

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI**

**BEFORE SHRI ABY T VARKEY, JM &
MS PADMAVATHY S, AM**

**I.T.A. No. 663/Mum/2023
(Assessment Year: 2009-10)**

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| Dhadda Gem N Jewels 2208, Panchratna Opera House, Mumbai – 400004 PAN : AAAFD5014F | Vs. | Income Tax Officer 19(1) Matru Mandir, Grant Road, Mumbai – 400 007 |
| Appellant) | : | Respondent) |

Appellant/Assessee by : Shri Vimal Punmiya
Revenue/Respondent by : Dr. Yogendra T. Wakare

Date of Hearing : 21.02.2024
Date of Pronouncement : 23.02.2024

ORDER

Per Padmavathy S, AM:

1. This appeal of the Assessee is against the order of the Commissioner of Income Tax (Appeals) / NFAC [for short 'the CIT(A)] dated 13.1.2023 for AY 2009-10.
2. The only issue contended in this appeal is the addition made by the Assessing Officer (the AO) by applying 8% as the profit element on the alleged bogus purchases made by the Assessee.
3. The Assessee is a trader in cut and polished diamonds. The Assessee filed the return of income for AY 2009-10 on 25.9.2009 declaring a total income of

Rs.2,49,418/-. The return was processed u/s 143(1) of the Income Tax Act, 1961 (The Act). The case was re-opened based on information received from DGIT(Inv), Mumbai in which it was alleged that the Assessee has obtained accommodation entries of bogus purchases to the tune of Rs.2,33,47,863/- from various entities of Rajendra Jain Group on whom there was a search operation. The AO completed the assessment u/s. 143(3) r/w. Section 147 of the Act by making an addition of Rs.18,67,829/- by applying 8% on the alleged bogus purchase. The CIT(A) confirmed the addition made by the AO. The Assessee is in appeal against the order of the CIT(A) before the Tribunal.

4. The learned Authorised Representative (the Ld. AR) submitted that the AO has made the addition by merely relying on the report of DGIT(Inv) without conducting any enquiry independently. The Ld. AR further submitted that the Assessee has submitted all the relevant documents with regard to the alleged bogus purchases which have not been disputed by the Revenue. The Ld. AR made a without prejudice submission that even if the purchases are presumed to be bogus the AO is not correct in attributing a percentage of 8% considering the nature of business the assessee is engaged in and that the percentage is very high. The Ld. AR in this regard drew our attention to the Report of the Task Group for diamond sector, Government of India, Ministry of Commerce and Industry, (Page 139 of paper book) in which it has been mentioned that the net profit in the diamond industry is in the range of 1% to 3% only. The Ld. AR further relied on the decision of the coordinate bench in the case of M/s. Star Brilliant v/s ITO (ITA No.1551 and 1552/Mum/2020, dated 12.7.2022) where it has been held that-

“3.1. We have heard rival submissions and perused the materials available on record. The assessee is an importer, exporter and manufacturer of diamonds and dealer in diamonds, precious stones and jewellery. During the course of assessment

proceedings, the assessee produced the books of accounts and records containing details of purchases, sales, bank statements and creditors before the Id. AO. The confirmation from all the creditors were called for which were also duly filed before the Id. AO. The Id. AO observed that assessee had made certain purchases from certain parties belonging to Shri Rajendra Jain group and that during the course of search conducted in the case of Shri Rajendra Jain Group on 3/10 / 2013 it revealed that certain parties were indulged in providing accommodation entries of purchases at the behest of Shri Rajendra Jain group. Since, the assessee had made certain purchases from those parties, the Id. Ao proceeded to examine the veracity of the purchases made thereon. It is not in dispute that assessee had indeed made payments for those purchases to the concerned suppliers by account payee cheques. It is not in dispute that assessee had furnished the details of corresponding sales made out of disputed purchases by producing the relevant sale invoices, ledger copy of the parties, bank statement showing payments made through account payee cheques, stock register, copy of affidavits of persons confirming the transactions with the assessee, confirmation from parties confirming sales made to assessee alongwith their copy of ITR, their bank statements, PAN, their affidavit confirming the genuineness of transactions etc., Despite all these facts, the Id. AO observed that the purchases made by the assessee were not proved beyond reasonable doubt as the suppliers belong to Shri Rajendra Jain group. Accordingly, the Id. AO proceeded to estimate the profit element embedded in the value of such disputed purchases at 5% and brought the same to tax in both the years under consideration. This profit percentage was reduced to 3% by the Id. CIT(A) for both the years. It is only an estimation of profit that had been made by both the lower authorities in the instant case. The report of the task group for diamond sector submitted to Department of Commerce suggested that the net profit that could be derived in the diamond manufacturing ranges from 1.5% to 4.5% and in trading activity thereof, the profitability range is 1% to 3%. Considering the same, we deem it fit to estimate the profit percentage embedded in the value of disputed purchases @2% which, in our considered opinion, would meet the ends of justice. Accordingly, the grounds raised by the assessee in this regard for both the years are partly allowed.”

5. The learned Departmental Representative (the Ld. DR) submitted that the profit percentage as per the report quoted by the Assessee is with respect to the genuine purchases and cannot be applied for non-genuine purchases as in Assessee's case. Accordingly, the Ld. DR prayed that the addition made by the AO be sustained.

6. We heard the parties and perused the material on records. From the perusal of facts of the present case, and the nature of business in which the Assessee is engaged in, we are of the considered view that the ratio laid on by the coordinate bench in the case of M/s. Star Brilliant (supra) is applicable to Assessee's case also. Therefore, respectfully following the above decision of the coordinate bench, we are of the considered view that it could be justified if the profit elements embedded in the impugned purchases are estimated at 2%. Accordingly, we direct the AO to estimate the profit from non-genuine purchases at 2% and make the addition accordingly.

7. In the result, the appeal of the Assessee is partly allowed.

Order pronounced in the open court on 23-02-2024.

Sd/-
(ABY T VARKEY)
Judicial Member

Sd/-
(MS. PADMAVATHY S)
Accountant Member

Mumbai, Dated : 23.02.2024
Mini Pawar, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,
(Dy./Asstt. Registrar)
ITAT, Mumbai