

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAJ KUMAR CHAUHAN, JM

ITA No.3927/Mum/2023
(Assessment Year: 2010-11)

Chaitali Gems DW-6110, Bharat Diamond Bourse, Bandra Kurla Complex, Bandra East, Mumbai-400 051 (Appellant)	Vs.	Income Tax Office 19(1)(1) Piramal Chambers, Lalbagh, Mumbai-400 012 (Respondent)
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PAN No. AA AFC2052Q

Assessee by : Shri K.A. Vaidyalingan, AR
Revenue by : Shri H.M. Bhatt, DR

Date of hearing: 15.04.2024
Date of pronouncement : 23.04.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by M/s Chaitali Gems (the assessee/appellant) for assessment year 2010 – 11 against the appellate order passed by the National faceless appeal Centre (NFAC), Delhi (the learned CIT – A) for assessment year 2010 – 11 dated 11/9/2023 wherein the appeal filed by the assessee against the assessment order passed under section 143 (3) read with section 147 of the income tax act dated 29/12/2017 passed by the learned that income tax officer Ward 23 (1) (3), Mumbai (the learned AO) is partly allowed.
02. Assessee has raised following grounds of appeal:-



“1. The learned CIT (A) erred in upholding the addition/disallowance made by the learned AO even to the extent of Rs.32,08,953/- (though quantum addition is reduced from Rs. 1,31,65,072/-) of alleged bogus purchases which is contrary to the binding judgment of the jurisdictional Bombay High Court in Mohammad Haji Adam & Co. (Appeal No. 1004 of 2016).

2. On the facts and in the circumstances of the case, the learned CIT (A) erred in upholding the addition/disallowance made by the learned AO even to extent of Rs.32,08,953/- (though quantum addition is reduced from Rs. 1,31,65,072/-) of the alleged bogus purchases without appreciating the fact that said addition was made merely on the basis of statement made by a third party and without furnishing to the appellant a copy of the said statement or affording to the appellant an opportunity to cross examine the third party.

3. On the facts and in the circumstances of the case, the learned CIT (A) erred in upholding the addition/disallowance made by the learned AO even to the extent of Rs.32,08,953/- (though quantum addition is reduced from Rs. 1,31,65,072/-) of the alleged bogus purchases ignoring umpteen number judicial pronouncements of the coordinate Benches of the Hon. ITAT wherein either no addition was sustained, or addition was restricted to 2 to 3% of the impugned alleged bogus purchases.

4. On the facts and circumstances of the case, the learned CIT (A) erred in upholding the addition/disallowance made by the learned AO even to the extent of Rs.32,08,953/- (though quantum addition is reduced from Rs. 1,31,65,072/-) of the alleged bogus purchases, which is purely based on suspicion, surmises and conjectures and even though all evidence in

support of the genuineness of the impugned purchases were filed.

5. On the facts and circumstances of the case, the learned CIT (A) erred in upholding the addition/disallowance made by the learned AO even to the extent of Rs.32,08,953/- (though quantum addition is reduced from Rs. 1,31,65,072/-) of the alleged bogus purchases as unexplained expenditure u/s. 69C even though the impugned transactions have been recorded in the duly audited regular books of account of the Appellant and all payments have been made through banking channel.

6. On the facts, the learned CIT (A) completely erred in his observation that "GP is a meagre 12.64%. The results give credence to the suspicions raised by the assessing authority" without understanding the diamond trade fully, where even the Report of the Task group for diamond sector submitted to Department of Commerce, Government of India, suggested that the net profit that could be derived in the diamond in trading activity thereof, the profitability range is 1% to 3% only. With this wrong notion and misunderstanding of GP%, the learned CIT (A) erred in upholding the addition/disallowance to the extent of Rs.32,08,953/-, which almost works out to approx. 25% of the impugned purchases."

