

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

**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 3165/MUM/2023  
(Assessment Year: 2012-13)**

**Sai Diamonds,**

HW 6071/72,  
Bharat Diamond Bourse,  
Bandra Kurla Complex,  
Mumbai - 400051  
[PAN: AAASF6126M]

..... **Appellant**

**Assistant Commissioner of Income  
Tax, Circle – 19(3), Mumbai,**  
Piramal Chambers, Lalbaug,  
Mumbai - 400012

Vs

..... **Respondent**

**Appearance**

For the Appellant/Assessee : Ms. Mrugakshi K. Joshi  
For the Respondent/Department : Smt. Shreekala Pardeshi

**Date**

Conclusion of hearing : 28.12.2023  
Pronouncement of order : 25.01.2024

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Assessee has challenged the order, dated 22/08/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2012-13, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 12/12/2019, passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Appellant has raised three grounds of appeal:

Ground No. 1: Re-opening assessment u/s 147

- "1. *The learned CIT(A) erred in confirming the re-opening of the assessment u/s. 147/148, merely on a statement made by Shri Rajendra Jain (who ultimately retracted his statement*
2. *The learned CIT(A) erred in confirming the re-opening of the assessment, without substantiating valid reasons to believe that income chargeable to tax had escaped assessment. The reasons cannot be non-existent and must be genuine and not a pretence. The reassessment proceedings are bad in law since the reasons to believe are non-existent.*
3. *The learned CIT(A) failed to take into consideration that information provided by the DGIT, Mumbai cannot construe as tangible material to justify the re-opening, since the concerned party has retracted the statement as the same being given under coercion/undue influence.*
4. *The AO has erred in reopening the assessment purely on presumption basis and to make an enquiry or verification.*
5. *The learned CIT(A) failed to take into consideration the cogent evidence submitted by the appellant in the course of assessment proceedings.*

Ground No. 2: Addition of Rs. 20,32,692/-u/s 68

1. *The learned AO erred in adding a sum of Rs. 20,32,692/-u/s.68 of the I.T. Act, 1961 being purchases of loose diamonds from M/s. Kalash Enterprises, although the Appellant had exported the same quantity of polished diamonds to various parties duly acknowledged by Custom Authority and had provided sufficient information and discharged its onus of proving the genuineness of the transaction, wherein details such as payments made by account payee cheques, bills/vouchers, copy of ledger account, confirmation by way of Affidavit, Audited books of accounts, ITR V, export ledger showing consumption of goods purchased from M/s. Kalash Enterprises, etc. were duly furnished, but ignored by CIT(A).*
2. *The learned AO and CIT(A) erred in making an addition of the*

*purchases made from M/s. Kalash Enterprises and failed to take into consideration that the Assessee had discharged its onus and proved the identity, genuineness and the creditworthiness of the purchases made from Kalash Enterprises*

3. *The learned CIT(A) failed to take into consideration the facts of the case and the detailed submissions filed along with the all evidences supporting the claim of the Assessee and has made an addition purely on the basis of baseless presumption of nexus between Bhanwarlal Jain Group and impugned Loan Creditor.*
4. *The learned AO and CIT(A) erred in making an addition on the basis of information relating to the search conducted on the premises of Bhanwarlal Jain group, without explaining the nexus of any nature whatsoever, between the said Bhanwarlal Jain and the Loan Creditor to whom the interest payment has been made.*
5. *The learned AO has not provided any material and neither demonstrated directly with incriminating evidence, to prove that the Appellant had engaged itself in any accommodation entries of whatsoever nature.*
6. *The learned AO failed to provide the appellant, with the affidavit or statement taken on oath by M/s. Kalash Enterprises which were filed before the DGIT, Mumbai wherein a confession was apparently made that it indulged only in issuing bogus purchase entries to parties that approached them. The said affidavit formed the basis of the entire addition and the same should have been provided to the appellant.*
7. *The Id. AO failed to consider that the goods purchased from M/s. Kalash Enterprises, were sold to buyers who could be identified from the appellants stock register as well as bank statement of sales realization of polished diamonds which were purchased from them.*
8. *The learned AO and CIT(A) erred in not granting an opportunity to the Assessee to cross examine the Third Party, on the basis of whose statement, the Department alleged that the Assessee has made accommodation entries.*

*Without prejudice,*

Ground No. 3: Addition restricted to 2% Gross profit margin

9. *The learned CIT(A) erred in not restricting the addition to Rs. 40,650/- (being 2% Gross Profit ratio of the impugned Bogus Purchases), being the estimated profit element (as per the market standards) embedded in purchases."*

3. The relevant facts in brief are that the Appellant, a partnership firm engaged, inter alia, in the business of processing and trading of diamonds, filed return of income for the Assessment Year 2012-13 on 27/07/2012 declaring total income of INR 50,73,358/-. The aforesaid return was processed under Section 143(1) of the Act. However, subsequently reassessment proceedings were initiated against the Appellant as noticed dated 25/03/2019 was issued to the Appellant. As per the reasons recorded a search and survey action was conducted in the case of Rajendra Jain/Dharmichand Jain/Sanjay Choudhary Group on 03/10/2013 by Director General Income Tax (Investigation), Mumbai wherein it was found that a number of companies/concerns under the management and control of the aforesaid persons were engaged, inter alia, in the providing bills of bogus purchase of diamonds. Since, the Appellant had made purchases of INR 20,32,692/- from Kalash Enterprises, one of the companies/concerns involved in providing bogus purchases bills, reassessment proceedings were initiated against the Appellant as notice, dated 25/03/2019, was issued to the Appellant under Section 148 of the Act. During the assessment proceedings, the Appellant contended that purchases of INR 20,32,692/- made from M/s Kalash Enterprises were genuine transaction of purchase of diamonds and submitted documents/details to support of the aforesaid contention. The payments were made by the Appellant through proper banking channel and therefore, the purchases could not be treated as bogus.

However, the Assessing Officer was not convinced. Taking into account the findings of the Investigation Wing, the Assessing Officer rejected the supporting documents furnished by the Appellant to support the genuineness of the purchase transaction as being self-serving documents resulting from unilateral acts of the Appellant. By applying the test of preponderance probabilities, the Assessing Officer concluded that the Appellant had failed to show that the purchases were genuine and held that entire amount of purchases of INR 20,32,692/- from M/s Kalash Enterprises to be bogus. Thus, the Assessing Officer made addition of INR 20,32,692/- in the hands of the Appellant vide order, dated 12/12/2019, passed under Section 143(3) read with Section 147 of the Act.

4. Being aggrieved, the Appellant preferred appeal before CIT(A) against the Assessment Order, dated 12/12/2019, challenging initiation of reassessment proceedings under Section 147/148 of the Act as well as addition of INR 20,32,692/- under Section 68 of the Act made by the Assessing Officer on merits. The CIT(A) dismissed the appeal, vide order dated 22/08/2023 and confirmed the addition made by the Assessing Officer.
5. Being aggrieved, the Appellant has preferred the present appeal before the Tribunal. Ground No. 1 challenges the initiation of reassessment proceedings, while Ground No. 2 challenges the addition of INR 20,32,692/- made by the Assessing Officer under Section 68 of the Act sustained by the CIT(A) holding that the Appellant had made bogus purchases of loose diamonds from M/s Kalash Enterprises. Ground No. 3 has been raised on without prejudice basis whereby the Appellant has contended that addition on account of impugned bogus purchases should be restricted to INR 40,650/- being 2% of impugned bogus purchases.

Ground No. 1

6. Ground No. 1 raised by the Appellant directed against the challenging the validity of reassessment proceedings under Section 147 read with Section 148 of the Act.
  - 6.1. We have heard the rival submissions and perused the material on record. We note that the return filed by the Appellant for Assessment Year 2012-13 was processed under Section 143(1) of the Act and it is admitted position that the regular scrutiny assessment under Section 143(3) of the Act was not framed on the Appellant. Therefore, the question of change of opinion did not arise. The notice for initiating reassessment proceedings under Section 147 of the Act was issued to the Appellant on 25/03/2019, i.e. within a period of six years from the end of relevant assessment year. Therefore, the provisions contained in Proviso to Section 147 of the Act were not triggered. As per the reasons recorded (reproduced in paragraph 2 of the assessment order), the Assessing Officer had placed reliance on the report from the investigation wing for initiating the reassessment proceedings. The fact that some of the persons whose statement was recorded by the investigation wing had been retracted their statement, could not form the sole basis of rejection of the aforesaid report of the investigation since the aforesaid investigation report was not based solely upon such statement(s). We find that the Assessing Officer had sufficient fresh tangible material to form a belief that income had escaped assessment. In any case, it is settled legal position that at the stage of initiation of reassessment proceedings the sufficiency or correctness of material cannot be considered at the stage of issue of notice under Section 147 of the Act [Raymond Woollen Mills Ltd. v. ITO: [1999] 236 ITR 34]. Therefore, initiation of reassessment proceedings under Section 148 of the Act cannot be said to be invalid in the facts and circumstances

of the present case. In view of the aforesaid, we do not find any infirmity in the order passed by the CIT(A) upholding the validity of the reassessment proceedings under Section 147/148 of the Act. Accordingly, Ground No. 1 raised by the Appellant is dismissed.

Ground No. 2 & 3

7. Ground No. 2 & 3 raised by the Appellant are directed against the addition of INR 20,32,692/- made under Section 68 of the Act and sustained by the CIT(A) on account of alleged bogus purchases.
8. We have heard the rival submissions and perused the material on record. The Ld. Authorized Representative for the Appellant submitted that it is admitted position that while the Assessing Officer had doubted the purchases made from M/s Kalash Enterprises, the corresponding export sales made by the Appellant were accepted. The Ld. Authorised Representative for the Appellant submitted that the Appellant had given details of purchase and the corresponding export sales during the assessment proceedings. It was submitted on behalf of the Appellant that in the case of the Appellant for the Assessment Year 2007-08 and 2010-11, in identical facts and circumstances the Tribunal was pleased to restrict the addition on account of alleged bogus purchases to the extent of profit element embedded in such bogus purchases and had, therefore, sustained addition only to the extent of 2% of such alleged bogus purchases after taking into account profit declared by the Appellant in the return of income.
9. Per contra, the Ld. Departmental Representative placed reliance upon the order passed by the Assessing Officer and the CIT(A) and submitted that during the assessment proceedings, the Assessing Officer has informed the Appellant that M/s Kalash Enterprises was

merely a paper concern and no goods had been supplied to the Appellant. The transaction was undertaken to generate paper trail only. No stock of diamonds was found by the Investigation Wing during the search conducted in various companies/concerns. Therefore, the onus of proving the transaction was genuine was squarely upon the Appellant. The Appellant was, therefore, asked to file confirmations of the said transactions and demonstrate/correlate that the said purchases resulted in genuine sales. The documents furnished by the Appellant were self serving documents that did not inspire confidence and were, therefore, rejected by the Assessing Officer. The CIT(A) also confirmed the findings of the Assessing Officer in this regard.

10. We have heard the rival submissions and perused the material on record. We note that the identical facts and circumstances while deciding Cross-Objections filed by an assessee in appeals preferred by the Revenue in the case of M/s Decent Diamonds for the Assessment Years 2007-08 to 2010-11 (CO No. 123 to 126/Mum/2021), the Tribunal has, vide common order, dated 28/02/2023, held as under:

*"5. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above in this order it is undisputed fact that assessing officer had accepted the fact that assessee has made corresponding sales against the impugned purchases made from the group concern of Rajendra Jain group. During the course of assessment the assessee submitted the copies of ledger account, copy of bank statement, purchase invoices and evidences of payment made by account payee cheques etc. It is evident from the findings of the lower authorities that the genuineness of the sales made in corresponding of purchases were not doubted. In fact the assessing officer has categorically pointed out that assessee has been benefitted by margin of actually making purchases in the grey market against bills obtained from the concern of Rajendra Jain without supplying of any material. These facts were also upheld by the Id. CIT(A) in his*

*finding by restricting the addition to the extent of 3% of such purchases.*

*6. During the course of appellate proceedings before us the Id. Counsel has referred the decision of ITAT, Mumbai in the case of Perry Impex Vs. ACIT 19(2) vide ITA No. 2052/Mum/2020, dated 22.08.2022 and the decision of ITAT in the case of Star Brillion Vs. ITO 19(3)(4) vide ITA No. 1551 & 1552/Mum/2020 dated 12.07.2022. The facts and circumstances in the aforesaid cases are similar to the case of the assessee and in those cases the parties were engaged in dealing in diamond. In the case of Star Brillion similarly purchases were made from Shri Rajendra Jain group and the A.O held that the purchases made by the assessee were not proved beyond the reasonable doubt as the supplier belong to Rajendra Jain group. Accordingly, the assessing officer estimated the profit element embedded in the value of such disputed purchases at 5%, however, the Id. CIT(A) has reduced the same to 3% and therefore the ITAT has estimated the profit percentage embedded in the value of disputed purchases @ 2%. In the case of the assessee the Id. Counsel has filed summary of chart on 13.02.2023 showing that in the assessment year 2007-08 to 2010-11 the assessee had already declared gross profit at 5.40%, 5.24%, 5.08% and 5.08% respectively in the different assessment year. From these facts the assessee has demonstrated that they have already reported higher profit on the purchase transaction made from the group concern of Rajendra Jain as against gross profit rate adopted by the task force formed by the Government of India (Ministry of Commerce and Industry, Department of Commerce) for diamond industry.*

*7. Considering the above facts and the percentage of gross profit already shown by the assessee after following the decision of ITAT as referred above we consider it appropriate to restrict the addition to the extent of 2% of the impugned purchases. Accordingly, we restrict disallowance to the extent of 2% of such purchases. Therefore, the ground no. 3 of the assessee is partly allowed.*

*8. The ground No. 1 & 2 pertaining to reopening of assessment was not pressed, therefore, the same stand dismissed.” (Emphasis Supplied)*

11. On perusal of above, it is clear that in identical facts and circumstances, the Tribunal had accepted the contention of the

assessee that in case the genuineness of the sales of diamonds corresponding to the alleged bogus purchases of diamonds are not doubted by the Assessing Officer, the additions on account of such alleged bogus purchases had to be restricted to the profit element embedded in such bogus purchases. We note that the Appellant had filed financial statements, purchase ledger, sales ledger, ledger account of M/s Kalash Enterprises along with purchase invoice, stock statement and copy of export invoice along with break-up of quantity/carats of diamonds exported giving the details of the corresponding purchases. On perusal of the documents placed at page 3 to 30 of the paper-book that the Appellant has been able to show nexus between the alleged bogus purchases from M/s Kalash Enterprises and the corresponding export sales to M/s Clarks Diamond Limited, UK. Thus, addition of entire amount of alleged bogus purchases cannot be sustained. In the case of M/s Decent Diamonds (supra) taking into account the profit of around 5% already disclosed by the assessee, the Tribunal had restricted the addition to 2% of the alleged bogus purchases. Thus, taking the effective profit rate to around 7%. However, we note that the Appellant has also placed reliance in some other judicial precedents wherein a reference has been made to Instruction No. 2/2008, dated 22/02/2008, dealing with the Benign Assessment Procedure for assessees engaged in diamond manufacture and trading industry for the purpose of estimating embedded profit element. In the aforesaid instruction rate of 6% has been specified as acceptable gross profit margin. Keeping in view the overall facts and circumstances of the present case, we adopt the rate of 6% as fair estimate of the profit element embedded in alleged bogus purchases and accordingly, direct the Assessing Officer to restrict the disallowance to 6% of bogus purchases as reduced by the gross profit margin already

declared by the Appellant in respect of alleged Bogus Purchases of INR 20,32,692/- made from M/s Kalash Enterprises after verification. For the purpose of the aforesaid verification, the Appellant is directed to provide to the Assessing Officer the computation of gross profit margin already declared in respect of the aforesaid alleged Bogus Purchases of INR 20,32,692/-. In terms of the aforesaid, Ground No. 3 raised by the Appellant/Assessee is partly allowed while Ground No. 2 raised by the Appellant/Assessee is dismissed.

12. In result, the present appeal preferred by the Assessee is partly allowed.

Order pronounced on 25.01.2024.

**Sd/-**  
**(Amarjit Singh)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 25.01.2024  
Alindra, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,  
Mumbai
6. गार्ड फाईल / Guard file.

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सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai