

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 375/JP/2023
निर्धारण वर्ष / Assessment Years : 2012-13

Shri Khandelwal Diamonds Private Limited, 205-206, C. K. House, IInd Floor, Bichun Market, Kishanpole Bazar, Jaipur	बनाम Vs.	ACIT, Circle-01, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAPCS 6518 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Mukesh Khandelwal (CA)
राजस्व की ओर से / Revenue by : Sh. Anup Singh (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 20/09/2023
उदघोषणा की तारीख / Date of Pronouncement : 30/10/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by assessee is arising out of the order of the National Faceless Appeal Centre, Delhi dated 25/05/2023 [here in after (NFAC)] for assessment year 2012-13 which in turn arise from the order dated 14.12.2017 passed under section 143(3) r.w.s 147 of the Income Tax Act, by the ACIT, Circle-01, Jaipur.

2. The assessee has marched this appeal on the following grounds:-

“1. That under the facts and circumstances of the case the Ld. CIT(A) has erred seriously on facts in sustaining the action of the Ld. AO in making an addition of 25% of alleged bogus purchases of Rs. 35,09,770/- made from 3 parties without any basis.

2. That the Id. CIT(A) has erred seriously in law and on facts in sustaining the validity of notice issued by Id. AO u/s 148 of the Income Tax Act, 1961 which was challenged before him on the reason of issuing notice u/s 148 on borrowed satisfaction of another wing of the department.

3. That under the facts and circumstances of the case, the Id. CIT(A) has erred seriously on facts in sustaining the action of the Ld. AO in considering purchases of a sum of Rs. 35,09,770/- made from 3 parties as bogus by rejecting the pleas of the appellant that (1) No statement of the parties on which reliance had been placed by Id. AO were provided to the assessee, (2) No Material/records found during the course of search in the case of Bhanwar Lal Jain group which was considered as against the assessee was provided to the assessee and (3) No cross examination of the parties was allowed to the assessee.”

3. The fact as culled out from the records is that the assessee filed its e-return of income for A.Y. 2012-13 on 24.09.2012 declaring total income of Rs. 52,71,470/-. As per Information available with this office, it was noticed that a search and seizure action in the cases of Shri Bhanwarlal Jain Group had been conducted by the DGIT (Inv.), Mumbai Charge on 03.10.2013 and these are entry providers operating in Mumbai, indulging in providing accommodation entries in the nature of bogus sales and

unsecured loans. During the course of the search of Mr. Jain, the list of the beneficiaries has been compiled. As per the said list, it was observed that the assessee Company M/s Shri Khandelwal Diamonds Pvt. Ltd., Jaipur is one of the beneficiaries and has obtained accommodation entries in the form of bogus purchase transaction of Rs. 35,09,770/- from the concerns operated by Mr. Jain and his group. The details of the alleged purchase are as under:-

PAN of bill Provider	Name of Bill Provider	Nature	Total value of the transaction
AALFP0478J	Pankaj Exports	Purchase	Rs. 15,58,560/-
AFEPV3695M	Malhar Exports	Purchase	Rs. 15,56,010/-
AAFFA6854K	Ankita Exports	Purchase	Rs. 3,95,200/-
Total			Rs. 35,09,770/-

3.1 Based on the detailed discussion in the assessment order the Id. AO observed that the assessee is engaged in the business of purchase, sale, manufacturing and trading of gold jewellery with diamond and color stones, diamond and gems stones. During the year under consideration the assessee has purchased from the above parties amounting to Rs. 35,09,770/- based on the specific information by the DGIT(Investigation), Mumbai the case was selected for compulsory scrutiny. The Id. AO also noted that since the assessee concern is engaged in corresponding sales also, the

only possibility is of purchases being from a different concern other than the concerns as listed here in above. Considering this aspect of the facts the Id. AO rejected the books of the assessee and estimated 25 % of the purchase claimed as income of the assessee for an amount of Rs. 35,09,770/-.

4. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A). Apropos to the grounds so raised by the assessee the relevant findings of the Id. CIT(A) is reproduced here in below:-

“5.3 Ground No. 2 Through this ground, the appellant has challenged the addition of Rs. 8,77,442/- being 25 percent of alleged bogus purchases of Rs.35,09,770/- made from 3 parties alleged to be controlled by Bhanwar Lal Jain group of Mumbai. In the appellant's case, as per information from DGIT(Inv.), Mumbai, a search and seizure action under section 132 of the Act was carried out in the case of group concerns of Sh. Bhanwarlal Jain. In the said search and seizure action various incriminating documentary evidence were found and seized. During the course of search, it was found that this group was indulging in providing accommodation entries to various parties through benami concerns operated and managed by Sh. Bhanwarlal Jain and his son. Sh. Bhanwarlal Jain also admitted the same in his statement on oath recorded during search operation u/s 132(4). The statement of various persons connected with this group and engaged in providing accommodation entries through benami concerns to the beneficiaries were recorded. As per the information received by AO, the appellant M/s Khandelwal Diamonds Pvt. Ltd. was one of the beneficiaries and had obtained accommodation entries in the form of bogus purchases to the tune of Rs. 35,09,770/- from the following 3 parties during the FY 2011-12:

Name of the Bill Provider	Amount in Rs.
Pankaj Exports	15,58,560/-
Malhar Exports	15,56,010/-
Ankita Exports	3,95,200/-
Total	Rs. 35,09,770/-

5.4 The AO after detailed discussion rejected the books of account u/s 145(3) and disallowed 25% of the said purchases making an addition of Rs. 8,77,442/-. The conclusion was reached based on the following facts:

(i) A search and seizure action under section 132 of the Act was carried out in case of Sh. Bhanwarlal Jain Group by Investigation Wing, Mumbai wherein it was found that this group was an entry provider indulging in providing accommodation entries pertaining to bogus purchases to various parties. Sh. Bhanwarlal Jain admitted the same in the statement recorded u/s 132(4). The alleged suppliers/parties of the group concern have also admitted that they never sold any goods & were only issuing bogus sales invoices and charged commission in lieu of providing accommodation entries. The appellant M/s Khandelwal Diamonds Pvt. Ltd. was one of the beneficiaries.

(ii) The assessee failed to establish the existence of the payee and the genuineness of the payment for business needs as it failed to provide the correct business addresses where these entities are carrying on their business so that the Department could contact them for independent verifications. Therefore, the appellant has failed to discharge its onus to establish the existence of the concerns which allegedly sold the goods to it.

(iii) It was incumbent on part of the assessee to produce the parties along with necessary documents which it failed to do.

(iv) Payments by the a/c payee cheque does not make the purchase transaction genuine.

5.5 The primary onus was on the assessee to establish the genuineness of the purchases claimed by it. Since the primary facts were in the knowledge of the assessee it was his duty to provide the correct address or contact modes of the alleged suppliers. If the investigation done by the department leads to doubt regarding the genuineness of the purchases, it is incumbent on the assessee to produce the parties along with necessary documents to establish the genuineness of the transaction. The assessee failed to discharge its onus.

Considering the above facts, and placing reliance on various case laws, the AO rejected the books of account u/s 145(3). However, since the assessee was engaged in corresponding sales, the AO has disallowed an amount of Rs. 8,77,442/- being 25% of alleged bogus purchases.

5.6 As can be seen, information was available before the AO as given by DGIT (inv) Mumbai, which demonstrated that the suppliers from whom the appellant claimed to have effected purchases are providing bogus bills & accommodation entries. Therefore, in the aforesaid context, the appellant was required to prove the genuineness of the purchases made from those parties. Merely filing bills, confirmation of account & payments by cheque does not tantamount to discharge of the onus cast on the appellant especially when the department had received specific material/information from the Investigation wing, wherein Sh. Bhanwarlal Jain/ the suppliers operating the benami concerns, on oath had admitted the fact that they have merely provided entry / issued bills without physically selling/delivering any goods. Further, it was the duty of the appellant to establish the existence of aforesaid suppliers. It is observed that the purchases made by the appellant from the concerned parties remained unverifiable due to non-production of the parties. Production of suppliers assumes importance in view of specific information with the Department that the concerned parties from whom the appellant claimed to have purchased the goods have actually admitted of providing accommodation entries & bogus purchase bills. Therefore, onus was on the appellant to satisfactorily prove that entire purchases are genuine by producing the alleged suppliers for verification. But the appellant failed to do so.

5.7 It has been held in a plethora of decisions that payment by a/c payee cheque is not sufficient to prove a transaction as bonafide. Merely because the money is transferred through the bank account does not prove that the money is explained. The appellant has submitted that Shri Bhanwar Lal Jain or any of the person whose statements were being relied upon by the Id. AO, was neither prop nor partner/director in alleged bogus concerns and all such parties had given their confirmations about selling the goods to the appellant. The contention is not accepted as during the course of Search & Seizure in the case of Bhanwar Lal Jain Group it has been established that Shri Bhanwarlal Jain was providing accommodation entries through various concerns which were operated by him and his son. Filing confirmations therefore does not serve any purpose as the real nature of the transactions as established during the course of search was to provide accommodation entries to reduce taxable profits.

5.8 The onus was on the appellant to prove the identity of the so-called suppliers and genuineness of transactions, when the purchases were claimed to have been made from them. The appellant failed to provide the correct business addresses where these entities are carrying on

their business so that the Department could contact them for independent verifications. It also failed to produce the parties along with necessary documents. This combined with the fact that the alleged aforementioned parties have been declared as engaged in issuing bogus sale invoices by the DGIT(Inv), Mumbai, leads one to conclude that the purchases from these aforementioned parties are not established. The purchases have failed to stand the test of scrutiny, as the appellant has failed to establish that the transactions are genuine. It is clear that these expenses have been debited in the books of account to reduce profit. In the face of these facts, the AO has rightly rejected the books of account and made disallowance of 25% of total purchase of Rs. 35,09,770/- amounting to Rs. 8,77,442/- on account of inflation of purchases and suppression of profits.

5.9 The appellant has claimed that the material relied upon i.e. statements of Shri Bhanwarlal Jain and group and opportunity to cross examine the parties was not DEPARTMEN given. The contention of the appellant is examined. At this juncture it would be relevant to take note of the decision of the High Court of Delhi in Suman Poddar Vs ITO which was affirmed by the Hon'ble Supreme Court in (2019) 112 taxman.com 330:

The first, issue which has been raised by the assessee that it has not been confronted with the statements of various parties relied upon by the Assessing Officer. The assessee has also contended that opportunity of cross-examining those parties/persons was not provided to the assessee. According to the assessee, this resulted in the violation of the principles of natural justice and thus assessment should be held void ab intio. However, in our opinion, not providing opportunity of cross-examination may be in the nature of irregularity which is curable but not an illegality leading to annulling of the assessment

In this case, information has been provided by the DGIT(Inv), Mumbai after crystallization and in-depth investigation. It is observed that the AO has issued notices under sections 143(2), 142(1) of the Act, show cause and the appellant has been directed to furnish the documents. The appellant has complied with the directions, appeared before the assessing officer and submissions have been made consequent to which the assessment has been completed. Therefore, merely by mentioning that material relied upon was not shared/opportunity for cross examination was not given can in no manner advance the case of the appellant. In State Bank of Patiala v. S.K. Sharma AIR 1996 SC 1669, the Hon'ble Supreme Court has pointed out that violation of any and every procedural provision cannot be said to automatically vitiate the domestic enquiry held against the delinquent employee or the order passed by the disciplinary authority except in cases falling under no notice, no opportunity and no hearing categories. Further it was held that if no prejudice is established to have resulted from such violation of procedural provisions no interference is called for, against the ultimate

orders. The test laid down was whether the person has received a fair hearing considering all things as the ultimate test is always the test of prejudice or the test of fair hearing. Further the Hon'ble Supreme Court pointed out a distinction between a case of no opportunity and a case of no adequate opportunity and while examining the latter case, it was held that the violation has to be examined from the stand point of prejudice, in other words the Court or the tribunal has to see whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answers to the said query.

As to whether and under what circumstances the NTF of cross examination can be demanded as a vested right, in Bakshi Ghulam Mohammad the Hon'ble Supreme Court held that the right of hearing cannot include the right of cross examination and the right must depend upon the circumstances of each case and must also depend on the statute under which the allegations are being enquired into.

In this case, the appellant has not been able to specifically point out as to how it was prejudiced on account of non-furnishing of the statements on oath and on failure to provide the opportunity of cross examination. The appellant has failed to prove the test of prejudice or that the test of fair hearing has not been satisfied. Non-furnishing of the report and providing opportunity for cross-examination has in no manner prejudiced the rights of the appellant to discharge the onus cast upon him. It is not in dispute that whatever information which was required to be made known to the appellant has been informed by issuance of a notice to which to the appellant has responded by submitting replies. Therefore, in the absence of any prejudice caused to the assessee on account of non-furnishing of the report or giving opportunity for cross examination, the appellant cannot claim that there has been violation of principles of natural justice and the right to defend itself was in any manner affected.

5.10 As held by several courts, the department is not required to lead clinching evidence to prove that purchases are bogus. The onus of proof at all relevant times rests upon the assessee. It is for the assessee to establish by evidence that a particular allowance is justified. The law does not prescribe any quantitative test to find out whether the onus in a particular case has been duly discharged. It all depends on the facts and circumstances / situations of the case as held by the Hon'ble Gauhati High Court in the case of Assam Pesticides & Agro Chemicals V. CIT (1997) 227 ITR 846, 851, 852 (Gauh). In the case of CIT Vis Golcha Properties (Pvt.) Ltd. 227 ITR 391 (Raj), the Hon'ble Rajasthan High Court has held that the genuineness of transaction could be decided on the basis of primary facts on records.

5.11 Further, the appellant has submitted that it has declared an NP rate of 9.15% for the assessment year under consideration and relied on the CBDT instruction 2/2008 dated 22-02-2008 wherein it is stated that for benign assessment procedure of a diamond trader if the trader declares profit @ 6% or more of turnover then the same deserves to be accepted for the AY 2008-09. I have perused the said circular. It has been explicitly mentioned in para 'D' that:

D. The procedure shall not apply to an assessee for an assessment year

(iv) Where assessment is being made pursuant to a –

- i. search and seizure action under section 132; or
- ii. requisition made under section 132A; or
- iii. survey action 133A.

(v) where 50 per cent or more of the income from such business of an assessee is claimed as deduction under Chapter-III or under Chapter VI-A of the Income-tax Act.

(vi) where there is information regarding escapement of income.

In this case, appellant's case was reopened on the basis of information that a search and seizure action under section 132 of the Act was carried out wherein it was revealed that appellant was one of the beneficiaries of receiving accommodation entries in form of bogus purchase and income had escaped assessment. Therefore, case of the appellant falls in above exception and instruction number 2/2008 dated 22-02-2008 does not apply. Further, the instruction is applicable for AY 2008-09 only and not for the year under consideration.

5.12 Keeping in view the facts in entirety, as discussed above and appellants failure to establish that the purchases are genuine it is held that the books of the appellant were not tenable as per provisions of section 145(3) of the Act, and 25% amounting to Rs. 8,77,442/- of the alleged purchases of Rs.35,09,770/- added back by the AO to the business income of the appellant are held to be justified and addition on this account stands confirmed. Accordingly, ground no. 2 of appeal raised by the appellant is dismissed.

6. Ground No. 3 is general in nature, therefore, not adjudicated upon.

7. In the result, appeal is dismissed.”

5. As the assessee did not find any favor from the finding from the first appellate authority and feeling dissatisfied from the order

of the Id. CIT(A), assessee has filed the present appeal as per grounds so raised and reiterated in para 2 above. The Id. AR of the assessee in support of the grounds so raised, filed a detailed submission which is reproduced here in below:-

“Before making detailed arguments the appellant would like to submit that present case of the appellant is covered case with the decision of the Hon`ble Bench in ITA No. 245/JPR/2023 vide order dated 18.07.2023 of the appellant which relates to AY 2014-15 containing exactly similar facts and hence the appellant relies completely on the submissions given in that case and the order of the Hon`ble Bench for this instant appeal. The only difference between both the cases is that in the cited case the assessment was framed u/s 143(3) whereas in the instant appeal the order was passed consequent to notice u/s 148. In this instant appeal the appellant has also challenged action of the Id. AO in issuing notice u/s 148 in ground no. 2.

Brief facts of the case :-

Assessment proceedings :

The appellant company was incorporated during the previous year 2011-12 and hence this was the first year of business. It has been engaged into trading of diamond, gold jewellery, coloured stones etc. For the year under consideration it had filed its ITR on 24.09.2012 declaring an income of Rs. 52,71,470. The return was processed /s 143(1) on the returned income. Thereafter on receipt of information about purchase of goods from certain concerns alleged to be belonging to Bhanwar Lal Jain group an opinion was formed that these purchases were accommodation entries only and accordingly notice u/s 148 was issued on 22.03.2017. The Id. AO received the information that the appellant had purchased goods worth Rs. 35,09,770 from three concerns of Bhanwar Lal Jain group and based thereon a show cause notice was issued for treating the said purchase as bogus. In response thereto the appellant had submitted confirmations, bank statements of the parties, their PAN cards etc. but the Id. AO by relying on the information in her possession proceeded to treat the purchases as accommodation entries and made addition of Rs. 8,77,442 being 25% of purchases from three parties. During the assessment proceedings the appellant had requested for producing all the persons whose statements were being relied upon by the Id. AO for considering the above stated purchases as bogus but no such action was undertaken by her. Even the Id. AO did not provide any material to the appellant which were in her possession and even she did not share any

information that might have come to her during her independent enquiries conducted from the three parties. The Id. AO without sharing any information in her possession and merely relying on the information received from investigation wing rejected the books of account u/s 145(3) and disallowed a sum of Rs. 8,77,442 being 25% of purchases of Rs. 35,09,770 made from three concerns alleged to be belonging to Bhanwar Lal Jain group by relying on the judgement of the Hon`ble Gujarat High Court rendered in the case of Sanjay Oilcake Industries (2008) (10 DTR 153).

First Appeal :

An appeal was preferred to the Ld. CIT (A) who concurred with the view of the Id. AO sustained the order.

Grounds of Appeal :

At this juncture the appellant would like to take one additional ground which is legal in nature and which is being taken for the first time. As the issue is legal in nature and all facts thereto are arising out of assessment order and no further investigations are required to be carried it is sincerely requested to kindly admit the same in accordance with the judgement of the Hon`ble Supreme Court in the case of NTPC Ltd. (229 ITR 383).

The said new ground is as under :-

Ground No. 4 : That the Id. AO has erred seriously on facts in applying the provisions of section 145(3) of the Income Tax Act, 1961 without proving any mistake on the part of the appellant. Such illegal action of the Id. AO may kindly be quashed.

The Id. AO states in her concluding para of the order at second last page of the order that since the assessee is engaged into sales of diamond and hence the only possibility is of purchases being made from a different concern other than the three parties listed above and consequently purchases made from above 3 parties are treated as bogus purchases and the assessee`s books are therefore rejected u/s 145(3) for the same reason.

The Id. AO has stated above facts without :-

- Confronting the appellant with the material in her possession which has been considered by her as adverse.
- Confronting the appellant with the statements of parties recorded during the course of search and which have been relied upon by her.

- Allowing any opportunity of cross examination of persons whose statements have been relied upon by her for which demand was raised by the appellant during assessment proceedings
- Verifying that the assessee has maintained complete quantitative details of the items purchased and sold by it (APB 41).
- Pointing out any mistake in the records of the appellant which indicate that the accounts were not reliable and she has relied merely on the information in her possession as received from investigation wing of Mumbai

The above approach of the Id. AO shows that she guided herself only with the information received from investigation wing of Mumbai and she had pre decided in her mind that 25% disallowance is to be made in the case. In this way her application of provisions of section 145(3) is illegal and unjustified and deserves to be quashed.

As ground no., 1 and 3 are against the same action of the Id. AO as well as Id. CIT (A) and are containing identical facts and submissions and hence both the grounds viz. 1 and 3 are being argued simultaneously.

Ground No. 1 : That under the facts and circumstances of the case, the Id. CIT (A) has erred seriously on facts in sustaining the action of the Id. AO in making an addition of 25% of alleged bogus purchases of Rs. 35,09,770 made from 3 parties without any basis.

Ground No. 3 : That under the facts and circumstances of the case, the Id. CIT (A) has erred seriously on facts in sustaining the action of the Id. AO in considering the purchases of a sum of Rs. 35,09,770/- made from 3 parties as bogus by rejecting the pleas of the appellant that (1) No statements of the parties on which reliance had been placed by Id. AO were provided to the assessee, (2) No Material/ records found during the course of search in the case of Bhanwar Lal Jain group which was considered as against the assessee was provided to the assessee and (3) No cross examination of the parties was allowed to the assessee.

The Id. AO has considered the purchases made by the appellant from 3 parties as bogus merely on the basis of the information passed on to her by Investigation wing of Mumbai. The appellant had submitted copies of the purchase bills, confirmation of the parties etc. (APB 4-34) but she has not made any comments on such vital documents and she insisted on production of all such parties which was an impossible task for the appellant. She did not share the documents in her possession, statements of the parties searched and even failed to produce all such

parties before the appellant for cross examination. She even did not share the outcome of independent enquiries conducted by her about such alleged bogus parties. The Id. AO did not have any thing in her possession to prove such purchases as bogus. Further the Id. CIT (A) has also erred seriously in sustaining the action of the Id. AO without caring for the evidences submitted by the appellant during assessment and appellate proceedings. Therefore then action of the Id. CIOT (A) is not in accordance with law and deserves to be quashed.

The Id. AO has relied on the judgment of the Hon`ble Gujarat High Court in the case of Sanjay Oil Cake Industries v/s CIT (2008) (10 DTR 153) for making an addition @ 25% of the purchases from 3 parties which have been alleged to be bogus. Such action of the Id. AO is without any basis or any evidence in her possession to make an upfront disallowance of 25%. She forgot to take into consideration the following facts :-

- The appellant has dealt with diamond, diamond jewellery and precious and semi precious stones during the year under consideration. Out of total turnover of Rs. 5.57 Crores it has declared turnover of following items :-

Diamond	3.19 Crores
Coloured Stones	1.80 Crores
Diamond Jewellery	0.24 Crores
Gold and Gold Jewelelry	0.34 Crores

In all the above sales the appellant has declared a net profit of Rs. 52,43,831 which amounts to 9.42% in the first year of business and such declared income was absolutely reasonable and there was no reason to doubt the purchases made by the appellant from 3 parties. Botht ehe lower authorities erred serioululy in not appreciating this factual position of the appellant.

The purchases doubted by the Id. AO are only for purchase of diamonds for which copies of all the bills are enclosed in paper book (APB 4,13 and,24). The appellant has already declared a GP rate of 5.96% in the diamond trade and has declared a GP rate of 13.59% in diamond jewellery which is more than reasonable in diamond trade. By making addition of Rs. 8,77,442 the Id. AO has raised the GP upto Rs. 27,79,392 i.e. GP Rate of 8.71% which is very high and exorbitant considering the first year of business of the assessee.

Regarding such addition reliance is placed on the following judgements of the Hon`ble ITAT :-

- i. Sanghavi Exports International P Ltd. v/s DCIT (Mumbai ITAT) (Case Law APB 1-9) : In this case the said party is into diamond export

business. Its purchases from 11 parties belonging to Bhanwar Lal Jain group was doubted and the Id. AO made addition of the whole amount of purchases u/s 69C. On appeal the Id. CIT (A) deleted addition u/s 69C and restricted the addition to 3% of the purchases made from such 11 parties. On further appeal the Hon`ble ITAT after observing that the assessee had declared a GP rate of 7.17% which is reasonable deleted the addition of 3% also as made by Id. CIT (A). This cited case has exactly similar circumstances as that of present appellant and hence it is submitted that no further addition was required to be made by the Id. AO and the Id. CIT(A) when the assessee has already declared sufficient gross profit in diamond trade.

- ii. Vama International v/s ITO (Mumbai ITAT) (Case Law APB 10-28) : The assessee is into diamond trade. Based on the information about search in the case of Bhanwar Lal Jain group the AO reopened the assessments for the AY 2011-12, 2012-13 and 2013-14 and even after submitting all details such as copy of bills, confirmation, bank statement of the supplier, their ITR etc. the Id. AO made 12.50% addition on the amount of purchases from the concerns controlled by Bhanwar Lal Jain in the AY 2012-13 and 2013-14 and in case of AY 2011-12 made 100% addition in the returned income. In first appeal the Id. CIT (A) sustained the findings of the Id. AO but restricted the addition in all the three years @ 12.50% of the amount of purchases made from such concerns. On further appeal the Hon`ble ITAT deleted the whole addition by observing that the assessee has already declared an overall GP of 6.04% which is more than the reasonable GP. In the case in hand also the GP declared by the appellant is on very good footings and no disallowance was required to be made.
- iii. Rajendra Prasad Chaudhary v/s ACIT (Jaipur ITAT) (Case law APB 29-39) : The assessee is into diamond trade and 148 proceedings were initiated by Id. AO (same ASO as that of the appellant) on the basis of information received from investigation wing of Mumbai. The Id. AO made addition @ 25% on purchases made from concerns of Bhanwar Lal Jain group as per their routine exercise. However the Id. CIT(A) restricted the GP rate to 8.50% (without confirming any addition made on estimated by Id. AO) and on further appeal this bench of Hon`ble ITAT deleted the whole addition. Relevant observations of the Hon`ble ITAT on the issue of GP rate are in pare 12 of the order (at Case law index APB 37-38) wherein the profit rate declared by the assessee at 7.32% and 7.80% has been considered reasonable. On the footings of GP rate the case of the present appellant is on far better footing as it has already declared overall profit of around 9.5% in the business.

The appellant has declared an NP of Rs. 78,92,898 (Profit before tax as per APB 57) on a turnover of Rs. 8,98,24,315 yielding an NP rate of 8.79% which is more than reasonable in the trade of diamond. The fact

of declare GP and NP rate have been completely ignored by the Id. AO as well as Id. CIT(A).

The appellant also relies on instruction no. 2/2008 dated 22.02.2008 issued by CBDT (APB 65) wherein a GP rate of 6% has been deemed reasonable in diamond trade. Although this instruction was issued for the assessments made during the FY 2008-09 but this shows that the CBDT is conscious about the reasonableness of profit earned in diamond industry. It can not be anticipated that reasonable GP rate which was 6% during PY 2008-09 would rise to higher rate in future in this competitive world. The Id. CIT (A) has stated about applicability of this instruction in the case of the appellant at para 5.11 of his order at page 30 wherein he states that since the case of the appellant was selected manually on the basis of search in the case of Bhanwar Lal group and hence this instruction is not applicable in the case of the appellant as mentioned in the instructions itself. The instruction although states about such exclusion but it is not clear whether this exclusion is for searched person or for other persons also. From a plain reading it shows that this exclusion clause is applicable for the persons who have been searched and is not applicable on other persons. Therefore the conclusion of the Id. CIT (A) for applicability of this instruction is not correct and deserves to be quashed.

The appellant had submitted all possible evidences in its possession to prove that all such purchases are genuine. Such documents include bills of purchases, confirmed account statements etc. (APB 4-34) which satisfies the prima facie burden of the appellant. The assessee has maintained complete books of accounts as desired by law including quantitative stock etc. which have not been doubted by the Id. AO and hence her action in making addition @ 25% of such alleged bogus purchases is wrong and unjustified. The appellant has enclosed copies of its Balance Sheet and Profit & Loss Account for the year under consideration for your kind verification (APB 38-39).

Ground No. 2 : That the Id. CIT (A) has erred seriously in law and on facts in sustaining the validity of notice issued by Id. AO u/s 148 of the Income Tax Act, 1961 which was challenged before him on the reason of issuing notice u//s 148 on borrowed satisfaction of another wing of the department.

In this ground the appellant wishes to challenge the action of the Id. AO in initiating action u/s 147, for which notice u./s 148 has been issued without satisfying the conditions stipulated therein. The reasons for initiating this action is enclosed herewith for your kind verification (APB 1). As per these reasons it is apparent that the Id. AO had received information from DGIT (Inv.), Mumbai about search in the case of Bhanwar Lal Jain group of cases. After receiving the information the Id. AO did not take any step further and issued notice u/s 148 of the Income Tax Act, 1961. Such reason do not contain any statement

about any efforts made by the Id. AO to reckon the truthfulness of the information received by her. In this way she had initiated the action on the basis of borrowed satisfaction of some other authority. She has also mentioned that *“Therefore based on the above information, I have reason to believe that the assessee company has failed to disclose fully and truly all material facts necessary for his assessment for the AY 2012-13 and therefore an income of Rs. 35,09,770/- has escaped assessment within the meaning of section 147 of the Act of the Act. Hence it is fit case for issue of notice u/s 148 of the Act”* which also evidence in clear terms that she merely relied on the information so received by her. It is a settled law now that proceedings u/s 147 can not be invoked on the basis of satisfaction recorded by others. Such view has been upheld by the Hon`ble Mumbai High Court in their case of PCIT -5, Mumbai v/s M/s. Shodiman Investments P Ltd. (ITA No. 1297 of 2015 – Mumbai HC vide order dated 16.04.2018) (page 6-12 attached to this write up) wherein the Hon`ble Mumbai HC held as under :-

“13 In this case, the reasons as made available to the Respondent Assessee as produced before the Tribunal merely indicates information received from the DIT (Investigation) about a particular entity, entering into suspicious transactions. However, that material is not further linked by any reason to come to the conclusion that the Respondent Assessee has indulged in any activity which could give rise to reason to believe on the part of the Assessing Officer that income chargeable to tax has escaped Assessment.

It is for this reason that the recorded reasons even does not indicate the amount which according to the Assessing Officer, has escaped Assessment. This is an evidence of a fishing enquiry and not a reasonable belief that income chargeable to tax has escaped assessment.

14 Further, the reasons clearly shows that the Assessing Officer has not applied his mind to the information received by him from the DDIT (Inv.). The Assessing Officer has merely issued a reopening notice on the basis of intimation regarding reopening notice from the DDIT (Inv.) This is clearly in breach of the settled position in law that reopening notice has to be issued by the Assessing Office on his own satisfaction and not on borrowed satisfaction.

15 Therefore, in the above facts, the view taken by the impugned order of the Tribunal cannot be found fault with. This view of the Tribunal is in accordance with the settled position in law.”

Further reliance is also placed on the case of Commissioner of Income-tax v. Smt. Sohan Devi Sodani decided by the Hon`ble Rajasthan High Court (2008) 303 ITR 342 wherein the following was held :-

“The Tribunal found that merely on the basis of DVO’s report the reassessment proceedings could not have been initiated in the absence of Assessing Officer’s own satisfaction about escapement of income from tax. The Tribunal found that the opinion about the escapement of income from tax ought to be of the Assessing Officer himself and not of a borrowed opinion of the DVO. The principle cannot be accepted in abstract inasmuch as though the DVO’s opinion in respect of cost investment may not be final, but prima facie in some cases circumstances if otherwise relevant can provide some material, like an audit report on the basis of which Assessing Officer could have framed his own opinion. It is, however, true that opinion about escapement of income from tax must be of Assessing Officer alone and of none else. It is also trite to say that sufficiency or adequacy of material on the basis of which such opinion is formed cannot be a ground for formation of reason to believe. At the same time, it is equally true that the material on the basis of which such opinion is framed must have some relevant nexus with the formation of opinion about escapement of income from tax. Opinion cannot be formed (on) non-existent material or wholly irrelevant and extraneous material. To that extent exercise of jurisdiction by the Assessing Officer is justiciable, apart from the question of limitation within which such jurisdiction can be exercised by the Assessing Officer.”

Further reliance is also made on the recent case decided by the Hon`ble ITAT, Jaipur Bench, Jaipur in the case of *Smt. Kanta Chaudhary v/s ITO, 7(3), Jaipur (ITA No. 878/JP/2018 vide order dated 06.12.2018)* wherein also the following was observed :-

“We have heard the rival contentions and perused the material available on record. On perusal of the reasons so recorded by the AO before issuance of notice u/s 148 of the Act, we find that on the basis of certain information received from Investigation Wing, Mumbai the AO has just not formed an opinion but has finally concluded that the assessee has benefitted by obtaining accommodation entries from M/s. New Planet Trading Co. Ltd. Further the AO has stated that since the assessee has not filed the return of income as per AST system of the department, he has reason to believe that income has escaped assessment. To our mind, such an approach of the AO where, based on information received in context of a third party, even before issuance of notice u/s 148 has concluded that assessee has obtained accommodation entries and income to that extent has escaped assessment is not a correct approach in the eyes of law.”

Reliance is also placed on the judgment of the Hon`ble Delhi High Court in the case of *PCIT v/s Meenakshi Overseas P Ltd. (Delhi High Court) (Order dated 26.05.2017 in ITA No. 692/2016)* wherein also the Id. AO recorded reasons in a way that it transpired to the Hon`ble Court that same were merely on the basis of report received from

investigation wing of the department and the Hon`ble High Court sustained the order of the Hon`ble ITAT who quashed reassessment proceedings on the reason of borrowed satisfaction. The Hon`ble Court held as under :-

"36. In the present case, as already noticed, the reasons to believe contain not the reasons but the conclusions of the AO one after the other. There is no independent application of mind by the AO to the tangible material which forms the basis of the reasons to believe that income has escaped assessment. The conclusions of the AO are at best a reproduction of the conclusion in the investigation report. Indeed it is a 'borrowed satisfaction'.

The reasons fail to demonstrate the link between the tangible material and the formation of the reason to believe that income has escaped assessment.

37. For the aforementioned reasons, the Court is satisfied that in the facts and circumstances of the case, no error has been committed by the ITAT in the impugned order in concluding that the initiation of the proceedings under Section 147/148 of the Act to reopen the assessments for the AYs in question does not satisfy the requirement of law."

The facts of the present case are exactly similar to above cited four cases and hence it is sincerely requested that the whole proceedings u/s 147 may kindly be declared void ab initio and the order so passed may be annulled.

You are sincerely requested to allow the appeal of the appellant and oblige."

5.1. To support the contentions so raised and in addition to the written submission the Id. AR of the assessee has also submitted a paper book containing following documents which reads as under:-

S. No.	Description	Page No.
1	Reasons for reopening of the case as recorded by Ld. AO	1
2	Details of Purchases made during the year under consideration	2-3
3	Bill, Confirmation, PAN Card, ITR, Bank Statement, Final Account of Pankaj Export	4-12
4	Bill, Confirmation, PAN Card, ITR, Bank Statement, Final Account of Malhar Export	13-23

5	Bill, Confirmation, PAN Card, ITR, Bank Statement, Final Account of Ankita Export	24-34
6	Account Statements of Pankaj Exports, Malhar Exports and Ankita Exports for the year under consideration	35-37
7	Balance Sheet & P & L Account of the appellant for the year ended 31.03.2012	38-39
8	Instruction No. 2/2008 dated 22.02.2008 issued by CBDT	40
9	Quantitative Details of Item traded during relevant PY	41

5.2 The Id. AR of the assessee has relied upon the following judgments: -

S. No.	Description	Page No.
1	Judgement of Hon'ble Mumbai ITAT in the case of M/s Sanghavi Exports International Pvt. Ltd.	1-9
2	Judgement of Hon'ble Mumbai ITAT in the case of M/s Vama International	10-28
3	Judgement of Hon'ble Jaipur ITAT in the case of Shri Rajendra Choudhary	29-39

5.3 In addition to the written submission so filed by the Id. AR of the assessee, he has vehemently argued that though the Id. AO alleged that the assessee has made the purchases which are termed as from the entry provider but at the same time he has agreed that the assessee has sold the goods also. Hence, he has estimated the profit @ 25 % ignoring the facts of the case. It is not disputed by the Id. AO that the assessee has not sold the goods which alleged to be purchased from the bogus bill provider but at the same time he observed that the assessee has taken the bill from those parties but the goods have been received from the different party as the sales is not disputed. Thus, the Id.AR of the

assessee submitted that the dealing of the assessee in diamonds and jewellery is not doubted. The profit of diamonds business and the date of the jewellery is tabulated and disclosed @ 10.28% and 13.88% respectively, which are higher in terms of percentage for the various decision relied upon hereinabove. Therefore there is no requirement to reject the books result declared by the assessee. The Id. AR of the assessee in support of the additional ground so raised in this appeal as ground No. 3 that while rejecting the books of accounts, the Id. AO has not pointed out any single defect in the book result and has simply relied upon the material or the information received from the search which was carried out in Bhanwar Lal Jain Group in Mumbai. The Id. AR of the assessee also submitted that relied upon the material or the statement is not enough, and he has not ever said with the name of the assessee and without sharing that the information and without pointing out any single defects in the books of accounts, the rejection of books of account are not in accordance with law. The Id. AR of the assessee further submitted that even the books of account is to be rejected, the Id. AO bound to issue the show cause notice and should also demonstrate as to why he wanted to apply the GP rate and thereby intend to estimate the income of the

assessee. As it is seen that there is no such show cause notice of estimation has ever been given to the assessee. The Id. AR of the assessee further submitted that he was not given to the said specific show cause notice for rejection of books of account and even otherwise the order after rejection of books of account is required to be passed u/s 144 of the Act whereas in the case of the assessee the order has been passed u/s 143(3) of the Act. Therefore the rejection of books of account is not as per provisions of the Act and also not correct on fact as the assessee was neither given any material relied upon nor was one any single defect in the books of account in support of the alleged peculiar purchases. The Id. AR of the assessee in the assessment proceedings submitted copy of invoices, copy of confirmation of account this primary details submitted were enough and never ever been confronted to be incorrect. There is no whisper in the assessment order as to incorrect of these information but simply there is an information from the investigation wing the books which are maintained in the regular course of business and same are audited by an independent Chartered Accountant the same cannot be rejected. To support, this contention, the Id. AR of the assessee relied upon on the written submission filed so far and the various

decisions and he has on facts differentiated the relied upon decisions by the Id. DR as the same are on different finding and facts. In those case relied upon by the AO/DR wherein there is recorded the finding that the purchases recorded in the books are bogus based on the material placed on record. Whereas in this case the Assessing Officer in the assessment order recorded that finding that the purchases are in fact may be bogus but the material are received from the other person this itself proves that though it is alleged that the bills recorded in the books if found bogus the consequent goods have been received and corresponding sales is also recorded in the books of account. Not only that, in this case there is no finding that the bills and confirmation are also bogus or incorrect on the merit of the case. The Id. AR of the assessee relied upon the judgment of the Coordinate Bench of Mumbai and ITAT, Jaipur wherein the GP rate was accepted at lower than what is disclosed by the assessee. The Id. AR of the assessee further submitted that since the Board has categorically admitted that 6% GP rate to be fair enough if declared by the diamonds dealers whereas in this case for the year under consideration the assessee has disclosed GP @ 5.96%. The findings of the Id. CIT(A) that this instruction is not

applicable is against the facts on record. Therefore on these issues, the Id. CIT(A) has erred in holding that the case of the assessee falls in the exception criteria. Based on these arguments, the Id. AR of the assessee submitted that the appeal of the assessee should be decided on technical grounds. Even on merits there is sufficient material on record by the lower authorities and thereby he has supported his arguments.

6. Per contra, the Id. DR relied on the case laws cited here in below and submitted that the assessee is involved in bogus purchase for which the findings of the lower authorities were relied upon by the Id. DR. The Id. DR submitted that there is specific information that the assessee has made purchases from three concerns of Shri Bhanwarlal Jain Group. The issue of notice u/s. 148 is not from the borrowed satisfaction but based on the sufficient information so ground of assessee challenging the reopening is not maintainable. The Id. AO has considering the aspect of the matter and considering the judicial precedent already given credit for purchases and estimated the profit @ 25 %. The rejection of the books are based on the fact that the assessee is involved in the tainted purchases and therefore, 145(3) is correctly

invoked. As regards the cross examination as there is general information available on record for which no cross examination is required and the right of cross examination is not absolute right of the assessee. The Id. DR vehemently argued that the CBDT circular is of 2008 where as the fact of the case is for the year 201, the same rate of profit is not applicable in the case of the assessee after the gap of four years. The Id. DR to drive home to the contentions so raised in addition to the decision cited in order of the lower authorities has also relied upon the following decision:

S.No.	PARTICULARS	Page No.
1.	[2016] 66 taxmann.com 288 (SC) SUPREME COURT OF INDIA Securities and Exchange Board of India v. Kishore R. Ajmera	4-19
2	[1962] 45 ITR 206 (SC) SUPREME COURT OF INDIA C. Vasantlal and Co.v. Commissioner of Income-tax	20-24
3	[2007] 158 Taxman 71 (SC) SUPREME COURT OF INDIA Kachwala Gems v. Joint Commissioner of Income-tax, Jaipur	25-30
4	[2007] 161 Taxman 316 (SC)/[2007] 291 ITR 500 (SC)/[2007] 21...[2007] 161 Taxman 316 (SC) SUPREME COURT OF INDIA Assistant Commissioner of Income-tax v. Rajesh Jhaveri Stock Brokers (P.) Ltd.	31-41
5	[2017] 84 taxmann.com 300 (SC) SUPREME COURT OF INDIA Paramount Communications Ltd. v. Principal Commissioner of Income Tax	42
6	[2019] 112 taxmann.com 330 (SC) SUPREME COURT OF INDIA Suman Poddar v. Income Tax Officer	43-48
7	[1995] 80 Taxman 89 (SC)/[1995] 214 ITR 801 (SC)/[1995] 125 ...[1995] 80 Taxman 89 (SC) SUPREME COURT OF INDIA Sumati Dayal v. Commissioner of ncome-tax	49-54
8	[1999] 236 ITR 34 (SC)/[1999] 152 CTR 418 (SC)[17-12-1997] [1999] 236ITR34 (SC) SUPREME COURT OF INDIA Raymond Woollen Mills Ltd. v. Income-tax Officer	55-56
9.	[2022] 139 taxmann.com 352 (Calcutta) HIGH COURT OF CALCUTTA Principal Commissioner of Income-tax v. SwatiBajaj	57-116
10	[1995] 82 TAXMAN 31 (CAL.) HIGH COURT OF CALCUTTA Commissioner of Income-tax v. Precision Finance (P.) Ltd.	117-121

11	[1997] 92 TAXMAN 356 (RAJ.) HIGH COURT OF RAJASTHAN, JAIPUR BENCH Commissioner of Income-tax v. Golcha Properties (P.) Ltd.	122-126
12	[2001] 117 Taxman 628 (Delhi)/[2001] 250 ITR 575 (Delhi)/[20... [2001] 117 Taxman 628 (Delhi) HIGH COURT OF DELHI Commissioner of Income-tax v. La Medica	127-130
13	[2000] 111 TAXMAN 46 (KER.) HIGH COURT OF KERALA Beena Metals v. Commissioner of Income-tax	131-132
14	[2009] 316 ITR 274 (Gujarat)[04-03-2008] [2009] 316 ITR 274 (Gujarat) HIGH COURT OF GUJARAT SanjayOilcakeIndustries v. Commissioner of Income-tax	133-138
15	[2002] 125 TAXMAN 763 (RAJ.) HIGH COURT OF RAJASTHAN, JAIPUR BENCH Indian Woollen Carpet Factory v. Income-tax Appellate Tribunal	139-141
16	[2003] 132 TAXMAN 629 (RAJ.) HIGH COURT OF RAJASTHAN Rameshwar Lal Mali v. Commissioner of Income-tax	142-143
17.	[2017] 79 taxmann.com 409 (Delhi) HIGH COURT OF DELHI Principal Commissioner of Income-tax-7 v. Paramount ommunication (P.) Ltd.	144-148
18.	[2016] 76 taxmann.com 106 (Gujarat) HIGH COURT OF GUJARAT Peass Industrial Engineers (P.) Ltd. v. Deputy Commissioner of Income-tax	149-160
19.	[2018] 91 taxmann.com 119 (Gujarat) HIGH COURT OF GUJARAT Aradhna Estate (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-(1)	161-175
20	[2017] 85 taxmann.com 84 (Gujarat) HIGH COURT OF GUJARAT Pushpak Bullion (P.) Ltd. v. Deputy Commissioner of Income-tax - Circle-3(1)	176-181
21.	[2017] 78 taxmann.com 58 (Gujarat) HIGH COURT OF GUJARAT Ankit Financial Services Ltd. v. Deputy Commissioner of b ncome-tax, Circle 1(1)(2)	182-188
22.	[2017] 83 taxmann.com 82 (Gujarat) HIGH COURT OF GUJARAT Aaspas Multimedia Ltd.v.Deputy Commissioner of Income-tax, Circle 1(1)	189-204
23	[2018] 89 taxmann.com 45 (Rajasthan) HIGH COURT OF RAJASTHAN Ankit Agrochem (P.) Ltd. v. Joint Commissioner of Income-tax, Range-1, Bikaner	205-214
24.	[1998] 96 Taxman 366 (Gauhati) High Court of Gauhati Assam Pesticides & Agro Chemicals v. Commissioner of Income-tax	215-218

7. In the rejoinder, the Id. AR of the assessee submitted that the year under consideration is the assessment year 2012-13 and

there is no merit in the arguments of the Id. DR to send it back to the file of the AO to decide it as afresh. Because there will not be any more requirement of findings of facts because the material is already available in the original assessment proceedings which the Id. AO has not investigated on account of reasons best known to him. Therefore, he prayed that the issue of estimation of profit may be decided by bench based on the arguments and material advanced in this appeal.

8. We have heard the rival contention, perused the material available on record and gone through the judgment relied upon by both the parties to drive home to their respective contentions advance before us. Brief facts of the case are that the assessee is engaged in the business of the purchase, sale manufacturing and trading of gold jewellery with diamond and color stones, diamond and gems stones. The case of the assessee was reopened based on the information received pursuant to the search and seizure action u/s. 132 of the Act in the case of Bhanwarlal Jain Group. In that search it was gathered that group provides accommodation entries of bogus purchases through various benami concerns operated and managed by Bhanwarlal Jain and his son. A search

revealed various incriminating documentary evidence were seized. In addition, statements of various persons (who assist Bhanwarlal Jain in providing bogus purchases through benami concerns to the beneficiaries) were recorded. Mr. Bhanwarlal Jain in his statement accepted to the fact that he was engaged in providing bills and his reply relied upon by the Id. AO in his order is reproduced as under:

"Q. 16 In his statement recorded u/s.131 of IT ACT, 1961 on 06.10.2013, Lunkaran Parasmal Kothari has stated that import of Diamond in the concerns managed and controlled by you, is made on behalf of certain local parties who do not wish to show such imports in their books of accounts. On receiving the consignment, the material is handed over to real importer out of books. However, in the books of the concerns managed and controlled by you, the said consignment still appear as stock since the material has been sold to the real importer out of books. To show sale against the bogus stock outstanding in your books, bogus sale bill are issued to parties against their purchase made in cash. These parties who take accommodation entries from your concerns make payment through RTGS. This RTGS is in turn used to make payment to the foreign parties from whom import has been made. The parties who have been given accommodation e4ntries by you in form of bogus bill and who had made payment for such bogus purchase through RTGS want their cash back. In the meantime, the real importer on whose behalf import has been made makes the payment for the said import through Aangaria (Cash transaction). The cash thus received from the real importer is used to pay back the party from whom RTGS has been received against bogus accommodation entry. Please comment on the same.

Ans. "Sh. Lunkaran Parasmal Kothari has correctly stated that import of Diamond in the concerns managed and controlled by me of various concerns running from our offices mentioned in Annexure A of his statement does import diamond as per the modus explained by him. I do agree that import of diamonds is made on behalf of certain local parties who do not wish to show such imports in their books of accounts. On receiving the consignment, the material is handed over to real importer out of books. However, in the books of the concerns managed and controlled by me and my son Shri Rajesh Jain, the said consignment still appear as stock since the material has been sold to the real importer out of books. To show sale against the bogus stock

outstanding in your books, bogus sale bill are issued to parties against their purchase made in cash. These parties who take accommodation entries from your concerns make payment through RTGS. This RTGS is in turn used to make payment to the foreign parties from whom import has been made. The parties who have been given payment for such bogus purchase through RTGS want their cash back. In the meantime, the real importer on whose behalf import has been made, makes the payment for the said import through Aangaria(Cash Transaction). The cash thus received from the real importer is used to pay back the party from whom RTGS has been received against bogus accommodation entry."

8.1 Thus, the Id. AO noted that the assessee had shown purchases from the three concerns managed and operated as per evidence provided by the Investigation wing that the purchase of the assessee was bogus. Mr. Jain has agreed that he imports and delivers the goods without a bill. Whereas the parties who take the bill does not take the goods. Even the Id. AO has accepted the fact the assessee has purchased the goods in cash and taken the bill from the alleged firm of Mr. Bhanwarlal Jain to the extent of Rs. 35,09,770/- and has added lumpsum amount of 25 % calculated on these purchases as income of the assessee. Thus, bench noted that the Id. AO has not disputed the fact that the assessee has received the goods from supplier who did not give the bill and has received the bill who did not supply the goods. Therefore, considering that aspect of the matter receipt of the goods is not disputed [quantitative details filed at page 66 (APB) which is not

disputed] but the only dispute is as to real cost of purchase. The bench further noted that the assessee has accounted the bills for purchase of diamonds from M/s. Pankaj Exports, M/s. Malhar Export and M/s. Ankita Export. Considering the nature of business of the assessee whether the same are at inflated or are at prevalent market rate. The sales and quantity records are not disputed. The only dispute here in this case is estimating the profit @ 25 % based on the facts that the purchase is tainted. So far as the decision relied upon for estimate of the profit @ 25 % we note that there were issues as to quality of the goods and in fact in some cases observed that the goods in fact not been delivered or denied to have purchased. Not only that, the rate @ 25 estimated is related to the food and oil industries where the prices are very low and always in demand. The case of the assessee relates to the costlier jewellery items where the profit margins are very thin and thought cut competition exist and profit margin are very low. Even this issue is examined by the board and issued the instructions no. 2/2008 dated 22.02.2008 and the same is reproduced to understand the issue on hand :

INSTRUCTION NO. 2/2008
SECTION 143 OF THE INCOME-TAX ACT, 1961 - ASSESSMENT -
'BENIGN ASSESSMENT PROCEDURE' FOR ASSESSEES ENGAGED IN
DIAMOND MANUFACTURING AND/OR TRADING

INSTRUCTION NO. 2/2008, DATED 22-2-2008

The undersigned is directed to state that the 'Benign Assessment Procedure', in the case of assessee engaged in diamond business as announced by Hon'ble Finance Minister in his Budget Speech on 28-2-2007 shall be as under :—

A.	The procedure will apply to assessee engaged in the business of manufacturing and/or trading of diamonds (referred to below as such business).
B.	If an assessee has shown a sum equal to or higher than 6 per cent of his total turnover from such business as his income under the head 'Profits and gains of business or profession' for a particular assessment year, the Assessing Officer shall accept his trading results.
C.	(i) The assessee shall be required to maintain separate books of account of such business.
	(ii) Acceptance of profit at 6 per cent or above as per para (B) for a particular assessment year will not be a precedent for that assessee or for any other assessee.
D.	The procedure shall not apply to an assessee for an assessment year—
	(iv) where assessment is being made pursuant to a—
	(i) search and seizure action under section 132; or
	(ii) requisition made under section 132A; or
	(iii) survey action 133A
	(v) where 50 per cent or more of the income from such business of an assessee is claimed as deduction under Chapter III or under Chapter VI-A of the Income-tax Act;
	(vi) where there is information regarding escapement of income.
E.	The rate of profit as a percentage of turnover would be reviewed annually on the basis of revenue generation and results of scrutiny assessments, searches and surveys made during the year.

2. The above instruction is issued under section 119(1) of the Income-tax Act, 1961 and would be applicable for assessments made during financial year 2008-09. The instruction may be brought to the notice of all concerned in your Region.

■ ■

8.2 With the above instructions the board clarified that the profit in this business if disclosed @ 6 % is desirable. As regards the exception we note that in the case of the assessee there is no

search conducted only the information shared and it is not disputed that the assessee is in receipt of the goods. In this line of business the Board has clarified that Diamond business, if an assessee declare a sum equal or to higher than 6 % of his turnover from such business. The alleged bogus purchase bills pertains to diamonds [bills at page 4,13 & 24]. The profit in this diamond business computed at page 41 comes to 5.96 % as computed here in below :

Sales of Diamond	Rs. 3,19,10,125/-
Closing stock of Diamond	Rs. 29,93,033/-
Total	Rs. 3,49,03,158/-
Purchase of Diamond	Rs. 3,30,01,208/-

Gross Profit	Rs. 19,01,950/-

Since this being the first year there is no opening stock. Thus, the profit as worked for this business is 5.96 % [$19,01,950/- / 3,19,10,125/- = 5.96\%$]. Since, the assessee has already disclosed profit @ 5.96 % we considered deem it fit to estimate @ 6 % as against the 25 % estimated by the lower authorities. The exemption of the circular cannot be applied as the premises of the assessee is not subjected search and even the assessment is not re-opened based provision of section 153A / 153C of the Act. As regards the decision cited by the Id. DR, we note that all that are

related to the contention of the assessee challenging the ground no. 3 and ground no. 2 since we have considered the ground no. 1 on estimation of profit, we do not deem it to repeat the same that ground no. 2 & 3 raised by the assessee and considering the arguments of the Id. DR and findings of the lower authority the same is treated as dismissed.

In the result, appeal of the assessee is partly allowed.

Order pronounced in the open Court on 30/10/2023

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 30/10/2023

*Ganesh Kr, PS

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

1. अपीलार्थी / The Appellant- Shri Khandelwal Diamonds Private Limited, Jaipur
2. प्रत्यर्थी / The Respondent- ACIT, Circle-01, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 375/JP/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar