

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, HON'BLE JUDICIAL MEMBER AND
DR. A. L. SAINI, HON'BLE ACCOUNTANT MEMBER**

(Physical Hearing)

Sl. No.	ITA No.	Asst. Year	Name of Appellant	Name of Respondent
1.	444/SRT/2023	2018-19	Saffron Gems Pvt. Ltd., 103, Vedant Complex, Bhojabhai Ni Sheri, Mahidharpura, Surat – 395003 PAN: AANCS2828J	The ACIT, Central Circle-2, Surat
2.	512/SRT/2023	2018-19	The ACIT, Central Circle-2, Surat	Saffron Gems Pvt. Ltd., 103, Vedant Complex, Bhojabhai Ni Sheri, Mahidharpura, Surat – 395003 PAN: AANCS2828J
3.	445/SRT/2023	2018-19	Antique Exim Pvt. Ltd., A-104, Shailalekha Commercial Co-op. Society, Bhoja Bhaini Sheri, Surat City, Mahidharpura SO, Surat – 395003 PAN: AAJCA9815B	The ACIT, Central Circle -3, Surat
4.	525/SRT/2023	2018-19	The ACIT, Central Circle-3, Surat	Antique Exim Pvt. Ltd., A-104, Shailalekha Commercial Co-op. Society, Bhoja Bhaini Sheri, Surat City, Mahidharpura SO, Surat – 395003 PAN: AAJCA9815B
5.	446/SRT/2023	2018-19	Tanman Jewels Pvt. Ltd., 6/2020-21, 22, Office No.305, Panchratna Apartment, Bhojabhai Ni Sheri, Hat Faliya, Mahidharpura, Surat – 395003 PAN: AADCT3283A	The ACIT, Central Circle-2, Surat
6.	521/SRT/2023	2018-19	The ACIT, Central Circle-2, Surat	Tanman Jewels Pvt. Ltd., 6/2020-21, 22, Office No.305, Panchratna Apartment, Bhojabhai Ni Sheri, Hat Faliya, Mahidharpura, Surat – 395003 PAN: AADCT3283A
7.	468/SRT/2023	2018-19	Nobal Jewels Pvt. Ltd., 101, 1 st Floor, Millenium Trade Centre, Thoba Sheri, Mahidharpura, Surat – 395001 PAN: AAECN8548D	The ACIT, Surat

8.	518/SRT/2023	2018-19	The ACIT, Surat	Nobal Jewels Pvt. Ltd., 101, 1 st Floor, Millenium Trade Centre, Thoba Sheri, Mahidharpura, Surat – 395001 PAN: AAECN8548D
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Date of Hearing:	22/11/2023
Date of Pronouncement:	23/11/2023
Appellant by:	Shri Prakash Jhunjhunwala, CA with Shri Pawan Jagetia, CA
Respondent by:	Shri Ashish Pophare, CIT(DR)

आदेश / O R D E R

PER BENCH:

Captioned four cross appeals filed by the different Assesseees and Revenue, all pertaining to same Assessment Year (AY) 2018-19, are directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals), Surat [in short “the ld. CIT(A)”], which in turn arise out of separate assessment orders, passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as the “Act”].

2. Since, the issue involved in all the appeals are common and identical; therefore, these appeals have been heard together and are being disposed of by this consolidated order for the sake of convenience and brevity. The grounds as well as facts narrated in ITA No.445/SRT/2023 for AY.2018-19 have been taken into consideration for deciding the above appeals *en masse*.

3. The grounds of appeal raised by the assessee in “lead” case in ITA No.445/SRT/2023 for AY.2018-19 are as follows:

“The appellant prefers an appeal against an appeal order passed by Ld. Commissioner of Income Tax (Appeal), Surat dated 04/05/2023 on following amongst other grounds each of which are without prejudice to each other:-

Additional Grounds of Appeal

1.0 On facts and circumstances of the case and in law, the assessment order passed u/s. 143(3) dated 30/03/2022 is bad in law, since had been passed beyond the limitation period prescribed u/s. 153(1) read with Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 expired on 30/09/2021;

Other Grounds of Appeal

2.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in estimating the gross commission income of Rs.91,35,701/- @ 0.05% of total purchase and sales turnover;

3.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in estimating the gross commission income of Rs.61,43,710/- @ 0.75% of entire outstanding loans and advances;

4.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in upholding the rejection of appellant's books of account u/s 145(3) of the Act;

5.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in upholding the appellant's entire business transactions as non- genuine and thereafter estimating the income on entire purchase/sales turnover and loans/advances.

The appellant craves leave to add, amend, alter, and/or withdraw any of the grounds of appeal at the time of hearing.”

4. Brief facts *qua* the issue are that the assessee company e-filed its return of income u/s. 139 of the Income-tax Act, 1961 (hereinafter referred to as the Act) for A.Y. 2018-19 on 24.10.2018 through e-filing declaring total income at Rs.11,10,580/-. Subsequently, this case was selected for Scrutiny CASS and notice u/s. 143(2) of the Act was issued on 22.09.2018 and duly served upon the assessee. Accordingly, notice u/s. 142(1) of the Act along with a detailed questionnaire was issued on 18.12.2020 which was duly served upon the assessee. In response to aforesaid notices u/s. 143(2) and 142(1) of the Act, assessee submitted the details called for through ITBA Portal. The details filed by the assessee through ITBA Portal were examined by the Assessing Officer. During the year under consideration, the assessee was engaged in the business of trading and export & import of diamonds. The Assessing Officer was in the receipt of information from the Investigation Wing, Surat. As per the information

available with Assessing Officer's office, it was noticed by the Assessing Officer that the assessee company, Antique Exim PVT Ltd was under the investigation of Directorate of Revenue Intelligence (DRI) for importing cheap diamonds at inflated rate and thereby sending large outward remittance. The inquiry conducted by the DRI has revealed that the assessee company has imported overvalued rough diamonds from three suppliers namely Maviya Impex, Mafii Impex and Diamondfield Trading Ltd, which belonged to Girish Kadel. The rough diamond imported by the assessee company having declared value of Rs.64,59,14,875/- were valued by a panel of 4 members at Rs.45,12,589/- on 11.07.2018. In the report, it was also mentioned that the average rate of Rough Diamond at the time of import into Hong Kong as per Import KPC Nos. 1611374 dated 03.10.2016 was US\$ 1.2 per carat and that as per Import KPC No. HK1611107 dated 05.08.2016 was US\$ 3 per carat whereas the import of rough diamond by the assessee company was ranging from US\$ 424 per carat to 2367.7 per carat. On the basis of this, further inquiry was carried out to identify the parties from which, the company received funds which in turn pumped out from the country. During such investigation, it was observed that web of shell/no-means companies were opened in different layers for routing money and for camouflaging the same as accounted money. Considering this, the investigation further deepened to identify the beneficiaries at various layers. During investigation by the Assessing Officer, summonses were issued to the directors of the assessee-company and related parties who have huge turnover and showing very less income below for appearing personally to explain the transactions related with the assessee company, but in most of the cases there were no compliance from the parties. The assessee-company has submitted the confirmations and other details of related parties. It observed that other bogus/shell companies are managed by the assessee-company directly for carrying out the non-genuine

transactions. From above, it appeared that whole arrangement is a planned conspiracy to import grossly overvalued Rough Diamonds from overseas suppliers so as to transfer huge amount of outward remittances from India to foreign countries in fraudulent manner and to infuse unaccounted money into banking system. There are around 117 companies identified involved in such transactions. Out of the above 117 entities, purchases were made by Antique Exim during F.Y.2017-18 with Tanman Jewels Pvt. Ltd, Nobal Jewels Pvt. Ltd, Sanmati Gems Private Limited, Saffron Gems Private Limited, Green Velly Gems Private Limited, Mishank Diagern Private Limited, Kundan Diamonds Private Limited etc. As per DRI report, these entities are managed by the same group as that of Antique Exim Pvt Ltd and these concerns are proved bogus by the DRI, Mumbai. Further, out of the above 117 entities in the second layer of transactions, 38 have very large turnover with very small income. Remaining 71 entities with which antique has sales transactions are found to have taken accommodation entries from Antique Exim Pvt Ltd and need to be taxed accordingly.

5. Therefore, Assessing Officer noted that the appellant was under investigation of Directorate of Revenue Intelligence (DRI) for importing cheap diamonds at inflated rates and thereby sending large outward remittances. The rough diamonds imported by the appellant with declared value of Rs.64,59,14,875/- were valued by a penal of 4 members at just Rs.45,12,589/- on 11.07.2018, which showed that the imports were excessively priced in the range of US\$ 424 to 2368 per carat. On page 2 and 3 of the assessment order, the AO has given the exact details of the imports with import bills, dates of imports and how the imports were overvalued. During the investigation, it was observed that the appellant routed the transactions through various shell companies for routing money and for camouflaging the unaccounted money as accounted. The summons issued to the Directors of these companies for ascertaining the beneficiaries of the

transactions were either unserved or in some cases the summons were served but none appeared in response to the said summons. During investigation, 117 companies were identified which were involved in importing overvalued diamonds and making outward remittances of Indian currency to foreign countries which, included bringing unaccounted money into banking system. The AO from page 6 to 12 of the assessment order, has reproduced the details of 117 concerns with whom the appellant has made purchases and sales and all the transactions with the said concerns are of accommodation entries. Accordingly, the AO issued show cause notice dated 07.06.2021 to the appellant wherein the investigation done in various group companies of Mr. Deepak Jain, M/s Surya Diamonds Pvt Ltd., M/s Sanmati Gems Pvt Ltd., M/s Abhinandan Diamonds Pvt Ltd., M/s Marudhar Diamonds Pvt Ltd. and M/s Sidhant Gems Pvt Ltd., which all were in the business of providing accommodation entries to show cause as to why the transactions of the appellant should not be treated as providing of accommodation entries without there being any actual transactions of purchases, sales, loan and advances.

6. In response to the show cause notice, the appellant filed the reply in which it was submitted that the appellant had entered into genuine and bonafide transactions of purchase and sale of goods. It was further submitted that the addition of purchases and sales cannot be made solely relying on the information received from the DRI or Investigation Wing merely on the basis of general statements of 3rd parties. It was also argued that the appellant had received and made the entire payments through banking channels by account payee cheques/RTGS to all the suppliers and customers. Alternatively, it was submitted that on the basis of concept of real income, only the profits embedded in disputed purchases and sales could utmost be brought to tax. After perusing the reply of the appellant, the AO held that the purchases and sales claimed by the appellant were to the

shell companies running only on paper without having any real business activities. It was further held that the bank accounts of these shell companies were used only to route the unaccounted funds through banking channels in disguise of purchase, sales and unsecured loans etc. The AO has also given a finding that the documents submitted by the appellant do not contain any delivery challans of sales / purchases to prove that the goods are transferred physically. The bank statements, bills and ledgers submitted by the appellant were only the fabricated books of accounts involving accommodation entries.

7. The AO also held that as per the investigation carried by the DRI revealed that the appellant is one of the shell companies involved in providing accommodation entries. The AO issued notices u/s 133(6) of the Act to various entities from whom the appellant had claimed sales/purchases. In only 2 cases out of 15 cases, the AO received reply as most of the other notices were returned unserved as the parties were not available at the given addresses and in other cases no replies were received. Hence, the AO held that the transactions in the books of accounts of the appellant were merely paper entries and no real business was carried by the appellant. As regards the 2 replies from M/s Vasupujya Exim and M/s Tanman Gems Pvt Ltd., the AO has given a finding that the said companies though admitted having done turnover of Rs.114 Cr. but had fixed assets of only Rs.1,512/- and office and salary expenses of Rs.5,80,000/-. Hence, the AO came to the conclusion that though the said 2 parties confirmed the sales / purchases shown by the appellant but on the basis of the details furnished, it could be reasonably be presumed that the said 2 concerns had no real business activities and were in the business of providing accommodation entries. Accordingly, the AO rejected the books of accounts of the appellant as provided in Section 145(3) of the Act as the books maintained did not provide any satisfaction relating to correctness

and completeness of the accounts. After rejecting the books of accounts of the appellant, the AO estimated the income of the appellant @ 0.5% being entry operating commission and made the addition of Rs.9,02,46,425/- being the profit of Rs.9,13,57,008/- reduced by the returned income of Rs.11,10,583/-. The AO further made an addition of Rs.7,19,60,390/- as interest income earned on loan and advances as shown in the P&L Account.

8. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) who has partly allowed the addition made by the Assessing Officer, observing as follows:

“7.8 Once it is held that the appellant has only provided accommodation entries of purchase, sale and loans and has not done any worthwhile trading in goods or services, the income of the appellant has to be estimated on the basis of the rate in the market for providing such services of providing entries of purchases, sales and loans. The AO has taken the rate of commission in entry operating business @ 0.50% of the turnover and has separately brought to tax the other income shown in the P&L Account as interest earned on loans and advances amounting to Rs.7,19,60,390/-. During the Appellate Proceedings, the AR of the appellant has taken an alternate plea that the nominal commission income earned by the appellant in the regular course of entry providing business should be upheld and the rate of such commission taken by the AO was much on a higher side as compared to the rate adopted by the Hon'ble IT AT in the cases having identical facts should be taken.

7.9 It was further pleaded that when the entry providers provide the sale bills to the beneficiaries for a commission, the entry providers to ensure the tally of quantity are required to obtain corresponding purchase bills from other entry providers by paying certain commission which is an allowable expenditure. Hence, it was prayed that a reasonable estimate of commission income be made and reasonable expenditure to earn such commission be allowed. Similarly, it was submitted that the entire interest income taxed in the hands of the appellant is not the correct method and the estimate of commission on loans and advances also should be made considering the prevailing rates for such services and reasonable expenses incurred to earn such commission also be allowed.

7.10 The AR of the appellant relied upon 3 decisions of Hon'ble ITAT, Surat and ITAT, Mumbai having identical facts of providing accommodation entries of purchases and sales and also accommodation entries for loans and advances. The gist of commission finally upheld by the Hon'ble ITAT in the said cases is given in the turnover below:

<i>Name of the assessees</i>	<i>Sales Turnover</i>	<i>Purchase Turnover</i>	<i>Loans and advances</i>

a) Rajendra Sohanlal Jain ITAT Surat dt. 26.11.2021 (7 appeals) IT(SS)A No.294 to 299/SRT/2017	0.02%	NIL	0.5%
b) Bhanwarlal M Jain ITAT Mumbai dt. 06.08.2021 (16 appeals) ITA No.108 to 114/MUM/2018	0.05%	NIL	0.75%
c) Rajendra P Jain ITAT Mumbai dt. 03.05.2019 (3 appeals) ITA No.296 to 298/MUM/2018	0.05%	NIL	0.5%

7.11 Thus considering the decisions of various Benches of Hon'ble ITAT, I am of the opinion that 0.05% of the total purchase and sales turnover (the Hon'ble ITAT has held that the commission to be in the range of 0.02% to 0.05%) can be estimated as the gross commission earned by the appellant in the business of providing accommodation entries of purchase and sale. The AR of the appellant argued that the commission should be charged only on sales and not on purchases. But I am of the opinion that the entry providers get commission for providing of entries of purchases as well as sales separately from the beneficiaries and hence, the commission has to be worked out on both purchases and sales. Similarly, the commission on loans and advances has to be worked out being a percentage on loans outstanding as on the last day of the FY instead of the interest income shown in the P&L Account as taken by the AO, The interest income cannot be taken as the income of the appellant as it has been held that even the loans and advances are not actual but they are merely entries and hence, the interest shown in the P&L Account is also not real. Therefore, considering the decisions of various Benches of Hon'ble ITAT, I am of the opinion that 0.75% of the total loans and advances outstanding on the last day of the FY (the Hon'ble ITAT has held that the commission to be in the range of 0.50% to 0.75%) can be estimated as the gross commission earned by the appellant in the business of providing accommodation entries of loans and advances. In providing the services as entry provider, the appellant must have incurred an expenditure towards administrative cost and personal cost for which 25% of the gross commission is allowed as expenditure as held by the Hon'ble ITAT, Surat Bench in the case of Rajendra Kumar Jain (IT(SS)A 294 to 299/SRT 2017. Accordingly, the net commission income earned by the appellant is computed as under:

0.05% of the total purchases and sales turnover as per the AO of Rs. 1827,14,01,611/-	91,35,701/-
0.05% of the total purchases and sales turnover as per the AO of Rs. 1827,14,01,611/-	61,43,710/-

Gross Commission	1,52,79,411/-
Less: Estimated expenditure @ 25% of gross commission	38,19,853/-
0.75% of the loans and advances outstanding as on last day of the FY of Rs.81,91,61,303/-	1,14,59,558/-

7.12 The AO has made an addition of Rs.16,33,17,398/- (Rs.9,13,57,008/- [+]
Rs.7,19,60390/-). The addition to the tune of Rs.1,14,59,558/- as tabulated above
is sustained and the appellant gets relieve of Rs.15,18,57,840/-, Ground No.2
and 3 are dismissed and Ground No.4 and 5 are treated to have been partly
allowed.”

9. Aggrieved by the order of Id. CIT(A), the Revenue as well as Assessee, both are in appeal before us.

10. The Ld. Counsel for the assessee at the outset stated that assessee has raised the additional grounds of appeal which may be adjudicated first. The additional ground so raised by the assessee is reproduced below:

“1.0 On facts and circumstances of the case and in law, the assessment order passed u/s. 143(3) dated 30/03/2022 is bad in law, since had been passed beyond the limitation period prescribed u/s. 153(1) read with Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 expired on 30/09/2021.”

11. In respect of above additional ground, the Ld. Counsel argued that assessee filed the return of income under section 139(1) of the Act on 24.10.2018. The notice under section 143(3) of the Act, was served on the assessee on 22.09.2019. The Ld. Counsel pointed out that time limit for completion of the assessment under section 153(1) was on 30.09.2020 (that is, within the eighteen months from end of assessment year in which the income was first assessable). The Ld. Counsel stated that as per last notification dated 25.06.2021 under taxation and other laws relaxation and Amendment Act, 2020 (TOLA). The extended time limit for completion of the assessment was upto 30.09.2021, therefore Assessing Officer must have passed the assessment order up to 30.09.2021. However, the assessment order was passed by the Assessing Officer under section 143(3) of the Act on 30.03.2022, which is outside the time limit prescribed by taxation and

other laws relaxation and Amendment Act, 2020, therefore assessment order itself should be quashed.

12. On the other hand, ld. CIT-DR for the Revenue submitted that the Department made the reference to FT & TR Division, therefore one year more time is available with the Department for completion of assessment. This reference to FT & TR was made on 16.05.2021, therefore from the date of 16.05.2021 to 15.05.2022, the time limit of one year was available to the Assessing Officer to frame the assessment order. The assessment order in the assessee's case may be framed by the Assessing Officer on or before 15.05.2022. However, the assessment was framed under section 143(3) on 30.03.2022 which is within time limit prescribed by the Act when the reference was made to the FT & TR Division, hence order passed by the Assessing Officer is within the time limit. Therefore, assessment framed under section 143(3) on dated 30.03.2022 is within the time limit and hence the assessment order should not be quashed.

13. The Ld. CIT-DR for the Revenue also submitted that the written submission prepared by the Assessing Officer in respect of technical issue, which is reproduced below:

“2. Vide letter under reference your goodself has solicited the factual report in respect of ground of appeal put forth by the assessee that the Assessment Order for A.Y.2018-19 passed by the A.O. is bad in law since it was barred by limitation of time prescribed u/s. 153 of the I.T. Act. Consequent upon this, in order to verify the above contention of the assessee and facts of the case, the assessment record for A.Y.2018-19 have been examined. This exercise revealed the following facts –

(i) The case of captioned assessee was selected for scrutiny for A.Y. 2018-19 by issuing notice u/s. 143(2) of I.T, Act on 22.09.2018. Accordingly, the period for completing the assessment in this case as per Sect. 153(1) was upto 30.09.2020.

(ii) In the instant; case, the period of limitation had been extended as per TOLA, Notification S.O. 2580(E) [No.74/2021/F.N©o370142/35/2020-TPL] for completing the assessment which was expiring on 30.09.2021.

(iii) Thereafter, during the course of assessment proceedings, from the submission of the assessee, it was revealed that the assessee had executed transactions/import/sales in A.Y.2018-19 with foreign entity based at Belgium,

(iv) Therefore, in order to carry out verification of above transactions, certain information was required to be obtained from the above foreign entity. Hence by virtue of Sect. 90 of the I.T Act reference was made by the then A.O. to the Foreign Taxation & Tax Research (FT&TR) (copy of acknowledgement dtd.16.05.2021 by Competent Authority enclosed for kind reference) for obtaining the transactions related information.

(v) In the light of reference made to FT&TR, the period of limitation for completion of assessment was to be computed by excluding the period mentioned in explanation 1(x) of the Sect. 153 of the Act, For the sake of ready reference the relevant explanation 1(x) is reproduced below :-

“Explanation 1. - For the purpose of this section, in computing the period of limitation-

(i)

(ii)

(iii)

(iv)

(x) the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or 90A and ending with the date on which the information requested is last received by the Principal Commissioner or Commissioner or a period of one year, which is less, or

(xi)

(xii)

(xiii)

shall be excluded.”

(vi) It is further submitted that the response/information solicited from the FT & TR in respect, of transactions with the foreign entity executed by the assessee was received in partial in this office on 27.12.2021 (copy of acknowledgement in respect of response received from Competent Authority enclosed for kind reference). However, final reply was not received till the passing of the assessment order in this case. Hence by virtue of clause (x) of explanation 1 to section 153 the time limit immediately after exclusion of period commencing from the reference to FT&TR made i.e. from 16.05.2021 to date of report received from FT & TR i.e. 27.12.2021 is to be excluded from the period of limitation prescribed for completing the assessment.

(vii) In the instant case, as stated earlier the reference to FT & TR was made on 16.05.2021 and the period of limitation for completing the assessment as per TOLA was expiring on 30.09.2021. Thus, as per explanation-I(x) of section 153, the period commencing from the date of reference made to FT & TR and final report received therefrom is to be excluded or a period of one year whichever is less, Accordingly, even if the period from 16.05.2021 (date of acknowledgment) to 27.12.2021 (date on which partial response received) was to be excluded i.e. 225 days, the assessment was to be completed from the

date of limitation for completing the assessment expiring on 30.09.2021. Accordingly, the time limit for completing the assessment in the captioned case was expiring on 13.05.2022 (the date falling after 225 days from 30.09.2021).

3. The Assessment in the instant case for A.Y.2018-19 is completed on 30.03.2022 which is well within the time limit prescribed in section 153 read with explanation 1(x) of the I.T. Act.”

14. On merit, Ld. CIT-DR for the Revenue submitted that Assessing Officer has made a reasonable addition after rejection of books of accounts at the rate of 0.5% of total sales and purchases of Rs.1827,14,01,611/- which comes to Rs.9,13,57,008/-. However, on appeal by the assessee, the ld. CIT(A) has reduced this addition by referring the case of jurisdictional Tribunal of ITAT, Surat and ITAT, Mumbai to 0.05% of the total purchases and sales (turnover) which is not acceptable. Further, the Assessing Officer made the addition on account of loans and advances to the tune of Rs.7,19,60,390/-, however, the ld. CIT(A) reduced it at the rate of 0.75% of the loans and advances outstanding as on last date of the financial year of Rs.81,91,61,303/- which is not acceptable. The ld. CIT-DR also pointed out that in addition to this, the ld. CIT(A) has provided the relief in respect of estimated expenditure at the rate of 25% of gross commission which comes to Rs.38,19,853/-, therefore the order of the ld. CIT(A) is on commercial principles that the assessee was earning commission on purchase and sale and therefore the addition made by the Assessing Officer ought to be upheld.

15. On the other hand, on merit, Ld. Counsel for the assessee submitted that Assessing Officer made the estimation of income taking into account purchase and sale both which are not justifiable. The ld. CIT(A) has also considered both elements that is purchase and sale and made the estimated addition at the rate of 0.05% which is not acceptable by applying the commercial principles. The Ld. Counsel pointed out that the profit is always

linked with sales, therefore 0.05% should be estimated on sales rather than on both the segments (purchase and sale). Therefore, Ld. Counsel contended that the estimated addition may be made either on purchase or on sale, but not on aggregation of both. Therefore, finally Ld. Counsel contended that estimation should be made either on purchase on sales and if the Tribunal accepts the contention of the assessee to the effect that the estimated addition must be sustained only on sales then assessee would not press the technical ground raised by it.

16. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the ld. CIT(A) and other material brought on record. We note that so far as the merit is concerned, the issue raised by the Revenue is no longer *res integra* and it is covered in favour of assessee by the judgment by the Co-ordinate Bench of ITAT, Surat in the case of ***Sanjay Kumar Choudhary (HUF) vs. ACIT, in ITA No.1367/Ahd/2017*** for AY.2014-15, order dated 29.12.2021 wherein the Tribunal held as follows:

“17. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the ld. CIT(A) and other material brought on record. We note that issue under consideration is squarely covered against the assessee by the judgment of Division Bench in IT(SS)A Nos. 294 to 299 /Ahd/2017 for assessment year 2008-09 to 2014-15 order dated 26.11.2021, in the case of Shri Rajendra Sohan Lal Jain whereby the issue relating to Commission @ 0.02%, Commission on import @0.20% and Commission on loan @ 0.50% were adjudicated by upholding the order of ld CIT(A). Learned DR for the Revenue submitted that the present appeal is squarely covered by the aforesaid order of the Tribunal. We see no reasons to take any other view of the matter than the view so taken by the Division Bench of this Tribunal in assessee’s own group case, vide order dated 26.11.2021. In this order, the Tribunal has inter alia observed as follows:

“10. We have heard the submissions of the learned authorised representative (ld AR) of the assessee and the learned Commissioner of

Income Tax departmental representative (ld CIT-DR) for the revenue and have gone through the entire record carefully. The Ld. AR for the assessee submits that investigation team was recorded the statement of assessee by pressurizing him. The assessee has already retracted the statement by filing retraction statement dated 21.10.2013 and 09.01.2014, before the assessing officer on 31.03.2014. When search was conducted the assessment for 2008-09 to 2012-13 were not pending and were already concluded either under section 143(3) or 143(1) and hence no income can be assessed unless there is incriminating material found during the course of search action. The A.O. merely relied on the fact that no stock of the diamonds was found at the time of search. The goods were given for approval to customers for sales. The assessing officer overlooked the entire documentary evidences. The Ld. AR for the assessee read over the written submissions filed before Ld. CIT(A). On merit the Ld. AR of the assessee submitted that the assessee was doing the real business and has shown business income while filing return of income. The ld AR for the assessee Rajendra Kumar Jain AY 2008-09 to 2014-15 IT(SS)A No. 294 to 299/SRT/2017 15 submits that Kolkata Tribunal in Manoj Begani Vs ACIT (ITA No. 932,933,935 936/Kol/2017), which is case of beneficiary of the alleged accommodation entry from Rajendra Jain, deleted the entire additions. In other words the ld AR for the assessee impressed that the business model of Rajinder Jain was accepted as genuine. In alternative claim the assessee claimed that he has already included the commission income in his business income disclosed in his audited accounts. To support all his legal and factual submissions the ld AR for the assessee relied on the following case laws; ꣳ CIT Vs Singhad Technical Education Society [(84 taxmann.com 290(SC)), ꣳ CIT Vs Calcutta Knitwear (362 ITR 673 SC), ꣳ PCIT Vs Munisuvrat Corporation (115 taxmann.com 265 SC), ꣳ PCIT Vs Himanshu Chandulal Patel (108 CCH 0019 SC), ꣳ PCIT Vs Himanshu Chandulal Patel (419 ITR 132 Guj), ꣳ Anil Kumar Gopikrishan Aggarwal Vs ACIT (106 taxmann.com 137 Guj HC), ꣳ PCIT Vs Ananad Kumar Jain 432 ITR 384 Delhi HC, ꣳ CIT Vs Renu Construction Pvt Ltd (99 taxamann.com426 (Delhi HC), ꣳ CIT Vs Harjeev Aggarwal (70 taxmann.com 95 Delhi HC),] ꣳ PCIT Vs Allied Perfumes Pvt Ltd (124 taxmann.com 358 Delhi HC), ꣳ PCIT Vs Meeta Gutgutia (82 taxmann.com 287 (Delhi HC), ꣳ PCIT Vs Saumya Construction (81 taxmann.com 292 Guj HC), ꣳ CIT Vs Raman bhai patel ((96CCH 0495 Guj HC), ꣳ Chetnaben J Shah Vs ITO (79 taxmann 328 Guj HC), ꣳ PCIT Vs Star PVG Export (112 taxmann. Com163 Kar HC) ꣳ CIT Vs Continental Warehousing Corporation Ltd (58 taxmann.com 78 Bom)' Rajendra Kumar Jain AY 2008-09 to 2014-15 IT(SS)A No. 294 to 299/SRT/2017 16 ꣳ CIT Vs Kabul Chawla (92 CCH 210 Delhi HC) ꣳ DCIT Vs Sourabh Naval Kishore Garg (ITA No.4130/Mum/2017), Rajinder P Jain Vs DCIT (ITA No. 296 to 298/ Mum/2018, ꣳ Manoj Begani Vs ACIT (ITA No. 932,933,935 936/Kol/2017), ꣳ M B Jewellwrs & sons (ITA No. 1/Kol/2017).

11. On the other hand the Ld. CIT-DR for the revenue supported the order of the Ld. CIT(A). The ld CIT-DR for the revenue submits that

during search action sufficient incriminating evidence was unearthed. The statement of assessee and his associates were recorded under section 132(4). The assessee in his statement disclosed the modus operandi of the operation of accommodation entry. During the search action the assessee confessed in his statement recorded under oath that he along with his other associate, employees and family members are operating through a number of business concern of three natures i.e. Proprietorship firm, partnership firm as well as companies in the name of various persons including his employees. For all practical purposes, he himself ensures the chain of entire business network on profit sharing basis. During the search on business premises as well as residential premises and survey on their employee it was admitted by all the person and family members and relatives that they were working for the assessee. Not a single piece of diamond was found from any of the business or residential premises of the assessee. The ld CIT-DR for the revenue further submits that while recording statement of the assessee, he was confronted with various emails extracted from his computers. The assessee clearly admitted that he was receiving commission on value of import at the rate of 0.2% from the Rajendra Kumar Jain AY 2008-09 to 2014-15 IT(SS)A No. 294 to 299/SRT/2017 17 real importer who route the transaction through his paper concern. It was also disclosed that on entry of unsecured loan, he received commission in the range of 0.25% to 0.5%. The AO on the basis of his statement, incriminating evidence found in the form of statement of account recovered from the pen drive and on post search inquiry the assessee was served with the notice under section 153A to file his return of income for assessment year under consideration. The assessee filed return of income in response to the notice under section 153A, however, no additional income was offered by the assessee, despite recovery of huge incriminating material. During assessment the assessee tried to impress that he has retracted his statement. The so called retraction has no evidentiary value, which is otherwise afterthought story. The alleged retraction was filed after more than one year before the AO. No complaint or protest was raised by the assessee before the investigation team. The AO made additions on the basis of statement of assessee which is corroborated with incriminating evidence found during the search action. The AO made very fair and reasonable additions of commission income in the assessment. The allegation of the assessee that no incriminating material was found in the search is unfounded and baseless. All the appeals of the assessee are liable to be dismissed.

12. We have considered the rival submissions of the parties and have gone through the orders of the lower authorities. We have also perused all the documents placed on record by the assessee. We have also deliberated on Rajendra Kumar Jain AY 2008-09 to 2014-15 IT(SS)A No. 294 to 299/SRT/2017 18 the various case laws relied by the ld. AR for the assessee. We find that in Ground No. 1, the assessee has challenged the validity of search action carried out under section 132 and upholding the action of A.O. in making assessment under section 144 rws 153A, however, during the submissions no specific submissions was made, therefore, the corresponding ground No.1 of appeal is treated as not pressed and dismissed as such.

13. Now adverting to the Ground No. 2 to 5 which relates to the additions of commission income that such additions are not based on incriminating evidence. A search action was carried out by the revenue at the assessee group on 03.10.2013, during the search action the statement of Rajinder Jain, Dharmi Chand Jain and Sanjay Chowdhary was recorded. Consequent on the search action and evidences gathered during search and post search action, notice under section 153A was served on the assessee to file return of income. The assessee filed return in response to the said notice, but no additional income was offered. The assessing officer after serving statutory notices proceeded for assessment. During the assessment the assessing officer referred relevant part of the statement of assessee and diagram of modus operandi of business operation which was prepared during the search action, as followed by assessee and his group while making the business of accommodation entry. The assessing officer further noted that the statement of Sachin Pariekh proprietor of Arihant Export, director of Karnawat Impex Pvt Ltd & Moulimani Impex, Manish Jain (prop of Kalash Enterprises, Director of Kriya Impex Pvt Ltd and Rajendra Kumar Jain AY 2008-09 to 2014-15 IT(SS)A No. 294 to 299/SRT/2017 19 Karnawat Impex Pvt Ltd.) and Anoop Jain (Prop of Adi Impex) was recorded during search. The Assessing Officer (AO) on the basis of statement of Sachin Parikh, Manish Jain and Anoop Jain in wherein they admitted that all they were working on remuneration with Rajinder Kumar Jain (assessee). The AO also held that during recording statement of assessee, in Question No. 15, the assessee was asked to explain the modus operandi of his business. The AO prepared the diagram of modus operandi disclosed by the assessee. The AO on the basis of incriminating material gathered during the search action and on the basis of statement of Rajendra Jain and his associates held that all the business concerns of the assessee were merely doing paper transaction, instead of carrying any real business, those concern were doing of maintaining 'books of accounts' and do not carry any actual or physical business of diamonds. It was held by AO that the actual importers of rough diamonds approach assessee to import their diamonds through his group and on receipt of consignment, the real importer get the delivery of diamonds after clearance from CHA (clearance house agent). The books of stock of rough diamonds have been converted by assessee group to cut and polished diamonds through commission companies or through name landing concern, issues bill of rough diamonds to local purchasers and show purchase of polished diamonds from them. On receipt of sale proceed; this group makes import remittance at the request of importer. Further, the AO on the basis of discloser of assessee, evidences of e-mails and other material which was incriminating material Rajendra Kumar Jain AY 2008-09 to 2014-15 IT(SS)A No. 294 to 299/SRT/2017 20 gathered during the search held that the assessee is entry provider as stated by him in his statement recorded during the search and received commission @0.20% of bill amount of import and commission @ 0.50% on loan transactions. The AO worked out the total disallowance of Rs.24,54,136/- as a commission income and after granting deduction of expenses @ 25% on such addition made addition of Rs.18,40,602/- in the following way;

<i>Sales</i>	<i>Amount</i>	<i>Rate of commission,</i>	<i>Commission income</i>
<i>Total turnover</i>	<i>2,43,23,94,646/-</i>		
<i>Total Import</i>	<i>86,88,19,534/-</i>		
<i>Total turn over (Excluding import & group turnover)</i>	<i>1,47,37,83,599/-</i>	<i>@0.02%</i>	<i>2,94,757/-</i>
<i>Import made</i>	<i>89,88,19,534/-</i>	<i>@0.20%</i>	<i>17,37,639/-</i>
<i>Loan outstanding at year end</i>	<i>8,43,48,087/-</i>	<i>@0.50%</i>	<i>4,21,740/-</i>
<i>Total commission income earned</i>			<i>24,54,136/-</i>
<i>Deduction of expenses of 25% is given for paper transactions & related cost as the such</i>			<i>6,13,534/-</i>
<i>Income Assessed</i>			<i>18,40,602/-</i>

14. Though, the AO also made various protective additions of income assessed in assessee's group concern, however, all those protective additions were deleted by the ld CIT(A). No further appeal is filed by revenue against such order in deleting the protective additions.

15. The Ld. CIT(A) confirmed the additions of commission income on export as well as on unsecured loan. The ld CIT(A) while confirming the order of the assessing officer recorded that that the basic objection of the assessee that his admissions of doing only paper business of trading of diamonds, in providing accommodation entry; is not correct and not based on Rajendra Kumar Jain AY 2008-09 to 2014-15 IT(SS)A No. 294 to 299/SRT/2017 21 incriminating document recovered in search action. The ld CIT(A) noted that assessee is Director in various companies/partners in various firms and also proprietor of a firm, the business of all firms and companies are controlled by the assessee. During the search no physical stock of diamonds was found, there were numerous e-mails including some e-mail found and seized during search clearly proved that the real beneficiary of importer of diamonds were different then the books, there were also e-mails which prove that the person wanting accommodation entry were approaching the assessee and his group, the correspondence of orders were found not placed by the assessee and his group to the foreign parties. Besides, books of account of various concerns was maintained by assessee, which the assessee himself said being run by him in the name of various persons, which he able to get them to his residence from Surat, during the search though Sachin Parikh, who is his accomplice. A pen drive containing accounts from various concerns including those where Rajendra Jain as per ownership had no interest was also provided by the assessee. All these facts and evidence clearly prove with the corroborative evidence recovered during the search action that assessee was indulging in providing accommodation entry. All these aforesaid evidence and

corroborative facts found during the search are incriminating material. The ld CIT(A) also recorded that not a single piece of diamond found during the search action. Further, from the admission of assessee, Sachin Pareek and Surendra Jain in their statement and identification of actual beneficiary of import and Rajendra Kumar Jain AY 2008-09 to 2014-15 IT(SS)A No. 294 to 299/SRT/2017 22 delivery of diamonds by actual beneficiary and e-mail found to actual beneficiary, the ld CIT(A) concluded that assessee and his group was providing accommodation entry. The ld CIT(A) further concluded that once the business as per books is proved fictitious and bogus, the action of AO in rejecting the books is obvious. On the ground/ grievance of the assessee on additions of commission and allowance of 25% expenses the ld CIT(A) concluded that the addition made by AO is on lower side comparative to the addition in case of Bhanwar Lal Jain, who was also providing similar accommodation entry with similar modus operandi. The ld CIT(A) further held that once books are rejected, the profit is to be estimated on the basis of commission rates and net profit is to be determined. On the grievance of assessee of exchange rate difference, the ld CIT(A) held that when the actual business is importing for others and in the books credit in the name of exporters (other beneficiary), the exchange rate difference is not payable by the assessee and rejected the ground raised by the assessee.

16. Before us, the ld AR for the assessee basically made two fold submissions that no incriminating material/ evidence was recovered during the course of search and that the assessee retracted from his statement recorded by the search party and the assessee was doing real business and not engaged in providing accommodation entry. We find that during the search action more than sufficient incriminating evidence was found, which is also supported with the corroborative evidence found in the form of e-mails and other evidence in the form of books of account recovered from the pen Rajendra Kumar Jain AY 2008-09 to 2014-15 IT(SS)A No. 294 to 299/SRT/2017 23 drive, which itself is incriminating evidence against the assessee. We further noted the assessee in his retraction statement has not explained the material evidence found in the form of e-mail, from his e-mail account, his background history as to how he entered in the this particular business of providing entry, which he himself disclosed during the search action that he learnt all this business module of providing accommodation entry from his ex-employer namely Ratanlal Jain. The said retraction is filed for the first time before AO after gap of 12 months period. The reliance in case Manoj Begani Vs ACIT (supra), passed by Kolkata Tribunal which is case of beneficiary of the alleged accommodation entry from Rajendra Jain, is not helpful to the assessee. Here in the present case, there is clear admissions of the assessee about the entire business affair carried out by him with his associate for providing bogus entry, mere obitor in case of beneficiary by the Coordinate bench, will not absolve the assessee from his own admission. The finding of Tribunal in Manoj Begani vs. ACIT(supra) is based on the facts and evidences produced by that assessee. Therefore, in view of the abovesaid discussions, we are in full agreement with the finding of ld CIT(A) that once the books are rejected the profit is to be

estimated on the basis of commission rates and net profit is to be determined. We also affirms the finding of ld CIT(A) that that when the actual business of assessee was importing goods for others and in the books credit in the name of exporters, thus exchange rate difference is not payable by the assessee and the assessee is not eligible for deduction of such exchange rate fluctuation. Rajendra Kumar Jain AY 2008-09 to 2014-15 IT(SS)A No. 294 to 299/SRT/2017 24 Even otherwise, no evidence is filed by the assessee on record to prove the fact that the assessee entered into hedging contract with the Banker, the evidence found in the form of e-mail and other evidences show the facts otherwise. Therefore, the submissions made by the assessee do not inspire confidence. None of the case laws relied by the ld AR for the assessee is helpful to the assessee as there was sufficient incriminating material seized during the search action on the assessee on the basis of which it is clearly proved that the assessee is in the business of entry provider. Therefore, we do not find any merit in the grounds No. 2 to 5 raised by the assessee, which we dismissed.

17. Ground No. 6 relates to alternative and without prejudice ground that the alleged commissions has already included by the assessee in his sales transaction. Considering the facts that the lower authority have categorically held that the assessee was not doing any genuine business transactions and was engaged in providing accommodation entry, books of the assessee was rejected and only very meager rate of commission income was added to the total income of the assessee, which we have already affirmed. If for the sake of assuming it is considered that the assessee was doing genuine business, thus, keeping in view of volume of transactions in his bank account, the income of assessee would be estimated many fold comparative to the commission income added by the AO. Thus, the alternative ground of appeal is also rejected. Rajendra Kumar Jain AY 2008-09 to 2014-15 IT(SS)A No. 294 to 299/SRT/2017 25

18. Ground No. 7 relates to rejection of books of accounts and ground No. 8 relates to expenses including foreign exchanges expenses, we find that the grievances of the assessee raised in these grounds of appeal has already been discussed in ground No. 3 to 5, therefore, needs no further adjudication. In the result all the grounds of appeal raised by the assessee are rejected.

19. In the result, the appeal of the assessee for AY 2008-09 in ITA No. 294/SRT/2021 is dismissed. 20. Considering the fact that we have dismissed the appeal for AY 2008-09, the remaining appeals for AY 2009-10 to 2014-15, are also dismissed with similar observation. No order as to cost.”

18. As the issue is squarely covered against the assessee by the decision of the Division Bench, in the case of Shri Rajendra Sohan Lal Jain (supra) and there is no change in facts and law and the ld Counsel is unable to produce any material to controvert the aforesaid findings of the Division Bench (supra). We find no reason to interfere in the said order of the Division Bench, therefore, respectfully following the judgment of the Division Bench, we dismiss the appeal of the assessee.

17. Therefore, we note that since the issue is squarely covered by the judgement of Co-ordinate Bench in the case of Sanjay Kumar Choudhary (HUF) & Ors. (supra), and there is no change in facts and law.

18. However, we note that in the above referred judgment of Co-ordinate Bench of ITAT, Surat in the case of Sanjay Kumar Choudhary (HUF) & Ors. (supra), this Tribunal has sustained the addition only on sales / commission and not on both the elements i.e. purchase and sales, therefore we direct the Assessing Officer to estimate the addition at the rate of 0.05% of the total sales turnover of the assessee at Rs.904,63,00,884/- which comes to Rs.45,23,150/- and the same should be sustained. Therefore, we direct the Assessing Officer to compute the estimated addition on sales at the rate of 0.05% on sales in case of other assessees also, namely Saffron Gems Pvt. Ltd., Tanman Jewels Pvt. Ltd. and Nobal Jewels Pvt. Ltd. This way, the assessee's appeal is partly allowed in above terms.

19. Since, we have adjudicated the issue on merit by taking the lead case in ITA No.445/SRT/2023 for AY.2018-19, and the facts and grounds of appeal raised by the assessee in other appeals are similar on merit, therefore our instant adjudication shall apply *mutatis mutandis* to other appeals of the assessee i.e. ITA Nos.444/SRT/2023, 446/SRT/2023 and 468/SRT/2023.

20. Since, we have adjudicated the issue on merit; therefore the issue raised by the assessee on technical ground is not required adjudication, as not pressed.

21. In the result, appeals filed by the Assessee in ITA Nos. 444/SRT/2023, 445/SRT/2023, 446/SRT/2023 & 468/SRT/2023 for AY.2018-19 are partly allowed whereas the appeals filed by the Revenue in ITA Nos.512/SRT/2023, 525/SRT/2023, 521/SRT/2023 & 518/SRT/2023 are dismissed.

Registry is directed to place one copy of this order in all appeals folder / case file(s).

Order is pronounced on 23/11/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A. L. SAINI)
ACCOUNTANT MEMBER

Surat / दिनांक/ Date: 23/11/2023

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat