

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "E" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 3223/MUM/2023  
Assessment Years: 2012-13**

Kalpsaru Diamonds,  
JW 8040/250, Bharat Diamond  
Bourse, BKC, Bandra East,  
Mumbai-400051.

**PAN NO. AAAPK 6960 H  
Appellant**

ACIT 23(2),  
Piramal Chambers,  
Mumbai-400013.

**Vs.**

**Respondent**

**ITA No. 3400/MUM/2023  
Assessment Years: 2012-13**

Dy. CIT-23(1),  
Room No. 511, Fifth floor,  
Piramal Chambers, Parel,  
Lalbaugh-400012.

**Appellant**

**Vs.**

Kalpsaru Diamonds,  
JW 8040/250, Bharat Diamond  
Bourse, BKC, Bandra East,  
Mumbai-400051.

**PAN NO. AAAPK 6960 H  
Respondent**

Assessee by : Mr. Ajay Singh  
Revenue by : Mr. P.D. Chougule, Sr. DR

Date of Hearing : 14/03/2024  
Date of pronouncement : 28/03/2024



## **ORDER**

### **PER OM PRAKASH KANT, AM**

These cross appeals by the assessee and Revenue are directed against order dated 26.07.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2012-13.

2. The grounds raised by the assessee in its appeal are reproduced as under:

#### ***I: Reopening of Assessment***

*a) On the facts and in the circumstances of the case and in law, the reopening proceeding initiated by issuance of notice u/s. 148 of the act invalid and bad in law.*

*b) On the facts and in the circumstances of the case and in law, the assessment order passed u/s. 143(3) r.w.s. 147 of the act is invalid and bad in law.*

*c) On the facts and in the circumstances of the case and in law, The learned CIT(A) erred in allowing reopening assessment merely based on information received from DGIT (Investigation), without forming independent belief by AO with regard to escapement of income.*

#### ***II: DISALLOWANCES OF BOGUS PURCHASES***

*a) On the facts and in the circumstances of the case and in law the Learned CIT(A) has erred by upholding/continuing an addition by taking GPM @ 25% of non-genuine purchases from parties declared as hawala by DGIT (Inv), Mumbai amounting to Rs.60,44,495/- .*

*b) The learned CIT(A) erred in making addition of Rs.60,44,495/- towards purchases made from Shri Gautam Bhanwarlal Jain and Shri Rajendra Kumar Jain and associated units treating this as unexplained expenditure u/s. 69C of the Income Tax Act, 1961 in spite of the fact that the transaction of purchase and payment to supplier are recorded in the books of account and source of expenditure is explained.*



c) *The learned CIT(A) ought to have considered the subsequent sale of goods to customers along with the evidence of sale/export submitted to him.*

d) *The learned CIT(A) ought to have considered the order passed in assessee's own case on similar grounds for AY:2010-11 wherein addition is restricted at 3% of hawala / bogus purchase.*

e) *The learned CIT(A) erred by upholding the action of AO by not giving for rebuttal the statement / document / information received from Shri Gautam Bhanwarlal Jain and Shri Rajendra Kumar Jain and relied upon by him for making addition.*

f) *The learned CIT(A) erred by upholding the action of AO by not allowing cross examination of the Shri Gautam Bhanwarlal Jain and Shri Rajendra Kumar Jain, whose statement taken during search action, was relied upon for making addition.*

g) *The learned CIT(A) erred by not considering GPM made in hawala transaction vis a vis overall GPM of the firm*

2.1 The grounds raised by the Revenue in its appeal are reproduced as under:

1. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting to addition made on account of bogus purchases to 25% of total bogus purchases of Rs. 2,41,77,979/-, ignoring the fact that the additions were made by relying on the information from the DGIT( Inv.), Mumbai which is a creditable agency of the Income-Tax Department?"*

2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in applying gross profit @ 25% as against the 100% of total bogus purchases of Rs.2,41,77,979/- by ignoring the fact that the assessee could neither produce the details of Importers, quantity tally of day to day purchases, Sales, Stocks and corresponding values nor could produce the parties for verification, in spite of opportunity provided by the Assessing Officer ?"*

3 *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in applying gross profit @ 25% as against the 100% of total bogus purchases of Rs.2,41,77,979/-without appreciating the ratio of the decision of the Hon'ble Supreme Court in the case of N.K. Proteins Ltd., wherein the Court has hold that when the purchases are from bogus suppliers, the entire purchases are liable to disallowed ?"*

4 *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in applying gross profit @25% as against the 100% of total bogus. purchases of Rs.2,41,77,979/-, by ignoring the fact that*



*Gautam Jain in his statement recorded u/s 132(4) of the Act, has categorically stated that he has involved in providing of Accommodation entries without supplying of any goods & services?"*

*5. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in applying gross profit @ 25% as against the 100% of total bogus purchases of Rs.2,41,77,979/, ignoring the fact that Gautam Jain in his statement recorded u/s 132(4) of the Act, has categorically stated that all the employees of M/s. Gautam B. Jain & Rajendra Jain and his 70 alleged associates concerns were shown/designated as company's directors/partners or proprietors who have not possessed any knowledge of diamond business and all were worked on Salary Basis?"*

*6. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in applying gross profit @ 25% as against the 100% of total bogus purchases of Rs.2,41,77,979/-, ignoring the fact during the search no stock of diamond was found in the premises of the Gautam Jain & Associates/group entities to whom the assessee claimed to have made alleged purchases?"*

*7. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in not appreciating the action taken by the A.O. for corroborating the circumstantial evidences collected through the various facts and the corroborative evidence in form of statements of the commission agents through which bogus bills were collected it is clear that the assessee alleged Firm Gautam Jain & Associates is indulged in inflating the purchases through bogus bills?."*

3. Briefly stated, facts of the case are that the assessee filed its return of income for the year under consideration on 26.09.2012 declaring total income at Rs.20,80,130/-. The return of income filed by the assessee was processed u/s 143(1) of the Income-tax Act, 1961 (in short 'the Act') on 10.05.2013. Subsequently, The assessing officer received information from the Investigation Wing, Mumbai that during search and seizure action in the cases of sh Gautam Bhanwarlal Jain and Rajendra Kumar Jain, it was revealed that the assessee firms obtained bogus accommodation entry purchase bills from entities controlled and managed by them. On analysis of the information, the Assessing Officer recorded reasons



to believe that income escaped assessment and issued notice u/s 148 of the Act on 28.03.2019 for reopening the assessment proceedings. In response, the assessee filed return of income on 26.11.2019 and thereafter statutory notices were issued and complied with. In the course of the re-assessment proceedings, the in view of observation made by the search team in the case of Shri Gautam Bhanwarlal Jain and Rajendra Kumar Jain , the Assessing Officer opined that the purchases from the two parties namely M/s Nayan Gems ( in short the 'Nayan') amounting to Rs.1`22,23,204/- and Nazar Impex P ltd ( in short the 'Nazar') amounting to Rs.1,19,54,775/- totaling to Rs.2,41,77,979/- was in the nature of accommodation entry and therefore, the assessee was asked to substantiate the purchase transaction with documentary evidences. In absence of any satisfactory reply, the Assessing Officer invoked the decision of the Hon'ble Supreme Court in the case of N.K. Proteins Ltd. (supra) and disallowed entire purchases under dispute amounting to Rs.2,41,77,979/-. The relevant finding of the Assessing Officer is reproduced as under:

*"10. From the circumstantial evidences collected through the various facts and the corroborative evidence in form of statements of the commission agents through which bogus bills were collected it is clear that the assessee Firm is indulged in inflating the purchases through bogus bills. This issue has been in the fray for long and has seen the face of Hon. Apex Court also. The observation of the Hon able Supreme Court of India in the case of N.K. Proteins Ltd v. Dy. CIT 2017 Tax Pub(DT) 1860 (SC) : (2017) 250 TAXMAN 0022 is very relevant here--Where assessee filed SLP to appeal against the judgment of the Gujarat High Court in N.K. Industries Ltd. v. Dy. CIT (2016) 292 CTR (Guj) 354, whereby it was held that addition on basis of undisclosed income could not be restricted to certain percentage when the entire*



transaction was found as bogus. The Hon'ble Supreme Court dismissed the SLP.

*11. In view of the above facts and circumstances and following the spirit of the judgment of the Hon'ble High Court, Gujarat which was later confirmed by the Hon'ble Apex Court, the bogus purchases amounting to Rs.2,41,77,979/- is treated as assessee's unexplained expenditure u/s 69C of the Act and added to the total income of the assessee. Penalty proceedings u/s. 271(1)(c) of the Income Tax Act, 1961 is initiated for concealment of income."*

4. On further appeal, the Ld. CIT(A) justified the reopening proceedings, however restricted the disallowance upto 25% of relevant purchases from two parties , observing as under:

*"9.9 In view of the above, considering the totality of facts and circumstances of the case, I am of the opinion that the ratio of the decisions of the Hon'ble High Court of Gujarat in the cases of (i) CIT vs. Bholanath Poly Fab Pvt. Ltd. (ii) Sanjay Oilcake Industries vs. CIT (iii) Vijay Proteins Ltd. vs. CIT; and (iv) N. K. Proteins Ltd. vs. DCIT (supra), as upheld by Hon'ble Supreme Court in N. K. Proteins Ltd. vs. DCIT (2017) 84 taxmann.com 195 (SC) is squarely applicable mutatis mutandis to the instant case. Accordingly, the AO is directed to reduce the quantum of disallowance of bogus purchases to 25% in place of 100% applied in the assessment order. Thus, the grounds of appeal raised by the assessee on this issue are treated as partly allowed."*

5. As far as ground No. 1 of the appeal of the assessee challenging reopening of the assessment is concerned, we find that the Ld. CIT(A) has rejected the contention of the assessee that reassessment proceedings are invalid due to no failure on the part of the assessee in making full and true disclosure. The Ld. CIT(A) has held that the return of income filed by the assessee u/s 139(1) of the Act was processed without carrying out any regular scrutiny u/s 143(3) of the Act, so the proviso to section 147 is not attracted. The Ld. CIT(A) also rejected the challenge of the reassessment proceedings on the ground that notice u/s 148 of the Act was



served beyond expiry of the four years from the end the relevant assessment year. The Ld. CIT(A) has concluded that the Assessing Officer was required to issue notice prior to the expiry of the limitation and which he had already complied as notice was issued on 30.03.2019. The Ld. CIT(A) also rejected the contention of the assessee of 'change of opinion' by the Assessing Officer on the ground that no scrutiny was carried out prior to reassessment proceedings, therefore, no opinion was framed by the Assessing Officer on the issue in dispute prior to reassessment. The Ld. CIT(A) also rejected the contention of the assessee that assessment was reopened based on the information received from the Investigation Wing without conducting any investigation by the AO. The finding of the Ld. CIT(A) is reproduced as under:

*"7.14 Coming to the issue of reopening of the assessment based on information received from DGIT (Inv.), but without conducting investigation on his own by the AO, it is observed that the AO had in fact analyzed the information and reports received from the DGIT (Inv.), which were prepared on the basis of search & seizure action u/s. 132 of the Act conducted in the cases of Shri Gautam Bhanwarlal Jain and Shri Rajendra Kumar Jain and their group concerns on 03.10.2013 and, based on the same, recorded his findings keeping in view the material available on record such as return of income, financial statements, etc. that the assessee had indulged in bogus purchases.*

*7.15 As such, it is clearly evident that the AO had not merely copied the findings of DGIT (Inv.), Mumbai, to formulate his belief that income chargeable to tax had escaped assessment within the meaning of section 147 of the Act, but recorded his own satisfaction after applying his mind and analyzing the facts came to his knowledge.*

*7.16 At this juncture, it may not be out of place to highlight the fact that it is trite law that at the time of initiation of proceedings u/s.147 of the Act, the condition precedent is reason to believe that income had escaped assessment but not establishment of the fact of actual escapement of income. Accordingly, while issuing notice u/s.148 of the Act, there should be evidence on record or specific information*



received from outside agencies or gathered by the AO to demonstrate that there is a prima facie case of escapement of income.

7.17 In the instant case, it is an admitted fact that the AO received specific information from DGIT (Inv.), Mumbai, establishing prima facie case of escapement of income. Under the circumstances, I don't find any merit in the assessee's contention that the AO recorded reasons for reopening based on information received from outside agencies without proper application of mind.

7.18 In this regard, I have perused the case laws relied upon by the assessee and found that the same are not applicable to the facts of the instant case and, also, on account of the fact that the said decisions have been impliedly overruled by the latest judgments of the Hon'ble Supreme Court in plethora of cases. In view of this, I would like to place reliance on the latest decisions of the Hon'ble Supreme Court, apart from the judgments of other High Courts, on the issue of reopening of the assessment involving bogus purchases based on information received from Sales Tax Department of Maharashtra Govt. and Investigation Wing of the Income Tax Department, as discussed below.”

6. We have heard rival submission of the parties and perused the relevant material on record. Before us, the Ld. Counsel for the assessee only pressed that reopening has been made merely on the basis of the information received from the DGIT Investigation Wing without any application of mind or carrying out any enquiry by the Assessing Officer regarding escapement of income. We are of view that the Hon'ble Supreme Court in the case of **ACIT vs Rajesh Jhaveri Stock Brokers Pvt. Ltd. (2007)( 291 ITR 500)** has held that at the stage of issue of notice, the only question to be seen is whether there was relevant material , on which a reasonable person could have formed a requisite believe. Further, the Hon'ble Supreme Court in the case of **Raymond Woolen Mills v. ITO [1999] 236 ITR 34 (SC)** held that for determining whether initiation of reassessment was valid, it has only to be seen whether there was



prima facie some material on the basis of which Department could reopen the case. It is further held that sufficiency or correctness of the material is not to be seen at the stage of recording reasons. In view of the above ratio of the Hon'ble Supreme Court, we find that the Assessing Officer has issued notice u/s 148 of the Act after verification of the material available before him and therefore, we do not find any infirmity in the order of the Ld. CIT(A) on the issue in dispute. The grounds challenging reopening of the assessment are accordingly dismissed.

7. The ground No. 2 of the appeal of the assessee relate to disallowance sustained by the Ld. CIT(A) on merit, whereas the grounds of the appeal of the Revenue relate to relief granted to assessee by the Ld. CIT(A). The facts qua the issue in dispute are that the Assessing Officer has disallowed entire amount of Rs.2,41,77,979/- from two parties namely 'Nayan' and 'Nazar', whereas the ld CIT(A) has sustained disallowance to the extent of 25% of those purchases amounting to Rs.16,44,495/- only. Thus the assessee is aggrieved with the addition sustained of Rs.60,44,495/- whereas the Revenue is aggrieved with the relief granted by the Ld. CIT(A) of Rs. 1,81,33,484/-. In the case, the assessee has shown to have purchased goods from the entities controlled and operated by Gautam Bhanwarlal Jain and Shri Rajendra Jain. The Assessing Officer has noticed in respect of parties as under:



*(i) The directors/ partners/ proprietor in the entities controlled by sh Gautam BhanwarLal Jain and Rajendra Jain were having dummy directors/ partners/proprietor only.*

*(ii) The directors/ partners/ proprietor of those firms were associated/connected with the Gautam Bhanwarlal Jain & family.*

*(iii) Those dummy directors/ partners/ proprietor of the company/firms controlled by Shri Gautam Bhanwarlal Jain and Rajendra Jain were looking after miscellaneous office work like depositing cheques in bank and handing over parcels to clients, making data entry etc. Those persons were not having any genuine knowledge of the diamond business and they used to receive salary as employees.*

*(iv) Those directors/ partners/ proprietor used to reside in flats owned/provided by Shri Gautam Bhanwarlal Jain and Shri Rajendra Jain & family.*

*(v) The so called business recorded in the books of account of those entities was shown to the operated from premises owned by sh Gautam Bhanwarlal Jain and family.*

*(vi) Those name sake directors/ partners/ proprietor were not having any contact or whereabouts of the importers.*



*(vii) Shri Gautam Bhanwarlal Jain and Shri Rajendra Jain duly admitted u/s 132(4) of the Act that those companies/firms were controlled by them and were engaged in issuing accommodation entry bills.*

*(viii) During the course of the search no stock of the diamond was found at the premises of business controlled by Rajendra Bhanwarlal Jain.*

7.1 Before the Assessing Officer, the assessee submitted bank statement of assessee showing payment to parties, invoice copy issued by those parties, ledger account of those parties in books of assessee, party wise sales and purchase – correlation between purchase and sales. The assessee was asked to produce, delivery challans, weighing slips, transportation bills etc, those parties for verification, but failure in doing so, the AO issued a show cause notice dated 6/12/2009 as why the purchases might be treated as non genuine. The submission of the assessee were rejected and the AO disallowed entire amount of purchases shown from them holding that those parties were controlled by Sh Gautam Bhanwarlal Jain for providing accommodation entries without any delivery of goods.

7.2 Before us , the Id AR contended that purchase from above parties were genuine for the reason that **firstly**, goods were received and same were ultimately exported , **secondly**, purchase



invoice and corresponding sales invoice were given along with statement of quantity and value of purchase and sale, **thirdly**, detailed statement of quantity purchased from above suppliers and quantity sold, **fourthly**, all payments were made through account payee cheque, **fifthly**, the suppliers were registered with VAT department and PAN were allotted to them, **sixthly**, the statements relied upon by the AO were never confronted for cross examination.

7.3 We have heard rival submission of parties on the issue in dispute. The Assessing officer has held that two supplier parties were controlled by sh Gautam Bhanwar lal Jain. We note that in the case of **Shri Gautam Bhanwarlal Jain through legal heir smt Pooja Jain**, the Coordinate Bench of Tribunal in **ITA No. 885 to 891/Mum/2019 for AY 2008-09 to AY 2014-15** has restored the matter of determination whether he was engaged in providing accommodation entry bills through entities controlled by him without any actual sales of goods i.e. diamonds. The relevant part of finding of the Tribunal in the case of sh Gautam Bhanwarlal Jain (supra) is reproduced as under:

*030. We have carefully considered the rival contention and perused the orders of the lower authorities. In this case, when the search took place, there was no material found at the premises where the business of the assessee was stated to be carried on supporting the books of accounts of the assessee. No evidences, except the books of accounts,*



*purchase and sales invoices and Page | 22 bank statement was produced before the learned that lower authorities. Merely producing documentary evidences without actually supporting that in fact such transactions have taken place in ordinary course of business, the books of accounts of the assessee cannot be stated to be showing the correct picture. It is the duty of the assessee to substantiate the transactions of purchases and sales of diamond with proving the chain of the business transaction with proper evidences. The learned AO has also rejected the books of accounts merely on the basis of the statement as well as absence of evidence of carrying on of the business actually by the assessee at the time of search. In view of this facts, we set-aside the issue of determination of the fact of actually carrying on of business by the assessee of purchase and sale of diamonds to the file of the learned assessing officer with direction to the assessee to substantiate that in fact assessee is carrying on the business and not merely an accommodation entry provider. The learned assessing officer is directed to examine the purchase and sales invoices as well as other evidences of each part of the chain of the trading and then decide whether the assessee is engaged in the business or is merely an accommodation entry provider. If the learned assessing officer reaches at the conclusion that assessee is an accommodation entry provider, then necessary action*



*may also be intimated in case of the beneficiaries of the transaction and determined the commission income in the hands of the assessee. Such action may also be explored in the hence of the beneficiaries even in case of a concluded assessment in case of this assessee. Therefore, the appeal of the assessee is for assessment year 2014 - 15 is set-aside to the file of the learned assessing officer to determine the income of the assessee afresh.*

7.4 Thus, the contention of the assessee that relevant purchases are genuine for the reason that sale has been confirmed in the hand of sh Gautam Bhanwarlal, is not acceptable as the issue has yet not determined. We have also noted that the assessee failed before the lower authorities in verifying the purchase parties except filing paper trails of purchase bill, bank statement, ledger account etc. The relevant finding of ld CIT(A) is reproduced as under:

*“8.16 Coming to the assessment proceedings, though the assessee furnished all legal documentation in the form of purchase invoices, sales invoices, stock summary, bank statements highlighting the payment made through banking channels, ledger accounts of the suppliers, etc., but failed to prove the genuineness of transactions by rebutting the finds of Investigation Wing and the AO. To be precise, it is important to note that, during the course of assessment proceedings, the assessee did not produce the above mentioned two parties in person for the purpose of examination and recording statement on oath regarding the genuineness of transactions they had with the assessee. Also, the assessee has not produced any retraction statement of the kingpins i.e., Shri Gautam Bhanwarlal Jain and Shri Rajendra Kumar Jain.*

*8.17 As such, it is amply clear that the assessee has failed to discharge the onus cast on it to prove the genuineness of the transactions by producing the parties concerned in person. Similarly, the assessee has failed to adduce any other credible evidence to demonstrate the genuineness of the transactions, except harping on fabricated*



*documentary evidence such as purchase bills, sales invoices, ledger accounts, etc. Also, the assessee placed undue emphasis on payment made to the parties through banking channels and contended that the genuineness of the transactions cannot be doubted.”*

7.5 The Id CIT(A) also held that merely because transaction was routed through banking channels, it couldn't be constructed as genuine transaction. In support of finding, the Id CIT(A) relied on following judicial decisions:

- (i) CIT Vs P Mohan Kala & Other others (2007) 291 ITR 278(SC)
- (ii) Nemichand Kothari vs CIT(2003)264 ITR 254(Gugrat)
- (iii) CIT Vs Precision Finance p Ltd (1995) 82 Taxman 31(Cal.)

7.6 The Id CIT(A) also rejected the copy of invoices issued by the 'hawala' dealers/operator to support genuineness of the transaction. After applying theory of human probability and substance over form, the Id CIT(A) held that claim of the assessee that he made genuine purchase lacked bonafide.

7.7 Before us the Id Counsel could not controvert the fact that the assessee failed in producing those parties for verification by the Assessing Officer or the Ld CIT(A). In such circumstances, the assessee has not discharged its onus of substantiating the purchases from those parties. Therefore the contention of the assessee that no disallowance should be made in the case of the assessee is rejected and we concur with the Id CIT(A) that purchase



shown from two parties are not substantiated by way of proper documents.

7.8 As far as disallowance in respect of bogus purchase is concerned, in our considered opinion, where the assessee is able to justify with the help of inventory of goods maintained on day to day basis that goods corresponding to the bogus purchase bills have been sold and sales have been confirmed by way of evidence in support of consumption or export outside India etc, the only presumption is that the assessee might have purchased goods from grey market at lower rate and therefore, the benefit to the assessee for purchase from grey market at reduced prices could be disallowed by way of part disallowance out of bogus bills. But, where the sales corresponding to the bogus purchase bills are not linked or reconciled to corresponding sales with the help day to day inventory of goods, in such cases it cannot be presumed that assessee purchased goods from the grey market therefore, in such cases entire bogus purchases are liable to be disallowed.

7.9 In the case, the assessee has filed a Paper Book containing copy of the purchase bills from 2 parties and corresponding sales. The assessee has filed a reconciliation of purchase and sales, which is available on Paper Book page 99. The relevant reconciliation is reproduced as under:



## Statement Giving details of Gross profit margin (GPM) on Hawala Purchase & Its Corresponding sales

Purchase			Sales				
Name	Carat	Value	Name	Inv Carat	Carat	Value	Profit
						Proportionate	
Nazar Impex Pvt. Ltd.	230.85	34,49,645.00	Leo Schachter Diamonds India Pvt. Ltd.	710.35	356.13	93,04,383.68	
Inv#NIPLS/PD/APR/15/11-12 dt. 11.04.2011		Inv # dt. 18.04.2011					
Nayan Gems	125.28	31,06,944.00					
Inv#NIPLS/PD/APR/02/11-12 dt. 13.04.2011	356.13	65,56,589.00				93,04,383.68	27,47,795
Nayan Gems	85.49	29,92,150.00	Arjav Diamonds	875.25	224.11	73,60,486.79	
Inv # NIPLS/PD/JUL/08/11-12 dt. 19.07.2011			Arjav Diamonds				
Nazar Impex Pvt. Ltd.	138.62	40,89,290.00					
Inv # NIPLS/PD/JUL/16/11-12 dt. 20.07.2011							
	224.11	70,81,440.00				73,60,486.79	2,79,047
Nayan Gems	457.81	61,24,110.00	Tache Jewellery Pvt. Ltd.	437.45		61,22,560.00	
Inv # NIPLS/PD/DEC/07/11-12 dt. 20.12.2011			Inv # 30 dt. 27.12.2011				
	457.81	61,24,110.00				61,22,560.00	-1,550
Nazar Impex Pvt. Ltd.	162.88	44,15,840.00	Di Moksh	381.55	162.88	30,54,400.21	-13,61,440
Inv # NIPLS/PD/SEP/18/11-12 dt. 21.09.2011			Inv # 28 dt. 20.12.2011				
	162.88	44,15,840.00				30,54,400.21	
		1,97,62,139.00				2,58,41,830.68	16,63,852
						GMP	6.44
						Overall GMP	4.52%

7.10 On further verification of the sale bills issued to M/s Leo Schachter Diamonds India Pvt. Ltd, corresponding to the purchase from Nazar Impex Pvt. Ltd. and Nayan Gems, which are available on page 60 to 62 of the Paper Book, we find that there is no mention of



quantity of pieces purchased and sold. There is no mention of the variety of goods i.e. diamonds. The assessee has also not enclosed the packing list for the purpose of export of goods. Whereas, we find that in the invoice issued to M/s DI-Moksh Diamond available on page 73 there is a complete detail of items exported. In absence of any such co-relation of goods bought corresponding to bogus bills and corresponding sales, it may not be possible to establish whether the assessee has exported the goods corresponding to the goods mentioned in the bogus bills. We find that before us, the Ld. Counsel for the assessee has relied on the various decisions wherein it is held that 3% addition is sufficient to cover up the benefit obtained by the assessee in purchase of goods from the grey market against the bogus bills. In view of the non-reconciliation of the goods exported corresponding to the bogus bills, we feel it appropriate to restore this matter back to the file of the Assessing Officer. The Assessing Officer, after the decision by the concerned Assessing officer in the case of Late Sh. Gautam Bhanwarlal Jain through L/H Smt. Pooja Jain, may decide in the case of the assessee whether the purchases are genuine or not and thereafter, if he finds that purchase bills are not genuine, then he may examine and verify that inventory details as to whether the goods purchased corresponding to bogus bills had been exported. If assessee succeed in establishing reconciliation of the goods purchased with the goods exported by the assessee, then it shall be presumed that assessee had obtained only benefit of purchasing



from the grey market. In such situation, then following finding of Coordinate Bench of Tribunal in assessee's own case ( ITA No 5082 /Mum/2018 for AY 2010-11 ) and other cases cited as under disallowance might be restricted to percentage of profit accordingly :

- i. Pr. CIT, Vs. Vaman International Pvt. Ltd. [ITXA No. 1940 Of 2017, dated 29/01/2020, (Bom-HC)]
- ii. M/s. Polar Jewellery Vs. ITO [ITA No. 6845/M/2019, dated 16/12/2021, (Mum-Trib)]
- iii. ITO Vs. M/s Dinal Diamonds ITA No. 6102/M/2017, dated 05/03/2019, (Mum-Trib)
- iv. M/s Star Brillian Vs. ITO ITA No. 1551 & 1552/M/2020, dated 12/07/2022, (Mum-Trib).
- v. M/s Oopal Diamond Vs. ACIT - 19(2) ITA No. 1500 & 1501/M/2020, dated 26/10/2022, (Mum-Trib).
- vi. Hitesh Kantilal Gandhi Vs. ACIT - 30(1) ITA No. 6734/M/2016, dated 16/08/2017, (Mum-Trib).

7.11 In the result, the grounds raised by the assessee as well as Revenue are allowed for statistical purposes.

8. In the result, the appeal of the assessee is partly allowed for statistical purposes whereas appeal of the Revenue is allowed for statistical purposes.

**Order pronounced in the open Court on 28/03/2024.**

**Sd/-**  
**(RAHUL CHAUDHARY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai;  
Dated: 28/03/2024  
Rahul Sharma, Sr. P.S.



**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,  
(Assistant Registrar)  
**ITAT, Mumbai**