been understood by the Id. CIT(A) while making this substantive addition. In any case, the substantive addition of commission income has already been made in the hands of Shri Bhanwarlal Jain and the similar addition was also confirmed in his hands during the block period also. Hence there cannot be any further addition of Rs 2,65,830/- in the hands of the assessee herein even on protective basis. Accordingly, the same is deleted.*

*7. In view of the aforesaid observations, all the additions made in the hands of the assessee herein are deleted.*

*8. Since we have already allowed the appeal of the assessee on merit, the ground raised by the assessee challenging the legality / validity of reassessment proceedings has been rendered academic and therefore we are not adjudicating the same and the same is left open."*

*11. Since the issue is exactly similar and grounds as well as the facts are identical, respectfully following the above said decision, we allow the grounds raised by the assessee. We order accordingly."*

**7.** Respectfully following the above said decision, and the Coordinate Bench has decided the issue of protective addition as well as the issued raised by the Ld.CIT(A) in his order that certain income was not considered in the hands of Shri Bhanwarlal Jain. Since the issue were already considered and adjudicated by the Coordinate Bench, respectfully following the above said decision, we are inclined to allow the grounds raised by the assessee. Accordingly, grounds raised by the assessee are allowed.

**8.** In the result, appeal filed by the assessee is allowed.

**ITA NO. 382/MUM/2022 (A.Y. 2015-16)**  
**ITA NO. 356/MUM/2022 (A.Y. 2015-16)**  
**ITA NO. 311/MUM/2022 (A.Y. 2015-16)**

9. Coming to the appeals relating to ITA No. 382/MUM/2022 (A.Y.2015-16), ITA No. 356/MUM/2022 (A.Y.2015-16) and ITA No. 311/MUM/2022 (A.Y. 2015-16), since facts in these cases are mutatis mutandis to the appeal in ITA.No. 310/Mum/2022 (A.Y. 2015-16), therefore the decision rendered in the case of Meenaxi Diamonds Pvt. Ltd., for the A.Y. 2015-16 is applicable to these Assesseees also. Accordingly, these appeals are allowed.

10. To sum-up, appeals filed by the assesseees are allowed.

Order pronounced in the open court on 15<sup>th</sup> September, 2023.

Sd/-  
**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

Mumbai / Dated 15/09/2023  
Giridhar, Sr.PS

Sd/-  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER  
(Asstt. Registrar)  
**ITAT, Mum**