

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

**आयकर अपील सं./ITA No.389 & 458/SRT/2023**

**निर्धारण वर्ष/Assessment Year: (2011-12)**

**(Physical Court Hearing)**

Magnifique Gems Pvt. Ltd. 105, Rajshree Building, Maniyara Sheri Na Naka, Mahidharpura, Surat-395003.		Income Tax Officer, Ward- 1(1)(4), Surat, Aayakar Bhawan, Near Majura Gate, Opp. New Civil Hospital, Surat-395001
Income Tax Officer, Ward-1(1)(3), Surat, Room No.113, 1 <sup>st</sup> Floor, Aayakar Bhawan, Majura Gate, Surat-395001	<b>Vs.</b>	Magnifique Gems Pvt. Ltd 105, Rajshree Building, Maniyara Sheri Na Naka Mahidharpura, Surat-395003
<b>(अपीलार्थी/Appellant)</b>		<b>(प्रत्यर्थी /Respondent)</b>
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAGCM 5160 N</b>		

निर्धारिती की ओर से /Assessee by	Shri Suchek Anchalia, CA
राजस्व की ओर से /Respondent by	Shri S.M. Keshkamat, CIT-DR
सुनवाई की तारीख/Date of Hearing	25.10.2023
घोषणा की तारीख/Date of Pronouncement	27.10.2023

**आदेश / O R D E R**

**PER DR. A. L. SAINI, AM:**

Captioned cross appeals filed by the Assessee and Revenue, pertaining to Assessment Year (AY) 2011-12, are directed against the common order passed by the National Faceless Appeal Centre, Delhi [in short “NFAC/ Id. CIT(A)”], which in turn arise out of common assessment order passed by Assessing Officer under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) dated 30.12.2018.

2. Since, the issues involved in all the appeals are common and identical; therefore, these appeals have been heard together and are being disposed of by this consolidated order. For the sake of convenience, the grounds as well as the

facts narrated in ITA No.458/SRT/2023 for assessment year 2011-12, have been taken into consideration for deciding the above appeals *en masse*.

3. Grounds of appeal raised by the Revenue in “lead” case in ITA No.458/SRT/2023 for AY.2011-12, are as follows:

*“1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition made by the AO of Rs.10,53,02,132/- to 6% of the turnover without appreciating the facts that the assessee had failed to prove the genuineness of the transaction made with M/s Rose Gems Pvt. Ltd. which was identified as a bogus entry provider, completely run by Shri Bhanweralal Jain.*

*2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in partly deleting the addition without considering that Shri Bhanweralal Jain has admitted in his statement u/s 132(4) of the Act given in the course of search and seizure action that with M/s Rose Gems Private Limited was run by him and engaged in the business of providing accommodation entries.*

*3. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition to 6% of the turnover by relying the CBDT’s instruction No.03/2028 which is not applicable in this case as the assessment was completed on 30.12.2018 and also on the basis of information regarding escapement of income.*

*4. On the basis of the facts and circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the Assessing Officer.*

*5. It is therefore prayed that the order of the Ld. CIT(A) may kindly be set aside and that of the Assessing Officer be restored.*

*6. The appellant craves leave to add, alter, amend and/or withdraw any grounds of appeal either before or during the course of hearing of the appeal.”*

4. The grounds of appeal raised by the assessee in ITA No.389/SRT/2023 are as follows:

**“Grounds of appeal against the order dated 10.05.2023 passed by the learned CIT Appeal, Delhi u/s 250 of the Income-tax Act, 1961.**

*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 Office 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 in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs.66,33,087/- being 6% of the alleged*

*purchase of Rs.10,55,51,462/- by treating the genuine purchases as accommodation entries.*

3. *The appellant craves to add, alter, classify, reclassify, delete or modify any of the above grounds of appeal and requests to consider each of the above grounds without prejudice to one another.”*

5. Brief facts *qua* the issue are that assessee is a company engaged in trading of diamonds. In this case, no assessment as stipulated u/s 143(3) of the Act was made and the return of income was only processed/s 143(1) of the Act on 20.01.2012. As per available information received in the office from DIT(Investigation),Mumbai through proper channel, a search and seizure action was carried out by the Investigation Wing, Mumbai in the case of Shri Bhanwarlal Jain and his group based in Mumbai on 03.10.2013. The search faction resulted into collection of evidences and other findings which conclusively proved that the assessee through a web of concerns run and operated by him, is engaged in providing accommodation entries of various nature like bogus unsecured loans, bogus share application and bogus sales (*purchases for the beneficiaries*) etc. During the course of search various premises which were shown by the assessee group to be the place of operations and registered addresses as per the ITR, MCA website and bank documents were covered. However, it was found that the entities were non-existing at these addresses and no genuine business was being carried out at any of these premises. The search enquiries had revealed that various persons shown to be the director/proprietors of different concerns were non-exist it on the given addresses. During the course of the statements recorded u/s 132(4)/131 of the Act these directors / proprietors admitted that they were merely dummy directors and used to sign different papers for nominal consideration given by Shri Bhanwarlal Jain. They were unaware of the place of operations, books of accounts and the business being carried out by the concerns

where they were directors / proprietors. After perusal of such documents/statement, it was found that Bhanwarlal Jain through various dummy directors/proprietors, controls, operates, and manage a large number of concerns. All such concerns are not carrying out any genuine business. They do not have any physical stock of goods, which they claimed to be dealing in. All such concerns have no employed persons except the few common accountants who manage accounts and banking transactions of all such concerns and all such concerns are indulged in the activity of providing accommodation entries only. In course of search/survey proceedings, Shri Bhanwarlal Jain in his statement recorded u/s 132(4) of the Act categorically admitted that he was indulged in providing of accommodation entries to the beneficiaries according to their need of share application/share capital money/loan/purchase and sale bills etc., He further named the companies/firms on his own or through other brokers through which he is providing accommodation entries to its clients in lieu of some commission. In this regard, he categorically admitted that he is in the business of giving accommodation entries which are routed through the companies under his control. All the companies either owned by him or directly/indirectly under his control are paper companies with no real business transactions.

6. As per details available, the assessee-company is one of the beneficiaries of accommodations entries in the nature of bogus purchases during the F.Y 2010-11 from the following concerns of the entry operator Bhanwarlal Jain group, the details of which are as under:

<i>Sr.No.</i>	<i>Name of the Bill provider</i>	<i>Amount</i>
<i>1</i>	<i>Rose Gems Pvt. Ltd.</i>	<i>105302132/-</i>
	<i>Total amount</i>	<i>105302132/-</i>

From the above facts/material available on record, it was apparent that the claim of purchase made by the assessee from aforesaid concern is bogus and nothing but an accommodation entry. Therefore to arrive at conclusion the Assessing Office issued notice u/s 133(6) to the assessee after getting necessary approval of PCIT-1, Surat. Since the assessee did not submit any reply within the time mentioned in the notice, therefore, it was clear that the assessee had taken accommodation entry in the form of bogus purchase from Rose Gems Pvt. Ltd. In view of the above the Assessing Office had reason to believe that the income of the assessee to the extent of Rs.10,53,02,132/- had escaped assessment within the meaning of Section 147 of the Act. Therefore notice u/s 148 was issued on 26.03.2018 after recording the reasons and getting due approval, which was duly served upon the assessee. In the said notice, the assessee was requested to file its return of income for the assessment year under consideration within 30 days. In response to the same the assessee filed its return of income on 17.04.2018. The reason recorded for re-opening was provided to the assessee. Thereafter notice u/s 143(2) was issued to the assessee on 01.08.2018 and the same was served upon the assessee on the same day. Thereafter the assessee filed its objection against the re-opening and the same was disposed off by passing speaking order date 21.08.2018. Thereafter notice u/s 142(1) was issued to the assessee on 15.09.2018 calling certain details. In response to the notice issued to the assessee, the assessee submitted its submission before Assessing Officer. After considering the assessee's submission on merit, the Assessing Officer disallowed bogus purchases of Rs.10,53,02,132/-.

7. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) who has restricted the addition of bogus purchase from 100% to 6% observing as follows:

*“4.0 Decision:*

*4.1. There is difference in trade in diamonds and that in Aloo/Pyaz. In vegetable one can say that I bought so many Kgs and sold so many, the mere mention of quantity would suffice in the bill. But there is bound to be difference in uncut and cut diamonds? What difference was there in unpolished and uncut, diamonds Vs. polished one? Why was it not clear from the face of the invoice?*

*4.2 What it not the duty of appellant to show that the trade was as per normal commercial prudence or does the appellant want that I.T. department should blindly accept the bills and trade which even on the face appear to be bogus, made up contrived.*

*4.3 As a result, given the facts and the wholistic perspective as available, the contention of the appellant cannot be accepted. With reference to CBDT circular mentioned in the last Notice, the income is estimated at 6% of the turnover, which is the base at which the AO would compute the income from business.*

*5.0 As a result, the appeal is **Partly Allowed.**”*

8. Aggrieved by the order of NFAC/Ld. CIT(A), the Revenue as well as assessee is in appeal before us.

9. The Learned CIT-DR for the Revenue, submitted that Assessing Officer has made 100% disallowance of bogus purchase made by the assessee from M/s Rose Gems Pvt. Ltd. to the tune of Rs.10,53,02,132/- and on appeal, the NFAC/Ld.CIT(A) restricted the addition @ 6% of the turnover. The Ld.CIT-DR submitted that Assessing Officer had made the disallowance on account of bogus purchases to the tune of Rs.10,53,02,132/- whereas NFAC/Ld.CIT(A) without giving the notice of enhancement restricted the addition @ 6% of the turnover. However, Ld.CIT-DR submitted that NFAC/Ld.CIT(A) has in fact restricted the addition upto 6% of bogus purchase and terminology “turnover” used in the appellate order is topographical error. Finally, Ld.CIT-DR stated that matter may be remitted back to the file of NFAC/Ld.CIT(A) for clarification or the addition made by the Assessing Officer @ 100% of bogus purchased should be upheld.

10. Shri Suchek Anchalia, Learned Counsel for the assessee, pleads that Assessing Officer has made @ 100% disallowance of bogus purchases, which were made by assessee from M/s. Rose Gems Pvt. Ltd. to the tune of Rs.10,43,02,122/-, however, NFAC/Ld.CIT(A) has restricted the addition @ 6% of the turnover. The Ld. Counsel also stated that whether 6% addition sustained by the NFAC/Ld.CIT(A) is on total “turnover” of the assessee or it is on bogus purchases made by the assessee from M/s Rose Gems Pvt. Ltd. to the tune of Rs.10,53,02,132/- is not clear. Therefore Ld. Counsel contended that the matter may be set aside to the file of NFAC/Ld.CIT(A) for adjudication on this issue whether estimated addition sustained by NFAC/Ld.CIT(A) @ 6% is on total “turnover” of the assessee or on bogus purchases made by the assessee. Alternatively, the Ld. Counsel submitted that assessee has submitted bills, vouchers, stock details, balance sheet and profit and loss account, before the Assessing Officer, hence, assessee has proved the genuineness of bogus purchases, therefore, no addition should be made in the hands of assessee.

11. We have heard the rival contentions, perused the material on record. We note that M/s Rose Gems Pvt. Ltd. is managed and controlled by Shri Bhanwarlal Jain group case and this Co-ordinate Bench of Tribunal in the case of Shri Bhanwarlal Jain had sustained the addition on bogus purchases @ 6%. Hence, these appeals are squarely covered by the judgment of this Tribunal in the case of Pankaj K. Choudhary, in ITA No.1152/AHD/2017 for AY.2007-08, wherein the Tribunal held as follows:

*“12. We have heard the submission of ld.CIT-DR for the Revenue and the ld. Authorised Representative (AR) of the assessee. We have also gone through the various documentary evidences furnished by assessee. The ld. CIT-DR for the Revenue supported the order of AO. The ld. CIT-DR submits that Investigation Wing, Mumbai made a search on Bhanwarlal Jain Group. During the search and after search, the Investigation Wing made a thorough investigation and concluded that Bhanwarlal Jain Group and his associates including his sons were indulging in managing about 70 benami concerns. The benami concerns*

were engaged in providing accommodation entries. The assessee is one of the beneficiaries of such accommodation entries. In the transaction of accommodation entries, the documentary evidences are created in such a way, so that the bogus transaction is looks like genuine transaction. In bogus transaction, the fabricated evidences are always maintained perfectly. The assessee has obtained accommodation entry only to inflate the expenses and to reduce the ultimate profit. No stocks of diamonds were found at the time of search on Bhanwarlal Jain Group. The assessee has shown a very meagre gross profit (GP) @ 0.78% and not net profit (NP) at 0.02%. The ld. CIT(A) restricted the addition to the extent of 12.5% which is on the lower side. The ld. CIT-DR for the revenue prayed that disallowance made by the AO may be upheld or in alternative submitted that it may restricted at least @ 25%, keeping in view that the NP declared by the assessee is extremely on lower side.

13. On the validity of reopening, the ld.CIT-DR for the revenue submits that the AO received credible information about the accommodation entry provided by Bhanwarlal Jain Group. The assessee is one of the beneficiaries, who had availed accommodation entries from such hawala trader. At the time of recording reasons, the mere suspicious about the accommodation entry is sufficient as held by Hon'ble jurisdictional High Court in various cases. To support his submissions, the ld.CIT-DR relied upon the decision;

- *Pushpak Bullion (P) Ltd Vs DCIT [2017] 85 taxmann.com 84(Gujarat High Court),*
- *Peass Industrial Engineers (P) Ltd Vs DCIT [2016] 73 taxmann.com 185 (Gujarat High Court),*
- *ITO Vs Purushttom Dass Bangur [1997] 90 Taxman 541 (SC) and*
- *Mayank Diamond Private Limited (2014) (11) TMI 812 (Gujarat High Court).*
- *AGR Investment Vs Additional Commissioner 197 Taxman 177 (Delhi) and*
- *Chuharmal Vs CIT [1998] 38 Taxman 190 (SC).*

14. On the other hand, the ld.AR of the assessee submits that he has challenged the validity of reopening as well as restricting the addition to the extent of 12.50% of the alleged bogus purchases. The ld.AR of the assessee submits during the assessment, the AO has not made any independent investigation. The AO reopened the case of the assessee on the basis of third party information without making any preliminary investigation. The AO received vague information about providing accommodation entry by Bhanwarlal Jain Group. No specific information about the accommodation entry obtained by assessee was received by AO. There is no live link between the reasons recorded qua the assessee. Therefore, the re-opening is invalid and all subsequent action is liable to be set aside.

15. On account of additions of bogus purchases, the ld.AR submits that in the original assessment, the assessee filed its complete details of purchases to prove the genuineness of expenses. The AO accepted the same in the assessment order passed under section 143(3) on 10.03.2009. During re-assessment, the assessee again furnished complete details about the genuineness of purchases.

The assessee filed confirmation purchases invoices, accounts of the parties, bank statement of assessee showing transaction to the banking channel. The AO has not made any comment on the documentary evidence furnished by assessee. The AO solely relied upon the statement of third party and the report of Investigation Wing. The report of wing and the statement of Bhanwarlal Jain were not provided to the assessee. The AO has not disputed the sales of assessee. No sale is possible in absence of purchase. The books of accounts were not rejected. The AO made the disallowance of entire purchases. The assessing officer not provided cross examination of the alleged hawala dealers. The disallowances sustained by the Ld. CIT(A) @ 12.5% of the impugned purchases, is on higher side and deserve to be deleted in total. The ld.AR of the assessee submits that entire purchases shown by assessee are genuine. In without prejudice and alternative submissions, the Ld. AR for the assessee submits that in alternative submission, the disallowance may be sustained on reasonable basis. To support his various submission, the ld.AR for the assessee is relied upon case laws:

1	<i>M/s Andaman Timber industries Vs Commissioner of Central Excise, CIVIL APPEAL NO. 4228 OF 2006 (Supreme Court)</i>
2	<i>CIT vs. Indrajit Singh Suri [2013] 33 taxmann.com 281 (Gujarat)</i>
3	<i>Albers Diamonds Pvt. Ltd. Vs ITO 1(1)(1), Surat I.T.A. No.776 &amp;1180/AHD/2017</i>
4	<i>The PCIT-5 vs. M/s. Shodiman Investments Pvt. Ltd. TTANO. 1297 OF 2015 (Bombay High Court)</i>
5	<i>Shilpi Jewellers Pvt. Ltd. vs. Union of India &amp; Ors. WRIT PETITION NO. 3540 OF 2018 (Bombay High Court)</i>
6	<i>CIT in Vs. Mohmed Juned Dadani 355 ITR 172 (Gujarat)</i>
7	<i>Micro Inks Pvt. Ltd. Vs. ACIT [2017] 79 taxmann.com 153 (Gujarat)</i>
8	<i>Shakti Karnawat Vs. ITO - 2(3)(8), Surat ITA 1504/Ahd/2017 and 1381 /Ahd/2017</i>
9	<i>Asian Paints Ltd. Vs. DCIT, [2008] 296 ITR 90 (Bombay)</i>
10	<i>PCIT, Surat I Vs. Tejua Rohit kumar Kapadia [2018] 94 taxmann.com 325 (SC)</i>
11	<i>The PCIT-17 vs. M/s Mohommad Haji Adam &amp; Co. ITA NO. 1004 OF 2016 (Bombay High Court)</i>
12	<i>Pankaj Kanwarlal Jain HUF Vs. ITO 2(3)(8) Surat ITA.No.269/SRT/2017</i>

16. In the rejoinder submissions the ld. CIT-DR for the revenue submits that that rigour of the rules of evidence contained in the Evidence Act is not applicable before the tax authorities. It was submitted that the ratio of various case laws relied by the ld. AR for the assessee is not applicable on the facts of the present cases. The ratio of decision of Hon'ble Gujarat High Court in *Mayank Diamond Private Limited (supra)* is directly applicable on the facts of the present case.

17. We have considered the submissions of the parties and have gone through the order of the lower authorities. We have also deliberated on each and every case laws relied by both the parties. We have also examined the financial statement of all the assessee(s) consisting of computation of income and audit report. We have also gone through the documentary evidences furnished in all cases. Ground No.1 in assessee's appeal relates to the validity of reopening. The ld AR for the assessee vehemently argued that the AO reopened the case of the assessee on the basis of third party information, and without making any preliminary investigation, which was vague about the alleged accommodation entry by Bhanwarlal Jain Group. And that there was no specific information about the accommodation entry availed by the assessee. There is no live link between the reasons recorded qua the assessee. We find that the assessee has raised objection against the validity of the reopening before the AO. The objections of the assessee was duly disposed by AO in his order dated 09.02.2015. The assessee raised ground of appeal before ld CIT(A) while assailing the order of AO on reopening. The ld CIT(A) while considering the ground of appeal against the reopening held that the AO has received report from investigation wing Mumbai, which indicate that the assessee is beneficiary of the accommodation entry operators. The accommodation entry provider admitted before investigation wing that he has given such entry to various persons; based on such report the AO has reason to believe that the income of the assessee has escaped assessment and thus the action of AO in reopening is justified.

18. We find that the Hon'ble Jurisdictional High Court in Peass Industrial Engineers (P) Ltd Vs DCIT (supra) while considering the validity of similar notice of reopening, which was also issued on the basis of information of investigation wing that they have searched a person who is engaged in providing accommodation entries, held that where after scrutiny assessment the assessing officer received information from the investigation wing that well known entry operators of the country provided bogus entries to various beneficiaries, and assessee was one of such beneficiary, assessing officer was justified in re-opening assessment. Further similar view was taken by Hon'ble Jurisdictional High Court in Pushpak Bullion (P) Ltd Vs DCIT (supra). Therefore, respectfully following the order of Hon'ble High Court, we find that the assessing officer validly assumed the jurisdiction for making re-opening under section 147 on the basis of information of investigation wing Mumbai. So far as other submissions of the ld AR for the assessee that there is no live link of the reasons recorded, we find that the Hon'ble Jurisdictional High Court in Peass Industrial Engineers (P) Ltd clearly held that when assessing officer received information from the investigation wing that two well known entry operators of the country provided bogus entries to various beneficiaries, and assessee was one of such beneficiary, assessing officer was justified. Hence, the ground No. 1 in assessee's appeal is dismissed.

19. Ground No. 2 in assessee's appeal and the grounds of appeal raised by the revenue are interconnected, which relates to restricting the disallowance of bogus purchases to the extent of 12.5%. The AO made of 100% of purchases shown from the hawala dealers/ entry provider namely Bhanwarlal Jain. We find that the AO while making additions of 100%, of disputed purchases solely

relied on the report of the investigation wing Mumbai. No independent investigation was carried by the AO. The AO has not disputed the sale of the assessee. The AO made no comment on the evidences furnished by the assessee. We further find that Id CIT(A), while considering the submissions of the assessee accepted the lapses on the part of the AO and noted that no sale is possible in absence of purchases. The Books of the assessee was not rejected by the AO. The Id CIT(A) on further examination of the facts and various legal submissions find that Ahmedabad Tribunal in Bholanath Poly Fab Private Limited (supra) held that in the such cases the addition of bogus purchases was sustained to the extent of 12%, on the observation that the assessee may have made purchases from elsewhere and obtained the bills from impugned supplier to inflate Gross Profit Rate. The Id CIT(A) by considering the overall facts, concluded that the 100% disallowance of purchase is not justified. We also find that the Id.CIT(A) also considered the decision of jurisdictional High Court in Mayank Diamonds Pvt. Ltd. (supra) and compared the fact of the present case with the facts in Mayank Diamonds Pvt Ltd (supra) and noted that assessee in that case was also engaged in the trading of polished diamonds. The Id CIT(A) noted that in that case the AO made disallowance of entire bogus purchase and on first appeal before CIT(A) the disallowances were maintained. However, the Tribunal gave partial relief to the assessee directing to sustain the addition @12% of such bogus purchases. And on further appeal, the Hon'ble High Court sustained Gross Profit Rate @ 5% being average rate of profit in industry.

20. Now adverting to the facts of the present case, the Id.CIT(A) held that in some other similar cases; though he had sustain 5% of Gross Profit Rate, considering the fact that where Gross Profit shown by those assessee's are more than 5%. However, in the present case, the assessee has merely shown Gross Profit Rate only at 0.78% of turnover, accordingly, the Id. CIT(A) was of the view that disallowance of 12.5% of impugned purchases/bogus purchases would be reasonable to meet the end of justice.

21. We have seen that during the financial year under consideration the assessee has shown total turnover of Rs. 66,09,62,458/-. The assessee has shown Gross Profit @ .78% and net Profit @ .02% (page 11 of paper Book). The assessee while filing the return of income has declared taxable income of Rs.1,81,840/- only. We are conscious of the facts that dispute before us is only with regard of the disputed purchases of Rs, 4.34 Crore, which was shown to have purchased from the entity managed by Bhanwarlal Jain Group. During the search action on Bhanwarlal Jain no stock of goods/ material was found to the investigation party. Bhanwarlal Jain while filing return of income has offered commission income (entry provider). Before us, the Id CIT-DR for the revenue vehemently submitted that the ratio of decision of Hon'ble Gujarat High Court in Mayank Diamond Private Limited (supra) is directly applicable on the facts of the present case. We find that in Mayank Diamonds the Hon'ble High Court restricted the additions to 5% of GP. We have seen that in Mayank Diamonds P Ltd (supra), the assessee had declared GP @ 1.03% on turnover of Rs. 1.86 Crore. The disputed transaction in the said case was Rs. 1.68 Crore. However, in the present case the assessee has declared the GP @ 0.78%. It is settled law that under Income-tax, the tax authorities are not entitled to tax the entire transaction, but only the income component of the disputed transaction, to

*prevent the possibility of revenue leakage. Therefore, considering overall facts and circumstances of the present case, we are of the view that disallowances @ 6% of impugned purchases / disputed purchases would be sufficient to meet the possibility of revenue leakage. In the result the ground No. 2 of appeal raised by the assessee is partly allowed and the grounds of appeal raised by revenue are dismissed.*

*22. In the result the appeal of revenue is dismissed and the appeal of the assessee is partly allowed.”*

12. However, we note that Ld. Counsel for the assessee as well as Ld.CIT-DR for the Revenue have stated that it is not clear whether estimated addition is on bogus purchase or the total “turnover” of the assessee. Although this Tribunal has taken consistent view that bogus purchase made from the concerns belonging to Shri Bhanwarlal Jain the addition is to be sustained @ 6% of bogus purchases. The view of the Tribunal was also upheld by Hon’ble jurisdictional High Court in the case of PCIT-1, Surat vs. Vinodkumar Shantilal Bothra R/Tax Appeal No.599 of 2023 dated 13.09.2023, *wherein* the Hon’ble jurisdictional High Court upheld the addition @ 6% on bogus purchases. We also state that terminology used by NFAC/Ld.CIT(A) stating estimated addition on “turnover” is typographical error, hence, it should be ignored.

13. Since the issue is squarely covered by the decision of the Co-ordinate Bench in the case of Pankaj K. Chaudhary (supra) *wherein* @ 6% addition was upheld on bogus purchases, and there is no change in facts and law and Revenue is unable to produce any material to controvert the aforesaid findings of the Co-ordinate Bench (supra). We find no reason to differ in the above said order of Co-ordinate Bench, therefore respectfully following the binding judgment of Co-ordinate Bench in the case of Pankaj

K. Chaudhary (supra), we dismiss the appeals of the assesseees and we allow the appeals of the Revenue partly.

14. Ground No.1 raised by the assessee is not argued / not pressed, hence, we dismiss ground No.1 as not pressed / argued.

15. In the result, appeal filed by the assessee (in ITA No.389/SRT/2023) is dismissed and appeal filed by the Revenue (in ITA No.458/SRT/2019) is partly allowed.

Registry is directed to place one copy of this order in all appeals folder / case file(s).

Order is pronounced on 27/10/2023 by placing the result on the Notice Board.

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

**Sd/-**  
**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

सूरत / Surat

दिनांक/ Date: 27/10/2022

Dkp Outsourcing Sr.P.S.

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// True Copy //

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Surat