

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 59/Asr/2013
Assessment Year: 1998-99**

Sh. Shadi Lal Jain C/o M/s Lasko Engg. Co. Bye Pass Road, P.O. Lidhran Jalandhar. [PAN:-AAMPJ5770E] (Appellant)	Vs.	ITO-II(2), Jalandhar. (Respondent)
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Appellant by	None (Written submission)
Respondent by	Sh.Yashender Garg, Sr. DR.

Date of Hearing	21.09.2023
Date of Pronouncement	06.10.2023

ORDER

Per: Anikesh Banerjee, JM:

The instant appeal of the assessee is directed against the order of the Id. Commissioner of Income (Appeals), Jalandhar, (in brevity 'the CIT(A)') order passed u/s 250(6) of the Income-tax Act, 1961 (in brevity the Act) for assessment year 1998-99. The impugned order was emanated from the order of Id. ITO Ward-II(2), Jalandhar (in brevity the AO) order passed u/s 143(3) r.w.s. 263 of the Act.

2. The assessee has taken the following grounds:

“1. That the order of Worthy CIT(A), Jalandhar dated 26.11.2012 is against the law & facts of the case.

2. That the Worthy CIT(A), Jalandhar has erred in law by upholding the order and confirming the addition of Rs.3.35,070/- made by the Ld. Assessing Officer on account of jewellery sold to M/s Bishan Chand Mukesh Kumar, without considering the facts of the case.

3. That assessee request to add or amend any ground of appeal before the appeal is finally heard and dispose off.”

3. When the appeal was called for hearing. But none was present on behalf of the assessee. On perusal of the record, we see that the assessee placed a written submission and request to take the matter on basis of the written submission. Accordingly, we proceed to dispose of the matter on basis of written submission of the assessee and the submission of the ld. DR.

4. Brief fact of the case is that the assessee declared the ornaments in Voluntary Disclosure Income Scheme (VDIS) and filed the return u/s 139(1). The assessee sold the ornament to Bishan Dass Mukesh Kumar, Delhi for consideration amount to Rs.3,28,500/- in the impugned assessment year. The ld. AO taken this transaction as accommodation entry and the whole amount was

added back with the commission of 2%. Accordingly, the total amount works out to Rs.3,35,070/- which was added back with the total income of the assessee. Being aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) upheld the order of the Id. AO. Being aggrieved assessee filed an appeal before us.

5. The Id. DR vehemently argued and fully relied on the order of the revenue authorities.

6. We heard the submission of the Id. DR, considered the order by the revenue authorities and perused the documents available in the record. In the written submission the assessee filed the details which was submitted before the Id. AO in proceeding u/s 143(3) r.w.s. 263, related to affidavit of Sh. Bishan Chand Mukesh Kumar duly attested and confirming the purchase of jewellery from the assessee and copy of sales tax assessment order of Sh. Bishan Chand Mukesh Kumar, wherein said firm disclosed Gross Turnover (in short GT) amount to Rs. 1,34,10,91,697/- and assessed sale tax amount to Rs.39,23,898/-. The Id. AR for the assessee submitted that the assessee's transaction was duly declared in the VAT return and the confirmation of was made by the purchaser during the time of assessment. The same submission was taken in the proceeding u/s 263 r.w.s. 143(3) of the Act. The Id. AR for the assessee fully relied on the order of the Coordinate Bench of ITAT Amritsar in the case of

**Smt. Anu Mehra, ITA No.511(Asr)/2009, Date of pronouncement-
18.01.2010**,in which it was held as under:

”4. In 'Manoj Aggarwal v. DCIT', the Special Bench of the Tribunal decided the issue, as to whether the jewellery business of M/s Bemco Jewellers Pvt.Ltd. was or was not by way of providing accommodation entries, in favour of the assessee and against the revenue, by making the following observations:

82. In view of the foregoing discussion, it. appears to us that the evidence collected by the revenue authorities is not sufficient to establish their stand that the jewellery transactions carried on by Bemco Jewellers Pvt. Ltd. were only paper transactions or bogus and that Manoj Aggarwal, who was one of the director of the company at the relevant time, controlled and put through these transactions by accommodation entries and earned commission income there from. We are aware that the entire evidence has to be appreciated in a wholesome manner and even where there is documentary evidence, the same can be overlooked if there are surrounding circumstances to show that the claim of the assessee is opposed to the normal course of human thinking and conduct or human probabilities. This principle has been laid down by the Supreme Court in two leading cases -CIT v. Durga Prasad More and Sumiti Dayal v. CIT. Even applying this principle to the present case, we have felt some

difficulty in rejecting the assessee's plea as opposed to the normal course of human conduct. The circumstances surrounding the case are also, in our view, not strong enough to justify the rejection of the assessee's plea as fantastic or outrageous. We have considered the background of Bishan Chand Aggarwal and his son . Manoj Aggarwal to be of relevance to the case. We have also considered to be of significance the admission of Manoj Aggarwal that only the transactions in the shares are accommodation entries and that Bemco's jewellery transactions are genuine and we have also given our reasons as to why we consider it to be so. We have also taken note of the fact that most of the questions put to Manoj Aggarwal while recording several statements from him related to the share transactions put through Friends Portfolio Pvt. Ltd. and that hardly any relevant question regarding the activities of Bemco was asked. We have also considered it to be of some importance the fact that the turnover shown in the share transactions, which were admitted to be bogus, was about three & half times the purchases of Rs. 36.60 crores shown by Bemco in its jewellery business. Added to these are the facts that even in the seized material there was a letterhead of Bemco which showed Jai Sidhi Apartments at Ahmedabad as the branch office of Bemco which means that the claim of Bemco that it had a branch office at

Ahmedabad where the gold bars were sold was right as also the sales-tax assessment order under the Gujarat Sales-tax Act where the assessee declared Rs.24,07,30,000/- as total sales and exempted sales. There was no evidence of any consequence which was unearthed during the search to directly show that Bemco was carrying on only accommodation entry business for jewellery. Sunil Kapoor who was projected as one of the witnesses of the department to support their stand that Bemco's jewellery business was bogus, has been found by us to have acted as sub-mediator in the share accommodation entry business carried on by Manoj Aggarwal through Friends Portfolio and he has also been paid commission in that business. Bemco has been found to have had a shop or showroom in 1182, Kucha Mahajani and this has been confirmed by the report of the sales-tax inspector as also by the rental receipt starting from January 1998. Thus, the surrounding circumstances, apart from the direct evidence in the case, do not contain anything which belies the claim of Manoj Aggarwal that though his share transaction business was only an accommodation entry business for commission, the jewellery business carried on by Bemco has not been proved to be so.

83. For these reasons, we allow ground No. 3 in the appeal of Manoj Aggarwal. Thus, his appeal in IT (SS) A. No. 404/DeI/2003 is partly

allowed. The appeal of the department in IT (SS) A. No. 415/Del/2003 is dismissed.

IT(SS)A. No. 452/Del/2003 (BEMCO JEWELLERS PVT. LTD.)

84. This is an appeal by Bemco which is consequential to our decision in the appeal of Manoj Aggarwal, as stated in paragraph 35 (supra). The result will be that Bemco will be liable to be assessed substantively in respect of the profits from the purchase and sale of jewellery in its regular assessments which have already been completed. No separate addition for commission from jewellery business will be made in the block assessment on the footing that the jewellery business is only by way of accommodation entries. The appeal of Bemco is thus allowed. No costs in all the appeals.

5. The learned counsel for the assessee further submitted that since from the decision in 'Manoj Aggarwal of the ITAT, Special Bench, it is now clear that M/s Bemco Jewellers Pvt. Ltd. was not providing accommodating entries, but was doing real sale and purchase business of jewellery, the jewellery in question sold by the assessee to M/s Bemco Jewellers Pvt. Ltd. cannot be treated as bogus accommodation book entries provided by M/s Bemco Jewellers Pvt. Ltd. and so, the impugned

additions made by the AO and sustained by the CIT(A) on account of sale of jewellery to M/s Bemco Jewellers Pvt. Ltd. as undisclosed income of assessee are liable to be deleted, as the case of sale of jewellery to M/s Bishan Dass Mukesh Kumar is identical to that of sale of jewellery to M/s Bemco Jewellers Pvt. Ltd.

6. The learned DR has stated that the orders under appeal are not sustainable; that it stands proved that the jewellers to whom the jewellery was sold by the assessee, were under providing accommodation entries; that the sale transactions of jewellery were out right bogus transactions; and it stands established during the assessment proceedings under section 158BD of the Act that M/s Bishan Dass Mukesh Kumar had not done any real business of jewellery and had not been providing bogus entries on commission basis. However, the learned DR has not been able to controvert the submissions of the learned counsel for the assessee that on identical facts and in identical circumstances, this very issue has been decided by the Special Bench of the tribunal in the case of 'Manoj Aggarwal' in favour of the assessee and against the revenue.

7. On going through the facts of the instant cases of the assessee as well as the facts of the case decided by the ITAT-Special Bench in the 'Manoj Aggarwal', we find that the facts involved in both the cases are almost

identical and the issue involved therein regarding the alleged bogus accommodation book entries provided by M/s Bemco Jewellers Pvt. Ltd. and M/s Bishan Dass Mukesh Kumar is identical. Hence, the findings recorded by the ITAT-Special Bench in 'Manoj Aggarwal, wherein the Tribunal held that the business of sale and purchase of jewellery of M/s Bemco Jewellers Pvt. Ltd. was genuine and they were not providing bogus accommodation book entries to the parties, fully apply to the issue involved in the instant cases of the assessees, because in the instant cases also, the tax authorities have held that there were no genuine sale of jewellery by the assessee to M/s Bemco Jewellers Pvt. Ltd. and M/s Bishan Dass Mukesh Kumar, respectively and the amount received on account of the bogus sale of jewellery was in fact accommodation entries provided by the said concerns and was identical. A perusal of para 163 of 'Manoj Aggarwal' shows that the evidence regarding the sale to M/s Bemco Jewellers Pvt. Ltd. is the same as that concerning M/s Bishan Dass Mukesh Kumar. Hence, respectfully following the decision of the ITAT-Special Bench in the 'Manoj Aggarwal', it is held that since M/s Bemco Jewellers Pvt. Ltd. and M/s Bishan Dass Mukesh Kumar were doing genuine jewellery business and were not providing any bogus accommodation book entries for the sale of jewellery made to them, the

impugned additions made by the Assessing Officer have rightly been deleted by the learned CIT(A) in the cases of all the assessees. The same is the case in the matter of addition on account of commission. The orders of the CIT(A) with regard to the impugned additions in the case of the assessees on account of sale of jewellery to M/s Bemco Jewellers Pvt. Ltd. and M/s Bishan Dass Mukesh Kumar and commission are, accordingly, upheld.

4. *As the issues involved in the present appeal are similar to the issues considered by the Tribunal, in the case of ACIT, Range- 1, Jalandhar, Vs. Sh. K.L.Seegal, Jalandhar, in ITA No. 415(Asr)/2006 and others, vide order dated 11.09.2008, the findings given therein shall equally apply, mutatis mutandis, to this appeal. Accordingly, the appeal filed by the Revenue is dismissed.*

5. *In the result, the appeal filed by the department is dismissed in the manner as indicated above."*

6.1 Also, considering the order of the ITAT Amritsar Bench in the case of Smt. **Anu Mehra** (supra) that the jewellery was duly disassociated from their change from accommodation entry. The assessee already declared this amount in VDIS Scheme only the amount was collected by transferring this jewellery.

Accordingly, we intervene in the order of the revenue authorities and set aside the impugned appeal order. Accordingly, the addition made by the Id. AO amount of Rs.3,35,070/- is quashed.

7. In the result, appeal of the assessee **ITA No. 59/ASR/2013** is allowed.

Order pronounced in the open court on 06.10.2023

Sd/-

Sd/-

(Dr. M. L. Meena)
Accountant Member

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order