

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM

AND

SHRI RAJ KUMAR CHAUHAN, JM

ITA No. 3763/Mum/2023

(Assessment Year: 2012-13)

DCIT		Peacemoon Traders
Room No.506, 5th Floor,		BW 3181/3182/B-Tower,
Piramal Chamber,	Vs.	Bharat Diamond Bourse,
Lalbaug, Mumbai-400 012		BKC Bandra (E),
(Appellant)		Mumbai-400 051
		(Respondent)
	PAN No. AAAFP4501D	

Assessee by : **Shri Nishit Gandhi, AR**
Revenue by : **Shri HM Bhatt, DR**

Date of hearing: 25.04.2024

Date of pronouncement : 26.04.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the Dy. Commissioner of Income Tax – 19 (1), Mumbai (the learned assessing officer) for A.Y. 2012-13, against the appellate order passed by the learned CIT – A on 29th August, 2023, wherein the appeal filed by assessee was partly allowed.
02. The learned AO is aggrieved and has raised following grounds: –

“Ground ”Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in reducing gross profit @ 12,5% as against the 100% addition made by the Assessing office on account of bogus purchases of Rs.2,34,54,210/-, by ignoring the fact that the DGIT (Inv.), had proved beyond doubt that Mr. Bhawarlal Jain & his Group concerns were involved in providing accommodation entry of sales & purchases without actual delivery of goods and the assessee was one of the beneficiary who accepting accommodation entries for the purchases of goods?

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in reducing gross profit @ 12,5% as against the 100% addition made by the Assessing office on account of bogus purchases of Rs. 2,34,54,210/- without appreciating the fact that during the search operation an statement recorded u/s 132(4) of the Act,

of Mr. Bhanwarlal Jain, in which he has categorically stated that those four entities to whom the assessee claimed to have made purchases are managed and controlled by him for providing the accommodation entry only with no real business.

3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in reducing gross profit @ 12,5% as against the 100% addition made by the Assessing office on account of bogus purchases of Rs. 2,34,54,210/- without appreciating the fact that during the search operation no stock of diamond was found in the premises of the group entities of Shri Bhanwarlal Jain to whom the assessee claimed to have made purchases.

4. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in reducing gross profit @ 12,5% as against the 100% addition made by the Assessing office on account of bogus purchases of Rs. 2,34,54,210/-, by ignoring the fact that the action of the Assessing officer was based on credible information received from the DGIT (Inv.), Mumbai and that the assessee during the course of assessment proceedings failed to prove the genuineness of the purchase transaction?

5 "Whether on the facts and in the circumstances of the case and in law, the order of the Ld CIT(A) is perverse in not considering the order of Hon'ble Supreme Court in the case of NK Protein Ltd. dated 16-1-2017, which is on the similar issue of bogus purchases and when the Hon'ble Apex Court order was already the law of

the land when the Ld CIT(A) has pronounced its order on 29.08.2023.

6 "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in reducing gross profit @ 12,5% as against the 100% addition made by the Assessing office on account of bogus purchases of Rs.4,65,85,141/-, without appreciating the fact that in the case of Swetamber Steels Ltd.(supra), the Hon'ble ITAT, Ahmadabad had confirmed the disallowance of the bogus purchase in entirety stating that the purchases shown from respective parties were found non-genuine and the decision of the ITAT was upheld by Hon'ble Gujarat High Court and also Hon'ble Supreme Court.

7 "The appellant craves leave to amend or to alter any ground or add a new ground, which may be necessary". "

03. Brief facts of the case shows that that assessee filed its return of income on 18th October, 2007 declaring a total income of ₹ 3,954,175/-. The return was picked up for scrutiny and assessment order under section 143 (3) was passed on 18th June, 2009, at a total income of ₹ 6,356,110/-.
04. Subsequently, on receipt of the information that the assessee is a beneficiary of accommodation entries of bogus purchases from entities controlled by an accommodation entry provider, Mr. Bharwarlal Jain, proceedings under section 147 of the Act were initiated and the notice under section 148 of the Act was issued on 27th March 2014. Subsequently, the assessee was asked to furnish the details of purchases claimed to be made from these allegedly bogus parties along with the stock register, manufacturing register and copy of bills. The assessee submitted that some details of the purchases and stated that purchases are genuine. The learned assessing officer passed an assessment order on 27th March 2015 and did not agree with the submission of the assessee and held that except this the stock register entry, cheque payment, customer appraisal report in respect of export sales no other documents such



as delivery challan etc. were produced during the course of the assessment/reassessment proceedings. Accordingly, the learned assessing officer held that purchases made from the entities controlled by accommodation entry provider are just shown as purchases to cover up the grey market purchases. Accordingly the entire purchases of ₹ 46,585,141/- was disallowed. When the matter reached the learned CIT – A, he directed the AO to restrict the addition to the extent of 12.5% of the non genuine purchases instead of disallowing hundred percent of the purchases.

05. Against the appellate order both the parties were in appeal. The assessee was contesting the addition of 12.5% confirmed by the learned CIT – A. This appeal was in ITA number 3625/M/2023 which was disposed of by order dated 20/3/2024 wherein the coordinate bench restricted the addition to 5% of the total purchases.
06. Unfortunately, at the time of disposal of the appeal filed by the assessee, the appeal filed by the learned AO on 19/10/2023 was not brought to the notice of the coordinate bench. Had that been intimated to the bench by either parties, the appeal of the assessee and appeal of the AO could have been disposed of simultaneously.
07. Now issue before us is that the learned assessing officer contesting the deletion of the addition by the learned CIT – A partly is under challenge.
08. After hearing the parties we find that in assessee's own case for assessment year 2012 – 13, coordinate bench has restricted the addition to the extent of 5%, therefore, unless there is an application for recall of that order, we are duty-bound to state that 5% of the bogus purchases are already determined as income of the assessee. Therefore the appeal of the learned AO becomes infructuous.
09. In the result the appeal of the learned AO is dismissed.

Order pronounced in the open court on 26.04.2024.

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

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 26.04. 2024

Sudip Sarkar, Sr.PS



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