

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

आयकर अपील सं./ITA No.530/SRT/2023

Assessment Year: (2011-12)

(Physical Hearing)

Abhishek Navnitkumar Doshi, 204/205, 2 nd Floor, 6/1911-12, Jin Shanti Building, Surat – 395003, Gujarat	Vs.	The ITO, Ward-2(3)(7), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AFHPD0064M		
(Appellant)		(Respondent)

Appellant by	Shri Sapnesh Sheth, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	12/10/2023
Date of Pronouncement	31/10/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2011-12, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), Surat [in short “the ld. CIT(A)”], National Faceless Appeal Centre (in short ‘NFAC’), dated 11.07.2023, which in turn arises out of an assessment order passed by Assessing Officer u/s 144 r.w.s 147 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 20.12.2018.

2. The grounds of appeal raised by the assessee are as follows:

“1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre has erred in confirming the action of assessing officer in reopening assessment by issuing notice u/s 148 of the I.T. Act, 1961.

2. *On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre has erred in partly confirming the action of assessing officer by sustaining the disallowance out of purchases to the extent of Rs.42,44,379/- at the rate of 25% of total purchases of Rs.1,69,77,514/- as against 100% disallowance made by assessing officer.*

3. *It is therefore prayed that above addition made by assessing officer and confirmed by Commissioner of Income Tax (Appeals) may please be deleted.*

4. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of appeal.”*

3. Brief facts *qua* the issue are that appellant individual is engaged in the business of trading of polished Diamond. The return of income for the AY.2011-12 was filed by the appellant on 07.10.2011, declaring the total income at Rs.5,36,620/-. Subsequently, the Assessing Officer received information from the DDIT(Inv.)-2, Mumbai that the assessee had taken accommodation entries from various parties which were found/identified as paper concerns of Shri Bhanwarlal Jain group. The said information was passed on after search and seizure action u/s 132 of the Act were carried out in the case of Shri Bhanwarlal Jain and others by the Investigations Wing, Mumbai on 03.10.2013. On the basis of this information, the Assessing Officer noted that income to the tune of Rs.1,69,77,514/- had escaped assessment for the AY.2011-12. Accordingly, the Assessing Officer initiated proceedings under section 147 of the Act by using notice under section 148 of the Act on 27.03.2018 after taking approval of the concerned authority. The Assessing Officer completed the assessment under section 144/147 of the Act on 20.12.2018 determining the assessee's total income at Rs.1,69,77,514/- by making addition on account of bogus purchases.

4. At the outset, Ld. Counsel for the assessee submitted that assessee's case relates to Bhanwarlal Jain group cases, wherein the Tribunal has sustained the addition at the rate of 6% of bogus purchases. However, in the assessee's case under consideration, the gross profit shown by the assessee is more than 5%, therefore addition at the rate of 6% should not be sustained. The Ld. Counsel also submitted that assessee has submitted bills, vouchers, balance sheet, profit and loss account and stock details before lower authorities, hence entire addition may be deleted.

5. On the other hand, learned Senior Departmental Representative (ld. Sr. DR) for the Revenue submitted that assessee's case is squarely covered by the judgment of Co-ordinate Bench, in the case of ITO vs. Pankaj K. Choudhary, in ITA No.1152/AHD/2017, dated 27.09.2021, hence addition should not be sustained less than 6% of bogus purchases. Without prejudice, the ld. Sr. DR also stated that addition made by the Assessing Officer at the rate of 100% of bogus purchase may be sustained as assessee is engaged in bogus purchase to minimize its tax liability.

6. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee. We note that Assessing Officer disallowed 100% of bogus purchases. On appeal, ld. CIT(A) restricted the addition @ 25% of bogus purchases. Now, assessee is in appeal before us, and Ld. Counsel argued that entire addition should be deleted. We note that in case of Pankaj K. Chaudhary (supra), the Co-ordinate Bench of Surat has sustained the addition at 6% of bogus purchases. Therefore, we note that this appeal

is squarely covered by the judgment of this Tribunal in the case of Pankaj K. Choudhary (supra) 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 &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 & 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</i> [2017] 79 taxmann.com 153 (Gujarat)
8	<i>Shakti Karnawat Vs. ITO - 2(3)(8), Surat</i> <i>ITA 1504/Ahd/2017 and</i> <i>1381 /Ahd/2017</i>
9	<i>Asian Paints Ltd. Vs. DCIT, [2008] 296 ITR 90 (Bombay)</i>
10	<i>PCIT, Surat 1 Vs. Tejua Rohit kumar Kapadia</i> [2018] 94 taxmann.com 325 (SC)
11	<i>The PCIT-17 vs. M/s Mohommad Haji Adam & Co.</i> <i>ITA NO. 1004 OF 2016(Bombay High Court)</i>
12	<i>Pankaj Kanwarlal Jain HUF Vs. ITO 2(3)(8) Surat</i> <i>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 ld 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 ld 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 ld CIT(A) by considering the overall facts, concluded that the 100% disallowance of purchase is not justified. We also find that the ld.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 ld 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 ld.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 ld. 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 ld 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.”

8. We note that the issue is squarely covered by the decision of the Co-ordinate Bench in the case of Pankaj K. Choudhary (supra) and there is no change in facts and law, therefore respectfully following the binding precedent, we direct the Assessing Officer to sustain the addition at the rate of 6% of bogus purchases.

9. In the result, appeal filed by the assessee is partly allowed.

Order is pronounced on 31/10/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

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

सूरत /Surat

दिनांक/ Date: 31/10/2023

SAMANTA

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

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat