

IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.3623/Mum./2023

(Assessment Year : 2007-08)

ITA no.3624/Mum./2023

(Assessment Year : 2009-10)

ITA no.3625/Mum./2023

(Assessment Year : 2012-13)

M/s. Peacemoon Traders
311, The Jewel Mama Paarmanand Marg
Opera House, Mumbai 400 004
PAN - AAAFP4501D

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-19(2), Mumbai

..... Respondent

Assessee by : Shri Nishit Gandhi

Revenue by : Shri H.M. Bhatt

Date of Hearing - 13/03/2024

Date of Order - 20/03/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeals have been filed by the assessee challenging the separate impugned order of even date 29/08/2023 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment years 2007-08, 2009-10 and 2012-13.

2. Since all the appeals pertain to the same assessee and involve a similar issue that arises out of a similar factual matrix, therefore, these appeals were heard together and are being decided by way of this consolidated order. With

the consent of the parties, the appeal for the assessment year 2007-08 is taken up as a lead case and the decision rendered therein shall apply *mutatis mutandis* to the other appeals of the assessee before us.

ITA no.3623/Mum./2023
Assessee's Appeal – A.Y. 2007-08

3. In this appeal, the assessee has raised the following grounds:-

"A. In the facts and in the circumstances of the case the Ld. CIT(A) erred in confirming the action of the Ld. A.O. in framing a re-assessment in the case of the Assessee (the Appellant herein] for the relevant assessment year without appreciating that

a. The necessary preconditions for initiation as well as completion of a re-assessment are not fulfilled in the present case;

b. The initiation of re-assessment is barred by limitation; and;

c. In any case the re-assessment is based on a change of opinion and hence unsustainable.

B. In the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in sustaining the disallowance on account of purchases to 12.5% as against 100% made by the Ld. AO without appreciating that such a disallowance is contrary to law and in any case uncalled for.

C. While partly sustaining the disallowance made by the Ld. AO, the Ld. CIT(A) failed to appreciate that:

a The Purchases made by the Appellant are genuine and duly explained by all the necessary documents, vouchers and evidences in this regard and in fact no fault has been found with the same by the Ld. AO himself;

b. The disallowance could be made only after deducting therefrom the GP already offered to tax by the Appellant; and;

c. Without prejudice to the above, even as per the report of the Financial Action Task Force appointed by the Government, the maximum profit attributable to the business as carried on by the Assessee is in the range 1 to 3% and the disallowance must be restricted to the said percentage of purchases.

D. Without further prejudice to the above, the Appellant humbly submits that the disallowance, if at all required to be made, must be restricted to 5% of the alleged bogus purchases as has been done by the Id. AO in scrutiny assessments in the other years.

E. The appellant craves leave to add amend alter or delete any or all grounds of Appeal."

4. During the hearing, the learned Authorised Representative ("*learned AR*") wishes to argue the grounds pertaining to disallowance on account of alleged bogus purchases. The brief facts of the case pertaining to this issue are that for the year under consideration, the assessee filed its return of income on 18/10/2007 declaring a total income of Rs.39,54,175. The return filed by the assessee was selected for scrutiny and vide order dated 18/06/2009 passed under section 143(3) of the Act total income of the assessee was assessed at Rs.63,56,110. Subsequently, on the basis of the information received from DGIT (Investigation), Mumbai that the assessee is a beneficiary of accommodation entries of bogus purchases from entities controlled by Mr. Bhanwarlal Jain, proceedings under section 147 of the Act were initiated and notice under section 148 of the Act was issued on 27/03/2014. In response to the aforesaid notice, the assessee filed a letter requesting to treat the return originally filed as a return filed in compliance to the notice issued under section 148 of the Act. During the reassessment proceedings, the assessee was asked to furnish the details of purchases claimed to be made from these entities along with the stock register, manufacturing register, and copy of bills. In response thereto, the assessee submitted that the purchases made are genuine in nature and also contended that the purchases made from these parties have been duly entered in the books of account and payments have been made through cheques only. The Assessing Officer ("*AO*") vide order dated 27/03/2015 passed under section 143(3) read with section 147 of the Act did not agree with the submissions of the assessee and held that barring the stock register entry and cheque payment, custom appraisal report in respect of export sales no other

documents such as delivery challans, etc. were produced during the course of assessment proceedings. Accordingly, the AO held that this leads to prove that the purchases shown to have been made by the assessee are bogus in nature. The AO further held that day-wise stock register is not produced, and the books produced are not in working condition. Therefore, the AO held that the purchases made from the entities controlled by Mr. Bhanwarlal Jain and his group, were debited not just to cover up the grey market purchases but also to suppress the taxable profit and to defraud the Revenue. Accordingly, the AO disallowed the entire purchases amounting to Rs.4,65,85,141 and added the same to the total income of the assessee. The learned CIT(A), vide impugned order, following the decision of the Hon'ble Gujarat High Court in CIT v/s Simit P. Sheth, [2013] 356 ITR 451 (Gujarat), directed the AO to restrict the addition to the extent of 12.5% of the non-genuine/suspicious/bogus purchases instead of disallowing 100% of the purchases. Being aggrieved, the assessee is in appeal before us.

5. We have considered the submissions of both sides and perused the material available on record. In the present case, on the basis of the information received from the DGIT (Investigation), Mumbai that the assessee is the beneficiary of bogus purchases, reassessment proceedings in the case of the assessee were initiated. It is evident from the record that the AO made the addition of the entire alleged bogus purchases made by the assessee, however, the learned CIT(A) restricted the disallowance to 12.5% of the alleged bogus purchases. It is the claim of the assessee that it is a dealer in cut and polished diamonds, gold and silver, precious and semi-

precious stones. Further, it is the claim of the assessee that the assessee has purchased cut and polished diamonds, and all the payments were made by account payee cheque. However, we find that before the lower authorities, the assessee could not prove the genuineness of the transaction with sufficient documentary evidence. From the material available on record it is evident that the assessee has failed to prove the genuineness of the purchases made from the supplier. However, at the same time, it is evident from the record that the Revenue has not doubted the sale of diamonds by the assessee. Further, it cannot be doubted that without the purchase of diamonds, the assessee cannot carry out the sale. Therefore, it appears to be a case of bogus bills arranged from the aforesaid entities and diamonds purchased from somewhere else at a lower cost. Thus, we are of the considered view that a reasonable disallowance of the purchases would meet the possibility of revenue leakage.

6. During the hearing, the learned AR by referring to the assessment orders passed in assessee's own case for the assessment years 2008-09, 2010-11, 2011-12, 2013-14, and 2014-15 submitted that the AO made the addition of 5% of the non-genuine purchases from the entities controlled by Mr. Bhanwarlal Jain and his group. The learned AR further submitted that the addition of 5% of the non-genuine purchases in the aforesaid assessment years has been accepted by the assessee and these assessment orders are also not altered pursuant to any revision proceedings. Since the profit margin embedded in the transaction of alleged bogus purchases of cut and polished diamonds has been accepted at 5% in other years in assessee's own case,

following the rule of consistency in view of the peculiar facts of the present case, we deem it appropriate to restrict the disallowance to 5% of the disputed purchases in the year under consideration. As a result, grounds raised by the assessee on merits are partly allowed.

7. The ground raised by the assessee challenging the invocation of proceedings under section 147 of the Act was not argued during the hearing. Accordingly, the said ground is dismissed as not pressed.

8. In the result, the appeal by the assessee is partly allowed.

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9. Since in the assessment years 2009-10 and 2012-13 the impugned addition pertains to disallowance on account of alleged bogus purchases from the entities controlled by Mr. Bhanwarlal Jain and his group, therefore our findings/conclusions rendered in assessee's appeal for the assessment year 2007-08 shall apply *mutatis mutandis*. Accordingly, the disallowance in respect of disputed purchases is restricted to 5%. As a result, grounds raised by the assessee on merits are partly allowed. In the appeal for the assessment year 2009-10, ground challenging the invocation of proceedings under section 147 of the Act was not argued during the hearing. Accordingly, the said ground is dismissed as not pressed.

10. In the result, the appeals by the assessee for the assessment years 2009-10 and 2012-13 are partly allowed.

11. To sum up, all the appeals by the assessee are partly allowed.

Order pronounced in the open Court on 20/03/2024

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 20/03/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai