

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

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

**ITA No. 450/MUM/2022
Assessment Year: 2015-16**

M/s Navkar India
304 Kohinoor Complex,
Chowky Sheri Sayedpaura,
Surat-395003
PAN NO. AAHFN 4207 H
Appellant

ACIT, CC-1(3),
M.K. Road, Churchgate,
Mumbai-400020.
Vs.
Respondent

**ITA No. 452/MUM/2022
Assessment Year: 2015-16**

Surya Diam,
204, Sapna Apartment, Jadda
Khadi, Mahidharpura,
Surat-395003.
PAN NO. ABMFS 0062 K
Appellant

ACIT, CC-1(3),
Pratishtha Bhavan,
Mumbai-400020.
Vs.
Respondent

Assessee by : Mr. Suchek Anchaliya
Revenue by : Mr. Ashok Kumar Ambastha, DR

Date of Hearing : 28/03/2024
Date of pronouncement : 25/04/2024



ORDER

PER OM PRAKASH KANT, AM

These appeals by the assessee are directed against two separate orders dated 20.01.2022 and 31.01.2022 passed by the Ld. Commissioner of Income-tax (Appeals)-47, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2015-16 respectively. The grounds raised in both these appeals being identical, both appeals were heard together and disposed off by way of this consolidated order for sake of convenience.

2. Both the parties agreed to take ITA No. 450/M/2022 in the case of Navkar India as a lead case. The grounds raised by the assessee in ITA No. 450/M/2022 are reproduced as under:

1. *On the facts and in the circumstances of the case and in law the Ld. CIT (A) erred in not considering that the assumption of jurisdiction by the Ld. Assessing Officer is bad in law as the conditions laid down under the Act for initiating reassessment proceeding us 147 of the Act have not been fulfilled.*
2. *On the fact and circumstances of the case and in law the Ld. CIT (A) erred in confirming the addition of alleged commission income arising out of alleged bogus unsecured loans, bogus purchases and bogus sales amounting to Rs. 5,73,082/- on protective basis without appreciating the fact that the same amount has been substantively added in the case of Shri Bhanwarlal Jain, thereby making the same addition in the hands of two assesseees leading to double taxation.*
3. *On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming addition of Rs. 63,40,432/- (being 8.05% of Rs. 7,87,63,131/-), on estimation basis, by treating genuine turnover of the appellant as bogus sales.*
4. *On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the addition of Rs. 34,22,589/- being the difference of preceding years Trade Payables and*



the current years Trade Payables, without appreciating the fact that the appellant had disclosed all the information regarding Current Liabilities submitted in the Audited Financial Statements for the relevant year and the said increase in Trade Payables is on account of change in the exchange rate at the year end.

5. *On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the addition of alleged commission income arising out of alleged bogus unsecured loans, bogus sales and bogus purchases and also confirming the addition of gross profit, on estimation basis, of a percentage of the total turnover, without appreciating the fact that both such additions cannot coexist together.*
6. *On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming addition of alleged commission income arising out of alleged bogus unsecured loans, bogus sales and bogus purchases, without appreciating the fact that for the very same assessee for previous assessment years, being A.Y. 2010-11 to A.Y. 2014-15, the Ld. CIT(A) has deleted the protective addition of alleged commission income, thereby not following the principle of consistency.*
7. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in changing protective addition of commission income on alleged bogus sales to substantive addition on the incorrect presumption that the same was not considered in the order of the Hon'ble ITAT in the case of Shri Bhanwarlal Jain.*
8. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in changing protective addition to substantive addition without issuing any show cause notice or opportunity of being heard to the appellant, which is in violation of section 251(2) of the Income Tax Act, 1961 and in violation of the principles of natural justice.*
9. *On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in confirming the addition made by Id. AO, without providing any opportunity of cross examination, without any corroborative evidence and without providing copy of statements relied upon.*

3. Briefly stated, facts of the case are that the assessee filed return of income on 24.09.2015 declaring total income at Rs.44,370/-. In the return of income filed, the assessee shown income from business, import & export and trading of cut and polished & rough diamonds. Subsequently, the Assessing Officer received information from the Investigation Wing, Mumbai that



during the course of search carried out on 11.10.2013 u/s 132(4) of the Income-tax Act, 1961 (in short ‘the Act’), at the premises of “Shri Bhanwarlal Jain” group , it revealed that he was engaged in issuing accommodation entries to others for bogus loans/sales/imports through entities controlled by him , including the assessee . Thus, in view of the information the assessee being one of the entity of Sh Bhanwar Lal Jain, the Assessing Officer recorded reasons to believe that income escaped assessment and reopened the assessment u/s 147 of the Act by way of issue of notice u/s 148 of the Act on 05.09.2018. In the assessment completed u/s 147 of the Act, the Assessing Officer treated the assessee as engaged in issuing accommodation entry bills and accordingly assessed the commission income on bogus unsecured loans/bogus purchase/sales etc. But along with the commission income, the Assessing Officer also assessed not only assessed the trading results appearing in the books of account but also enhanced the profit from such trading activity. Though the commission on loans/sale/purchase appearing in the books of the assessee was assessed in substantive capacity in the case of Shri Bhanwarlal Jain for AY 2015-16, but same was assessed on protective basis in the case of assessee. The computation of said commission income of Rs.5,73,082/- in the case of assessee is reproduced as under:

Sr. No.	Nature of Accommodation entry	Amount of commission earned
1.	Accommodation of Bogus unsecured loan	Rs. 4,72,311/-



	(On Proportionate basis on Rs. 1,96,79,659/- @2.4%)	
2.	Accommodation of Bogus Purchases (0.075% of Rs, 14,04,99,815/-)	Rs. 1,05,374/-
3.	Accommodation of Bogus sales (0.075% of Rs. 7,87,63,131/-)	Rs. 59,072/-
4.	Total Commission	Rs. 6,36,757/-
5.	Less: 10% of total commission as discussed above	Rs. 63,675/-
6.	Undisclosed commission income	Rs. 5,73,082/-

3.1 Further, the Assessing Officer computed business income of Rs.63,40,432/- at the rate of 8.05% on the turnover of Rs.7,87,63,131/- as against loss in the trading activity shown by the assessee. The Assessing Officer also made addition for increase in trading payables as compared to the last year which amounted to Rs.4,73,73,337/- and treated the same as unexplained cash credit u/s 68 of the Act.

4. On further appeal, the Ld. CIT(A) upheld the commission added on protective basis as well as profit computed on the turnover shown in the books of account. The Ld. CIT(A) also enhanced the commission in respect of sales.

5. Aggrieved, the assessee is in appeal before the Tribunal by way of raising the grounds as reproduced above.

6. Before us, the Ld. Counsel for the assessee has filed a Paper Book containing paged 1 to 58.

7. The ground No. 2 of the appeal of the assessee relate to addition of Rs.5,73,082/- on protective basis in respect of



commission income on issuing the bogus accommodation entry bills.

7.1 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that the Ld. CIT(A) has referred to the order of the Co-ordinate Bench of the Tribunal in the case of Shri Bhanwarlal Jain (supra) and observed that Shri Bhawarlal Jain was engaged in issuing accommodation entry bills through 70 entities controlled and managed by him including the assessee. The Ld. CIT(A) observed that commission income from the accommodation entries issued through 70 entities including the assessee has been assessed on the substantive basis in the case of Shri Bhanwarlal Jain and therefore, the Assessing Officer added part of the commission related to the assessee on protective basis. However, the Ld. CIT(A) was of the view that this estimation of the commission income was sub-judice and challenged by the Department before the higher appellate forum and therefore, to keep the issue alive , he sustained the disallowance made by the Assessing Officer. The relevant finding of the Ld. CIT(A) is reproduced as under:

“10.2 On the issue whether the Assessing Officer has correctly made the addition of commission income in the hands of the Appellant "on protective basis", while substantive addition was made in the hands of Shri Bhanwarlal M. Jain, my observation is as under-

10.2.1 The Hon'ble ITAT, vide the above referred order in the case of Shri Bhanwarlal M. Jain, has given part relief in page no. 30 of the order, in the following manner-

No.	Nature of Transaction	Estimation of the
-----	-----------------------	-------------------



		<i>Hon'ble Tribunal in the case of Shri Bhanwarlal M. Jain</i>
1.	<i>Import transaction by Shri Bhanwarlal M. Jain on behalf of others</i>	<i>@ 0.02%</i>
2.	<i>Accommodation entries of Bogus purchases</i>	<i>@ 0.05% instead of 0.075%</i>
3.	<i>Bogus unsecured loan</i>	<i>@ 1% instead of 2.40%</i>
4.	<i>Commission of Local purchases</i>	<i>Nil against 0.02%</i>
5.	<i>Expenses Allowed</i>	<i>@ 25%</i>

10.2.2 As informed, Department has not accepted the above percentage estimated by the Hon'ble ITAT and further appeal is being preferred. Therefore, the estimation is not final. Hence, with due respect to the judgment of Hon'ble Tribunal, and to keep the issue alive, the undersigned confirms the estimation made by the Assessing Officer, with respect to commission income earned by the appellant on bogus unsecured loan and bogus purchases as well as 10% of commission income for day-to-day expenses as mentioned in the preceding paragraphs, on protective basis.

10.2.3 It is further observed that Commission income earned on Bogus sales does not form part of the Appellate Order of Hon'ble Tribunal. Hence, the estimation of Rs. 59,072/- @ 0.075% on the sales of Rs. 7,87,63,131/- is hereby confirmed on substantive basis. Thus, Ground of Appeal Nos. 3, 4, 5, 7 and 9 of the present appeal are dismissed.”

7.2 Before us, the Ld. counsel for the assessee has referred to the decision of the Tribunal in the case of Rare Diamond Pvt. Ltd. in ITA No. 313/M/2022 wherein identical finding was given by the Ld. CIT(A) , but the Tribunal after considering the facts, deleted the addition observing as under:

“8. But on the issue whether the protective addition made in the case of the assessee should be deleted or upheld, the Ld. CIT(A) has given the reasoning that the Department has not accepted the percentage estimated by the ITAT (supra), and therefore to keep the issue alive, he confirmed the estimation made by the Assessing Officer. The relevant finding of the Ld CIT(A), is reproduced as under:

9.2 On the issue whether the Assessing Officer has correctly made the addition of commission income in the hands of the Appellant "on protective basis", while substantive addition was made in the hands of Shri Bhanwarlal M. Jain, my observation is as under-



9.2.1 The Hon'ble ITAT, vide the above referred order in the case of Shri Bhanwarlal M. Jain, has given part relief in page no. 30 of the order, in the following manner-

No.	Nature of Transaction	Estimation of the Hon'ble Tribunal in the case of Shri Bhanwarlal M. Jain
1.	Import transaction by Shri Bhanwarlal M. Jain on behalf of others	@ 0.02%
2.	Accommodation entries of Bogus purchases	@ 0.05% instead of 0.075%
3.	Bogus unsecured loan	@ 1% instead of 2.40%
4.	Commission of Local purchases	Nil against 0.02%
5.	Expenses Allowed	@ 25%

9.2.2 As. informed, Department has not accepted the above percentage estimated by the Hon'ble ITAT and further appeal is being preferred. Therefore, the estimation is not final. Hence, with due respect to the judgment of Hon'ble Tribunal and to keep the issue alive, the undersigned confirms the estimation made by the Assessing Officer, with respect to commission income earned by the appellant on bogus unsecured loan and bogus purchases as well as 10% of commission income for day-to-day expenses as mentioned in the preceding paragraphs, on protective basis.

9.2.3 It is further observed that Commission income earned on Bogus sales does not form part of the Appellate Order of Hon'ble Tribunal. Hence, the estimation of Rs. 25,663/- @ 0.075% on the sales of Rs. 3,42,17,419/- is hereby confirmed on substantive basis. Thus, Ground of Appeal Nos. 3, 4, 5, 7 and 9 of the present appeal are dismissed.

9. In our opinion, the reasoning given by the Ld. CIT(A) is against the principle of judicial discipline. The Ld. CIT(A) being an appellate authority is required to follow the judicial precedent available on the issue in dispute. The Ld. CIT(A) has duly mentioned the order of the Tribunal in the case of Sh. Bhanwarlal Jain where the commission income from accommodation entries has been held to be assessed on substantive basis treating the various concern through which accommodation entries were provided as his 'benami' concerns.

11. For ready reference, said findings of the Tribunal is reproduced as under:

8.2 It will not be out of place to mention here that Hon'ble ITAT, B Bench, Mumbai, in the combined order dated 06.08.2021 (ITA No. 98-104, 108-114, 2669, 3509/M/2018) in the case of Bhanwarlal M. Jain, has extensively examined the modus operandi of Bhanwarlal M. Jain and 70 odd associates. The Appellant is one of



the 70 associates, as mentioned in the preceding paragraphs. The relevant findings of the Hon'ble Tribunal are reproduced as below:

4. We have carefully heard the rival submissions, oral as well as written. We have duly appreciated the factual matrix as enumerated by us in the preceding paragraphs. The judicial pronouncements including our own order in *Rajendra P. Jain V/s DCIT (ITA Nos.298/Mum/2018 & ors.; order dated 03/05/2019)*, as cited before us during the course of hearing has been deliberated upon. We proceed to deal with the issues in the following manner.

5. The first and foremost argument taken before us is that the pendrive as found during the course of search proceedings was planted from outside and the admission thereof was taken forcibly in statement of assessee u/s 132(4). The Ld. AR has impressed upon the idea that the search took place on 03/10/2013 whereas the said pen drive was not inventorized for 6 days. It has been submitted that the same could have been seized or inventorized on 04/10/2013 along with the inventory made for credit cards, bank account and jewellery etc. Further, the seizure of the pen drive was not made part of Panchnama annexure, officially drawn on 04/10/2013 and the admission about the same from his son Shri Rajesh Jain was extracted forcibly. 6. Going by the factual matrix as enumerated in preceding paragraphs, we find that the attitude of the assessee during the course of assessment proceedings was totally non-cooperative. In fact, the assessee remained absent during search proceedings for 3 days. The summons were not complied with and no explanation was furnished on incriminating material. Pertinently, voluminous hand written estimation sheets have been found at various premises of the assessee. The sheets have been admitted to be in the hand writing of assessee's son as well as an employee of the assessee. These sheets contain parallel cash accounts. The entries in the estimated sheets were in the nature of square-off transaction wherein cash received from one party was paid back to another party through Angadiya Account. The pen drive contained calendar year-wise names of beneficiaries, the amount of cash, details of brokerage and commission etc. It also contained complete details of Angadiya Account since 2004 in electronic form. The parallel account maintained on the pen-drive pertained to various concerns, 70 to be precise, being managed and controlled by assessee group. The password of the pen drive was cracked with the help of software programmers. After decrypting the data, print outs were



taken and matched with the estimation sheets as well as other data gathered during the course of search action from various premises, disclosed as well as secret. The data was found to be identical. The complete correlation was established between the parallel books of accounts found on the pen drive with books of 70 concerns being managed and controlled by the assessee. It transpired that the daily accounts were first written manually on estimation sheets and thereafter entered into pendrive electronically. So much so, identical pen drive was found from the possession of Shri Rohit Birawat at CST Terminus who was apprehended by the search team while attempting to flee from Mumbai to Rajasthan with incriminating material.

7. All these facts have been admitted not only by the assessee but also by his son as well as trusted employees in various statements as recorded on oath u/s 132(4) at various points of time. The statements were recorded in the presence of independent witnesses. The contents of the statement were said to be duly explained to the assessee at the time of recording thereof.

8. In the backdrop of such clinching and overwhelming evidences, no substance could be found in the plea that the pen-drive did not belong to the assessee or the same was not found from assessee's premises particularly when the contents of the pen drive completely matched with incriminating material found during the course of search operations. The seizure of the same was duly recorded in the Panchnama which was vouched by independent Panchas. The vital link was established between the pen drive and the estimate sheets as well as the regular books of benami concerns being run by the assessee. Therefore, we do not find any substance in this plea as raised by Ld. AR before us and therefore, we reject the same.

9. So far as the other arguments are concerned, we find that that the assessee was running more than 70 benami concern under name-sake directors / partners / proprietors. These persons were acting as per the direction of the assessee against remuneration. Most of them, in their statement u/s 132(4), made admission of those facts. They also made admission that they assisted / abetted the assessee in the business of providing accommodation entries. Their PAN Cards, IDs, blank signed cheque books etc were found at centralized premises. They were visiting the centralized premises to sign the blank cheque books as per the directions of the assessee. All these persons had superficial knowledge



about nature of business being conducted by their respective concerns. Further, most of these persons were residing at premises owned by the assessee group. The books of accounts of all these entities were being maintained at two premises in a centralized manner. The books were found in the same computer and audited by common Auditor. The auditor admitted to have signed the financial statements as per the directions of Shri Lunkaran Parasmal Kothari without verifying the books of accounts. This is further fortified by survey action at BKC, Mumbai wherein more than 30 firms were found to be operating from common premises. All the 70 entities were found to have common features in their respective financial statements. All these factors strongly prove the allegations of the department that all the concerns were being run by the group in a combined manner with a view to provide accommodation entries to various beneficiaries against commission.

10. So far as the retraction of the statement made by the assessee is concerned, we find that the retraction was made after more than 8 months and the same was devoid of any material evidence. The statements were made on oath u/s 132(4) and heavy onus was on assessee to rebut the same with cogent material while retracting the same. However, nothing of that sort as done by the assessee, has been shown before us. Glaring contradictions as well as similarities has been found in the retraction affidavits. As rightly held by lower authorities, the retraction was nothing but mere after-thought and tutored statement to thwart the process of investigation. The retraction was bereft of any material evidence and therefore, the same was to be completely ignored.

11. The aforesaid factual matrix as well as findings would lead to inescapable conclusion that all the 70 entities under consideration were being managed and controlled by the assessee group and therefore, lower authorities were quite justified in estimating commission income earned by the assessee group from all these benami concerns.

12. Accordingly, Ground Nos.1,2,5,6,7 & 8 of the assessee's appeal stands dismissed. Ground No.12 stand dismissed since we do not find any violation of principle of natural justice during appellate proceedings

12. The Ld. CIT(A) has summarized the factual conclusions in para 8.3 of the impugned order. Ld. CIT(A) has also noted that for the commission income added on protective basis in the case of the assessee for such period from Assessment Year 2007-08



to AY 2014-15 has been deleted by the concerned first appellate authority following the decision of the Tribunal in the case of Sh. Bhanwarlal Jain. Despite fully aware of the fact, the Ld. CIT(A) in the instant case has upheld the addition on the reasoning that the Income-tax department has not accepted the percentage estimated by the Tribunal in the case of Sh. Bhanwarlal Jain, and further appeal has been preferred. The Ld. CIT(A) has ignored that he, being a appellate authority, is required to follow the decision of the higher appellate forum irrespective whether the department has preferred appeal again the same, unless the decision of that appellate forum has been stayed by the higher appellate forum. The Ld CIT(A) cannot confirm an addition on protective basis. He is required to decided the issue either way and cannot proceed with keeping an addition on substantive in one case and protective in other case that too even after a finding of the higher appellate forum i.e. ITAT. We accordingly, reject this approach of the Ld CIT(A) and set aside his finding on the issue on dispute. Respectfully following the finding of the ITAT in the case of Sh. Bhanwarlal Jain (Which has been extracted above), the protective addition made in the case of the assessee in respect of commission income from accommodation entries is deleted. The relevant grounds of the Appeal are accordingly allowed.”

7.3 In above case, the Tribunal (supra) has held that Id CIT(A) being appellate authority is required to follow the precedent , which in operation at relevant point of time. Since, the issue in dispute in present case being identical, following the finding of the Tribunal in the case of Rare Diamonds Pvt. Ltd.(supra), the addition made on protective by the AO and sustained by the Ld. CIT(A) is deleted. The ground No. 2 of the appeal of the assessee is accordingly allowed.

8. The ground No. 3 of the appeal of the assessee relate to confirming the addition of Rs.63,40,432/- being 8.05% of turnover of Rs.7,87,62,131/-. Regarding the addition of Rs.63,40,432/- the Ld. CIT(A) though has clearly mentioned that assessee was engaged in issuing bogus accommodation entry bills and therefore, claim of the assessee that it is a trader and quantity tally of the goods



submitted in the tax audit report had no meaning and those were devoid of truth and genuineness and not reliable. Despite the above observation, the Ld. CIT(A) computed the net profit on this business activity at Rs.63,40,432/- observing as under:

“12.2 While making the impugned addition, the Assessing Officer has noted that

(i) The Appellant has shown a turnover of Rs.7,87,63,131/-.

(i) The Appellant has failed to submit the transaction wise details as called for vide notice u/s 142(1) of the I T Act dated 03/11/2019. No information regarding the purchases, corresponding payments made for purchases, the effect of such purchases in the stock maintained, sales made, receipt of sales proceeds and the corresponding effect in the stock register, were provided. No detail in respect of the items of its account including expenses debited were supplied to the AO.

(iii) Accordingly, the AO rejected the income & expenses as declared in its P&L account, being un-substantiated by supporting documentary evidences viz., details of expenses. stock etc.

(iv) Accordingly, the income of the Appellant was estimated as a percentage of turnover. The AO, thereafter compared the results shown by the group entities of Shri Bhanwarlal M. Jain claimed to be in the business of trading in diamonds. identical circumstances and environment. The AO concluded that the gross profit involved should be in the identical range.

iv) The gross profit percentage of a few of the entities for AY 2014-15 was found as under-

Sr. No.	Name	GP for AY 2014-15
	Shri Ritesh Siroya	13.70
	M/S Meridian Jewellery Pvt Ltd	11.35
	M/S Meridian Gems	11.00
	M/s Little Diam	10.29

(v) The AO took the average percentage of 11.5%. The AO has also given the findings that the business of the Appellant has not changed between AY 2014-15 to A Y 2015-16 and most of the conditions have remained unaltered. The meagre gross profit of 3.45 % as declared by the assessee for AY 2015-16 is unacceptable.

(vi) Therefore, the gross profit percentage of the Appellant for the year under consideration is adopted at 11.5%. Since, the Appellant had



declared a GP of 3.45%, the difference in GP percentage of 8.05 % (11.5 - 3.45) is added as income of the assessee for AY 2015-16. Accordingly, an amount of Rs. 63,40,432/- (8.05 % of Rs. 7,87,63,131), is added to the total income of the Appellant.

12.3 I am in full agreement with the findings of the Assessing Officer. When other group concerns of Shri Bhanwarlal M. Jain, claimed to be in the same business of trading in diamonds, in identical circumstances, have shown much higher gross profit, there is no reason for the Appellant to show such small profit, in the return of income. Hence, the estimation on the basis of comparables is justified. Moreover, the appellant has not found any lacuna in the comparison of results carried out by the AO. Thus, the addition of Rs. 63,40,432/- to the total income of the Appellant, is confirmed. As such, the Grounds of Appeal No. 8 and 10 of the appellant are dismissed.”

8.1 We have heard rival submission of the parties and perused the relevant material on record. We find that the Ld. CIT(A) on one hand as held that the entity has been utilized by Shri Bhanwarlal Jain for issuing bogus accommodation entry bills however on other side he has upheld the profit from said business activity in addition to commission income sustained on bogus accommodation entries. The Tribunal in the case of Rare Diamond Pvt. Ltd. (supra) in similar circumstances has deleted the addition made in respect of trading activity. The relevant finding of the Tribunal is reproduced as under:

“17. From the impugned order of the Ld. CIT(A), we find that in one para he is treating the books of accounts and other details of quantitative tally in respect of trading activity as self-serving documents, devoid of truth and genuineness and therefore cannot be relied upon. On the other hand, he is confirming the gross profit rate addition made by the Assessing

Officer for the said trading activity. The Ld. CIT(A) cannot give both the finding that assessee was engaged in providing accommodation entry and being simultaneously was engaged in trading activity. We find that tribunal in the case of Sh. Bhawarlal Jain (supra) has given a specific finding that 70 associate concerns of Sh. Bhanwarlal Jain were engaged in providing only accommodation entry and no real business was carried, which was recorded in their books of accounts. The assessee also being one of the concern out of those 70 concerns, the Ld. CIT(A) has correctly



rejected the claim of the assessee in para 11.1 that it was engaged in any trading activity. Once it is held, that assessee was not engaged in any trading activity, there is no justification for making any addition for low gross profit rate in such trading activity. The finding of the Ld. CIT(A) in para 11.3 are accordingly set aside. The ground No. 3 and 4 (partly), of the appeal of the assessee are accordingly allowed.”

8.2 Respectfully following the finding of the Tribunal (supra) above, the addition in the case of the assessee is being deleted. The ground No. 3 of the appeal of the assessee is accordingly allowed.

9. The ground No. 4 relates to addition for the trading payables of Rs.34,22,589/- being the difference of preceding years trade payables and the current year trade payables. We are of the opinion that once the Assessing Officer is of the view that the assessee has been used or misused for providing accommodation entry bills of unsecured loans and bogus purchase and sale entries and addition of commission income for same has already been made, then separate addition for the trade payables in terms of section 68 is not justified as held by us while adjudicating the ground No. 3 of the appeal. Accordingly the ground No. 4 of the appeal of the assessee is allowed.

10. The ground Nos. 5 and 6 of the appeal relate to the addition of the commission income and addition of the gross profit on estimation basis which we have already deleted and therefore, the ground Nos. 5 and 6 of the appeal are rendered merely academic and therefore, we are not required to adjudicate upon.



11. The ground No. 7 and 8 of the appeal relate to enhancement of the commission income. We find that the identical addition made in the case of Rare Diamonds (supra) has been deleted. The relevant finding of the Tribunal (supra) is reproduced as under:

“20. We are of the opinion that when the Tribunal in the case of Sh. Bhanwar Lal Jain (supra) has considered the commission from accommodation entry on substantive basis, any addition if not considered in respect of such commission entry, same can only be made in the hand of Sh. Bhanwarlal Jain. When it is evident that after the finding of the Tribunal in the case of Sh. Bhanwarlal Jain, no addition can be made on protective basis in the case of the assessee, there is no question of further enhancement of said commission income from accommodation entry and that too on substantive basis. The enhancing of such commission income from accommodation entries of bogus sales is without any reasoning and totally unjustified. We reject this action of Ld. CIT(A).

21. The Ld. Counsel before us submitted that Hon'ble Tribunal in the case of Bhanwar Lal Jain, has duly considered the alleged commission on sales, but in absence of any such details before us, we are not adjudicating upon said contention of the Ld. Counsel.

22. The Ld. Counsel further submitted that Ld. CIT(A) has enhanced the commission income without providing any show cause notice to the assessee, which is in violation of the section 251(2) of the Act. The relevant part of the provision is reproduced as under:

251(2). The [Commissioner (Appeals) shall not enhanced an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

23. In the impugned order there is no mention of any opportunity provided to the assessee by way of issue show cause notice, before making the addition and therefore this addition is unsustainable on the ground of violation provision of section 251(2) of the Act also.”

11.2 The facts and circumstances of the instant case being identical, respectively following the finding of the Tribunal in the case Rare Diamonds (supra), the enhancement made by the Ld.



CIT(A) is hereby deleted. The ground Nos. 7 and 8 of the appeal are accordingly allowed.

12. The ground No. 1 and 9 of the appeal relates to reopening of the assessment and opportunity for cross-examination. Since, we have already deleted the additions and therefore, these grounds are rendered merely academic thus, we are not adjudicating upon at this stage.

13. In the result, the appeal of the assessee is allowed.

14. The grounds raised in ITA No. 452/Mum/2022 in the case of Surya Diam for AY 2015-16 are identically worded to the grounds raised in ITA No. 450/Mum/2022 except change of amount and therefore, following our finding in ITA No. 450/Mum/2022, the grounds raised in the present appeal are decided *mutatis mutandis*.

15. In the result, both the appeals of the respective assesses are allowed.

Order pronounced in the open Court on 25/04/2024.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 25/04/2024
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