03. Fact shows that assessee is a partnership firm engaged in the business of trading, export and import in draft, cut and polished diamonds. Assessee filed its return of income on 20/9/2010 declaring a total income of Rs. 783,500/-. Subsequently the information was received on conduct of search on 3/10/2013 on Mr.Bhanwar LalJain an accommodation entry provider who is issuing bogus purchase bills through various Benami concerns operated and managed by him. He has confirmed in his statement the modus operandi and providing of the accommodation

entries. The details of the beneficiaries were also provided wherein the name of the assessee was found who obtained in accommodation entries of bogus purchase of Rs. 13,165,072/- through 2 entities who are operated by that accommodation entry provider. Therefore, the notice under section 147 of the act was issued on 30/3/2017. In response to that assessee submitted a letter dated 10/4/2017 requesting the assessee to treat the return is originally filed. The assessee submitted several details during the course of assessment proceedings wherein it was found that the assessee has obtained purchase bills from Pankaj exports of Rs. 3,068,962 and from M/s Mukti exports of Rs. 10,096,110/- totaling to Rs. 13,165,072/- from the entities operated by this accommodation entry provider. After considering the explanation of the assessee learned assessing officer made the hon percent of the bogus purchase's addition in the hands of the assessee by applying the provisions of section 69C of the act. Accordingly, the assessment order under section 143 (3) read with section 147 of the income tax act was passed determining the total income of the assessee of Rs. 1,39,48,570/- on 29/12/2017.

04. Assessee aggrieved with the same preferred an appeal before the learned CIT – A. The learned CIT – A noted the decision of the honourable Supreme Court in 281 CTR 241 wherein it was held that when the assessment is made on the basis of the statements recorded from third parties and if those statements were not provided for cross-examination, assessment order based on the statements is bad in law. He further noted that there are many decisions that the addition made by the assessing officer on account of alleged bogus/non-genuine purchases estimation of profit at 3% of bogus purchases may be adopted. He found that the total cost of goods involved is Rs. 13,165,072/- the export made by the assessee is Rs. 1,48,29,571/-. Thus, the total export is made out of the bogus purchases allegedly of Rs. 13,165,072. Thus, there are no other entities that were supplied to the assessee other than these two alleged bogus entities. The gross profit on by the assessee is bigger 12.64%. He also found that there is a

difference between the cost of goods sold which were purchased from these two different entities. According to him goods purchased from Mukti Exports are Rs, 11,205 per carat whereas from the other party it is Rs. 11,325 per carat. Therefore, he applied the purchases rate of Pankaj Exports to Purchases of Mukti Exports and found that all goods purchased should be valued at Rs. 11,000 325/- per carat. Therefore, he applied per carat cost of purchases from Pankaj Exports to purchases from Mukti Exports and made the addition of Rs. 32,08,953/-. Thus, the appeal of the assessee was partly allowed.

05. Assessee is aggrieved with that appellate order and is in appeal before us. Assessee submitted that assessee has shown the gross profit of 12.64% same is not meagre because of the reason that report of the task group for diamond sector submitted to the Department of commerce, government of India suggested that the net profit that could be derived in the diamond in trading activity the profitability ranges 1% – 3% only. Therefore, the findings of the learned and CIT – A considering the gross profit of 12.64% as meagre profit is devoid of any merit. He submits that the learned CIT – A has adopted Novell method for confirmation of the addition of Rs. 3,208,953. He found that total purchases from Mukti exports are 1174.84 carats which should have the purchase cost at the rate of 11,325 per carat as purchases of Pankaj exports. Thus, the purchases from Mukti exports were determined at Rs. 13,305,063 against the actual purchase of Rs. 10,096,110/- and thereby making an addition of Rs. 3,208,953. He stated that the goods have been exported by the assessee therefore the learned CIT – A has ignored the quality of diamond, their use also. He submits that the diamond purchased from Pankaj exports are different from diamond purchased from Mukti exports. He further referred to the decision of the honourable Gujarat High Court in the case of Vardhman exports that addition under section 69C cannot be made if the transactions are recorded in the duly audited regular books of accounts. He further referred to the several judicial precedents where the profits have been estimated at the rate of 3%. In the end he referred to the decision of



honourable Bombay High Court in case of Mohd, Haji Adam & company dated 11/2/2019 stating that assessee has earned gross profit of 11.22% and net profit before tax of 5.28% and accordingly the addition deserves to be deleted. The learned authorized representative further submitted case law paper book containing 10 judicial precedents of the coordinate benches including one decision of Mohd Haji Adam and company of honourable Bombay High Court and of Vardhman Exports of honourable Gujarat High Court. The learned authorized representative also referred to the paper book containing 93 pages wherein in earlier years the order of the learned and CIT – A were also enclosed wherein 3% of the purchases were confirmed as addition on account of alleged bogus sellers. It is further stated that those orders have not been challenged further by revenue.

06. The learned departmental representative vehemently supported the order of the learned CIT – A. He submits that in this case the total sales made by the assessee are procured out of alleged bogus suppliers, therefore the learned CIT – A could not have relied upon the gross profit earned by the assessee from regular suppliers. Therefore, the learned CIT – A, the purchases of goods from both the alleged bogus suppliers at the same rate and made the addition made the suppliers purchase price was less than the other suppliers purchase value. Thus, there is no infirmity in the order of the learned CIT – A.
07. We have carefully considered the rival contention and perused the orders of the lower authorities. The fact shows that in the present case on dispute facts shows that assessee has purchased diamonds from two different entities amounting to Rs. 13,165,072/-. An accommodation entry provider operated both these entities. Assessee has exported these diamonds and realized export proceeds. Quantitative details of purchases in carats are also shown. On page number 57 of the paper book, it was shown that 270.99 carats of diamonds purchased on 25/5/2009 from one party or exported on 1/6/2009. Similarly other purchases of diamonds from alleged bogus suppliers were also exported



in the same quantity. Assessee has also produced the stock register where one to one core relation between the alleged bogus purchases compared to exports was established. The learned CIT – A has noted that assessee has made only these diamonds purchased from alleged bogus suppliers has exported for Rs. 14,829,571/- where the cost of goods sold is 1,31,65,072/-. Therefore, the gross profit on by the assessee is 11.22%. Net profit shown as per the trading and profit and loss account at page number 65 is 5.28%. Identical facts and circumstances in earlier years, the learned CIT – A has confirmed the addition to the extent of 3% of bogus purchases. However, for this year, the learned CIT – A made the addition differently by considering the rate of the carrots purchased from one bogus supplier with the rates of another bogus supplier and the difference amount is confirmed and addition on account of bogus purchases. We do not agree with the approach of the learned CIT – A because when both the suppliers are allegedly bogus, rates paid to one party cannot be compared with rates paid to another bogus party for the reason that both are tainted transactions. We find that in the present case the decision of the honourable Bombay High Court in [2019] 103 taxmann.com 459 (Bombay) Mohd haji Adam also does not apply for the reason that honourable High Court held that Where there was no discrepancy between purchases shown by assessee and sales declared, no question of law or on form Tribunals order restricting addition made by AO on account of bogus purchase by bringing gross profit rate on purchases at same rate as applied in other genuine purchases. In this case there are no genuine purchases. The other judicial precedents relied upon by the assessee are also considered where varying rates of additions are confirmed depending on the facts and circumstances of the case of each of the assessee in the range of 1%- 12.5 % . Therefore, in absence of similar facts, those cannot be applied blindly. As stated above the facts in the case of the assessee are unique where only alleged bogus purchases of



diamonds are exported in the same quantity and there are no other genuine purchase transactions. Therefore, only the facts in the case of the assessee in earlier years could be a guiding factor. Further in the case of the assessee in earlier years assessment year 2008 – 09 and 2007 – 08 the learned and CIT – A has restricted the addition to the extent of 3% of the bogus purchases which is not disputed by the revenue, therefore, we also find it reasonable to retain the addition to the extent of 3% of the bogus purchases. Accordingly, appeal of the assessee is partly allowed.

08. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 23.04.2024.

Sd/-
(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 23.04.2024

Sudip Sarkar, Sr.PS/ Dragon

Copy of the Order forwarded to :

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai