

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE SH. SAKTIJIT DEY, VICE PRESIDENT
AND
SH. N. K. BILLAIYA, ACCOUNTANT MEMBER**

ITA No.4784/Del/2019
Assessment Year: 2013-14

ITO Ward- 15 (2) New Delhi	Vs.	LA Solitaire Jewels Private Limited, 2706, Bank Street Road, Karol Bagh, New Delhi-110005 PAN No.AAACL9483H
(APPELLANT)		(RESPONDENT)

C.O No.102/Del/2023
(In ITA No.4784/Del/2019)
Assessment Year: 2013-14

LA Solitaire Jewels Private Limited, 2706, Bank Street Road, Karol Bagh, New Delhi-110005 PAN No.AAACL9483H	Vs.	ITO Ward- 15 (2) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Vipul Kashyap, Sr. DR
Respondent by	Sh. Mayank Patawari, CA

Date of hearing:	30/01/2024
Date of Pronouncement:	05/02/2024

ORDER

PER N. K. BILLAIYA, AM:

ITA No.4784/Del/2019 and Co.No.102/Del/2023 are appeal by the revenue and the cross objection by the assessee directed

towards the very same order of the CIT(A)-36, New Delhi dated 22.02.2019 pertaining to A.Y. 2013-14.

2. The appeal and the cross objection were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. The solitary grievance of the revenue is that the CIT(A) erred in deleting the addition of Rs.23265825/- made on account of bogus purchases.

4. Representatives of both the sides were heard at length. Case records carefully perused and the relevant documentary evidences duly considered in the light of rule 18 (6) of the ITAT Rules.

5. Briefly stated the facts of the case are that the original return of income was filed on 25.09.2013 declaring total income of Rs.2621810/-. The return was processed u/s. 143 (1) of the Act.

6. Subsequently on the basis of information received from the Investigation wing that material recovered during search at the premises of Sh. Bhanwarlal Jain, Rajendra Jain, Dharmichand Jain, Sanjay Choudhary group revealed that the assessee was beneficiary of accommodation entry in the form of bogus

purchase of diamond through these entry providers details of such entries are as under :-

S. No	Name of Entry provider	Entry provider PAN	Entry Amount	Accommodation entry obtained through
1	Nice Diamond	AIKPK8272C	Rs.9,99,944/-	Bhanwarlal Jain Group
2	Nayan Gems	AADFN2516R	Rs.42,16,275/-	Rajendra Jain Group, Sanjay Choudhary Group and Dharmichand Jain Group
3	Nazar Impex Pvt. Ltd.	AACCN3603R	Rs.76,83,625/-	-do-
4	Dharam Impex	AAFFD2692C	Rs.12,39,125/-	-do-
5	Mihir Diamonds	AFRPJ5886P	Rs.11,71,910/-	Bhanwarilal Jain Group
6	Parshwanath Gems Pvt. Ltd.		Rs.52,30,225/-	-do-
7	Karishma Diamond Pvt. Ltd.	AACCK5154E	Rs.53,09,812/-	-do-
	Total		Rs.2,58,50,916/ -	

7. Notice u/s. 148 of the Act was issued and served upon the assessee in response to which the assessee stated that the original return filed should be considered as return filed pursuant to notice u/s. 148 of the Act.

8. During the course of the scrutiny assessment proceedings the assessee was asked to furnish details of transactions with the aforementioned parties. The assessee was show caused why the

purchases made from the aforementioned parties be not treated as bogus purchases.

9. The assessee furnished all the details alongwith copies of sales invoices.

10. The contention of the assessee were dismissed by the AO in the absence of stock register. The AO further observed that the assessee did not file the quantity and quality wise details of opening stock and closing stock of the diamond and the sales are only shown in cash. The AO was of the firm belief that the assessee failed to produce necessary purchase account and sale account of diamonds and treated the purchases from aforementioned seven entries as bogus and made the addition of Rs.25850916/-.

11. Assessee agitated the matter before the CIT(A) and strongly contended that assessee has maintained regular books of account which were subjected to audit u/s. 44AB of the Act and no defect has been pointed out by the AO in the books of account of the assessee. It was pointed out that the assessee has filed conformity letters from all the parties giving their complete address, PAN details alongwith their income tax returns, copy of bank statement and the notices issued by the AO u/s. 133 (6) of the Act were duly served. It was brought to the notice of the

CIT(A) that the profit margin shown by the assessee is in line with the margin shown in earlier assessment years.

12. After considering the facts and the submissions and pursuing the details filed by the assessee the CIT(A) observed as under :-

“4.3.3.12. The appellant's plea on GP rate has been considered. In the instant case, it is seen that the AO had disallowed the entire amount of purchases/ expenditure without examining the gross profit ratio or net profit ratio of the appellant for previous year and in subsequent years. The case under appeal is not about non genuineness of purchases itself, but it is about non genuineness of suppliers. The AR has submitted the ledger accounts of Nice Diamond, Nayan Gems, Nazar Impex (P) Ltd., Dharam Impex, Mihir Diamonds, Parshwanath Gems (P) Ltd., Krishma Diamond (P) Ltd. (placed on record) where it is seen that the payments have been made by cheque/RTGS. So, it cannot be held that expenses were incurred by the appellant outside the books of accounts, Under Income Tax Act only the real income can be taxed by the Revenue. It is further to be noted that even in cases where the whole transaction is not verifiable due to various reasons, the only taxable part is the taxable income component and not the entire transaction. It is held that only the profit attributable on the total unrecorded sale consideration alone can be subject to income tax. In order to fulfill the gap of revenue leakage the disallowance of reasonable percentage of impugned purchase would meet the end of justice. Therefore, the disallowance made on account of bogus purchases is restricted to 10% of the impugned/ disputed purchases.”

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Accordingly, after considering the nature of appellant's business, appellant's submission on the G.P. and other relevant facts of the case and judicial decisions, it is held that 10% of the amount of total bogus purchases is to be disallowed which will meet the ends of justice in the present case. Therefore, the addition is restricted to 10% of the amount of bogus purchases and is restricted to 10% gross profit on the said purchases. In view of the discussion above, appeal on Ground Nos. 5, 6, 7, 8, 9(1), 9(III), & 10 are partly allowed.”

13. No factual error has been pointed out by the DR in the aforementioned findings of the CIT(A). After giving a thoughtful consideration to the aforementioned findings of the CIT(A) we are of the considered view that the CIT(A) has considered the facts discussed here in above in their true perspective which calls for no interference.

14. In the result, the appeal of the revenue is dismissed.

15. Since the cross objection was not seriously contested the same is also dismissed.

Order pronounced in the open court on 05.02.2024.

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

NEHA

Date:- .02.2024

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER