

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

**BEFORE SHRI ABY T VARKEY, HON'BLE JUDICIAL MEMBER**

**AND**

**SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NO. 3682/MUM/2023 (A.Y: 2012-13)**

Concorde International EC-B2-8010, Bharat Diamond Bourse Bandra (E), Mumbai- 400051  <b>PAN: AABFC9865G</b>	v.	DCIT, Circle 19(1), Matru Mandir Building 1 <sup>st</sup> & 2 <sup>nd</sup> Floor, Nana Chowk Bhatia Hospital Lane Javji Dadaji Marg, Grant Road (W) Mumbai- 400007
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee Represented by</b>	<b>:</b>	<b>Shri Sunil Hirawat</b>
<b>Department Represented by</b>	<b>:</b>	<b>Shri H.M. Bhatt</b>
<b>Date of Conclusion of Hearing</b>	<b>:</b>	<b>05.03.2024</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>13.03.2024</b>

**ORDER**

**PER S. RIFAUR RAHMAN (AM)**

**1.** This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals)-51, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 18.09.2023 for the A.Y. 2012-13.

**2.** Brief facts of the case are, assessee filed return of income on 06.08.2012 declaring income of ₹.2,39,63,799/- for the A.Y. 2012-13 and the return was processed u/s. 143(1) of Income-tax Act, 1961 (in short "Act"). The case was reopened u/s. 147 of the Act by issue of notice u/s.148 of the Act after recording the reasons and obtaining the prior approval from the competent authority. Notice u/s. 142(1) of the Act was issued and served on the assessee. In response Authorised Representative of the assessee attended and submitted the relevant information as called for.

**3.** Assessee is engaged in the business of trading and manufacturing in diamonds. A search and survey action was conducted in the case of Shri Bhanwarlal Jain group on 03.10.2013 by DGIT (Investigation) Mumbai. Subsequently, Assessing Officer received information from the DGIT(Inv.), Mumbai about the accommodation entries provided by various dealers operated by the Shri Bhanwarl Jain group and assessee was also one of the beneficiary from those dealers. The assessment was reopened u/s. 147 of the Act based on the information received from DGIT (Inv.), Mumbai, that the assessee has availed accommodation entries from various dealers who are said to be providing accommodation entries without there being transportation of any goods. In the reassessment

proceedings, the assessee was asked to prove the genuineness of the purchases made from various dealers as referred in Assessment Order. In response assessee filed its submissions vide letter dated 28.11.2019 and submitted that the purchases made are genuine.

**4.** Not convinced with the submissions of the assessee the Assessing Officer treated the purchases as non-genuine and he was of the opinion that assessee had obtained only accommodation entries without there being any transportation of materials and the assessee might have made purchases in the gray market. Accordingly, Assessing Officer treated the said purchases made for an amount of ₹.3,42,65,843/- as bogus and non-genuine purchases under section 69C of the Act and determined the income of the assessee at ₹.5,82,29,643/- for the A.Y. 2012-13.

**5.** Aggrieved assessee preferred an appeal before the Ld. CIT(A) and filed detailed submissions. After considering the detailed submissions of the assessee, Ld. CIT(A) following the decision of the ITAT in assessee's own case for the A.Y. 2007-08 directed the Assessing Officer to restrict the addition to the G.P Rate of 7.89% while working out the profit element embedded in the non-genuine purchase amounting to ₹ 3,42,65,843/-.

**6.** Aggrieved with the above order, assessee is in appeal before us raising following grounds in its appeal: -

- 1. On the facts and in law, learned commissioner of income tax (Appeals) had erred in confirming the addition of Rs.27,03,575/- as against Rs. 92,752/- submitted by the appellant during appellate proceedings. Under the facts and circumstance, the excess addition of Rs. 26,10,823/- ought to have been deleted.*
- 2. On facts and in law, learned commissioner of income Tax (Appeals) had erred in not following the decision of Hon'ble ITAT in AY 2007-08 on similar facts. Under the facts and circumstances of the matter only the differential G.P. ought to have been confirmed.*
- 3. The appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing of the appeal, so as to enable the Hon'ble ITAT to decide this appeal according to law.*

**7.** Ld. Counsel for the assessee reiterated the submissions made before the Ld.CIT(A). Further, Ld. Counsel for the assessee submitted that assessee is in the business of Diamonds and the profit percentage in the diamond manufacturing business ranges from 1.5% to 4.5%. Ld. AR relying on the order of the Hon'ble Bombay High Court in the case of Pr.CIT v. M/s. Mohommad Haji Adam and Company in ITA.No. 1004 of 2016 dated 11.02.2019 reported in 2019-TIOL-High Court–Mum-IT submitted that the addition in respect of bogus purchases is to be limited to the extent of bringing the gross profit rate on such purchases at the same rate as of other genuine purchases. Ld.AR of the assessee

submitted that as per the decision of the Hon'ble Bombay High Court the addition should have been the difference of actual Gross profit and declared gross profit rate. In this regard, he brought to our notice rectification petition filed under section 154 of the Act before the First Appellate Authority seeking for the rectification of the impugned order which is yet to be disposed off. Ld.AR of the assessee prayed that the addition be restricted only to the extent of differential gross profit.

**8.** On the other hand, Ld. DR supported the orders of the authorities below.

**9.** Considered the rival submissions and material placed on record and perused the orders of the authorities below. It is not in dispute that sales have been accepted as genuine from out of these purchases. When the sales have been accepted as genuine the entire purchases cannot be treated as non-genuine. The Hon'ble Gujarat High Court in the case of Bholanath Polyfab Pvt. Ltd [355 ITR 290] held that when the assessee made purchases and sold the finished goods as a natural corollary not the entire amount covered under such purchases would be subject to tax but only the profit element embedded therein. Similar view has been taken by the Hon'ble Gujarat High Court in the case of CIT *v.* Simit P. Seth

[38 taxman.com 385]. Simply because the parties were not produced the entire purchases cannot be added as held by the Bombay High Court in the case of CIT v. Nikunj Eximp [216 Taxman.com 171]. We agree with the view of the lower authorities that there should be an estimation of profit element from these purchases and should be estimated reasonably as the assessee could not conclusively prove that the purchases made are from the parties as claimed, especially in the absence of any confirmations from them.

**10.** The Hon'ble Bombay High Court in the case of Pr. CIT v. M/s. Mohommad Haji Adam and Company (supra) held as under: -

*"8. In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of N.K. Industries Ltd. (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under-*

*"So far as the question regarding addition of Rs.3,70,78,125/- as gross profit on sales of Rs.37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6 % gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66 %. Therefore, considering 5.66 % of Rs.3,70,78,125/- which comes to Rs.20,98,621.88 we think it fit to direct the revenue to add Rs.20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said question is answered partially in favour of the assessee and partially in favour of the revenue."*

*9. In these circumstances, no question of law, therefore, arises. All Income Tax Appeals are dismissed, accordingly. No order as to costs."*

**11.** Further, we observe in assessee's own case for the A.Y.2007-08 the Coordinate Bench in ITA No. 4235/MUM/2018 dated 11.06.2019 following the decision of the Hon'ble Bombay High Court in the case of Pr. CIT v. M/s. Mohommad Haji Adam and Company (supra) held as under: -

*"5. Learned counsel of the assessee in this regard has submitted that there is hardly any difference between the gross profit on normal purchases and gross profit shown in so-called bogus purchases. According to him the gross profit rates are as under :-*

*GP rate for A.Y. 2007-08 5.20%, GP rate for bogus purchase 5.01%*

*Learned counsel of the assessee agreed that this aspect can be examined by the assessing officer.*

*6. I respectfully following the aforesaid judgement of the honourable High Court set aside the matter to the file of the*

*assessing officer with the direction to restrict the addition as regards the bogus purchases by bringing the gross profit rate on such bogus purchases at the same rate as that of the other genuine purchases. Needless to add the assessee should be granted adequate opportunity of being heard."*

**12.** Ld. CIT(A) has followed the order of the Tribunal in assessee's own case and restricted the addition to 7.89% of ₹.3,42,65,843/-. The issue raised before us is with conclusion drawn by the Ld.CIT(A) in Para No. 10.4 at Page No. 25 of the Appellate Order, for the sake of clarity it is reproduced below: -

*"10.4. The settled position of the law is that the onus lies on the assessee to prove the genuineness of the purchase transactions claimed as genuine. However, as seen from the records, this onus has not been discharged. The Courts have time and again held that if the investigation done by the department leads to a doubt in respect of the genuineness of the transactions / purchases, it is incumbent on the assessee to produce the parties along with the necessary documents to establish the genuineness. In the instant case, there is uncontroverted evidence regarding the bogus nature of the purchases from an source i.e the Wing of the Income Tax and the evidences include admission from the so- called sellers that they have been issuing bogus bills. Therefore, respectfully following the Hon'ble ITAT In the own case for AY 2007-08 in ITA No.4235/MUM/2018 , the addition on account of the non-genuine purchases is restricted to the profit element embedded in such non-genuine purchases. The AO is accordingly directed to take the Gross Profit rate of 7.89% while working out the profit element in the non genuine purchases amounting to Rs. 3,42,65,843/-. Thus, the addition on account of non-genuine is restricted to 7.89% of Rs.3,42,65,843/- which amounts to Rs. 27,03,575/-. The remaining addition of Rs.3,15,62,268/- [Rs. 3,42,65,843- minus Rs. 27,03,575/- ] is accordingly deleted. This ground of appeal is, therefore, partly allowed."*

**13.** Following the decision of the Hon'ble Bombay High Court, we find merit in the submissions of the Ld. AR that the addition should be restricted only to the extent of bringing the gross profit rate on such purchases at the same rate as of other genuine purchases. For the sake of clarity, the summary of statement of purchase / sale and submitted by the assessee for the year under consideration assessee is reproduced below: -

**Summary of Statements of Purchase / Sales**

NAME OF THE PARTY	QUANTITY	PURCHASE	SALES & CLOSING STOCK
RAHUL EXPORTS	96654	12780908	13789154
PANKAJ EXPORTS	1320.51	17272996	18941312
MARVIN ENTERPRISES	123.29	4211939	4370324
TOTAL	2420.34	34265843	37100790

GROSS PROFIT (Sales – Purchase) = (37100790-34265843)  
**=2834947**

**GROSS PROFIT RATIO TO SALES -- 7.64%”**

**14.** Respectfully following the decision of the Hon'ble Bombay High Court and the decision in assessee's own case for the A.Y. 2007-08 and also taking the totality of facts and circumstances, keeping in view the nature of business of the assessee i.e. manufacturing, trading in diamond, the Ld. CIT(A) should have sustained the addition to the extent of difference of gross profit declared in regular trading and non-genuine

trading transactions. In this case assessee has declared 7.89% and in non-genuine it was declared at 7.64%. The difference is 0.25%. Accordingly, we direct the Assessing Officer to disallow only 0.25% of the disputed purchases under section 68 of the Act.

**15.** In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 13<sup>th</sup> March, 2024.

**Sd/-**  
**(ABY T VARKEY)**  
**JUDICIAL MEMBER**

Mumbai / Dated 13.03.2024  
Giridhar, Sr.PS

**Sd/-**  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

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

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**