

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 3771/MUM/2023
(Assessment Year : 2007-08)**

**ITA No. 3765/MUM/2023
(Assessment Year : 2009-10)**

DCIT, Room No. 506,5 th Floor, Piramal Chamber, Lal Baug, 400012	Vs.	Peacemoon Traders, BW3181/3182,B-Tower, Bharat Diamond Bourse, BKC, Bandra (E) 400051
PAN/GIR No. AAAFP4501D		
(Appellant)		(Respondent)

Assessee by	Shri. Nishit Gandhi
Revenue by	Shri. H.M. Bhatt (SR. DR.)
Date of Hearing	29/04 /2023
Date of Pronouncement	30/04/2024

आदेश / O R D E R

PER BENCH:

The aforesaid appeals have been filed by the Revenue against separate impugned order of even date 29/08/2023 passed by NFAC Delhi for the quantum of assessment passed u/s.147 for the A.Yrs. 2007-08 and 2009-10.

2. Since the issues are involved in both the years are exactly common i.e. ld. CIT(A) has erred in reducing gross profit @12.5%

as against the addition of 100% of the alleged bogus purchases of Rs.4,65,85,141/- in A.Y.2007-08 and Rs.1,82,29,469/- in A.Y.2009-10.

3. The brief facts are that on the basis of search and survey action conducted in the case of Shri Bhawarlal Jain it was found that he was providing accommodation entry for purchases from various parties. The assessee has also made purchases from four such parties for A.Y.2007-08 and one party in A.Y.2009-10 and accordingly, assessee's case was reopened u/s.147 and assessment has been completed by the ld. AO by treating the entire purchases as 'unexplained'. The ld. CIT (A) after considering the entire facts and various judgments held that entire purchases cannot be disallowed if the source of purchases are from the books and at the most the GP rate should be allowed. Thereafter, after relying upon the decision of the **Hon'ble Jurisdictional High Court in the case of PCIT vs. S.V. Jiwani reported in (2022) 145 taxmann.com 230**, he directed ld. AO to restrict the addition to the extent of 12.5% of the suspicious, bogus purchases instead of disallowing 100%. Before us ld. Counsel for the assessee submitted that assessee had come in appeal before the Tribunal against applying of GP rate of 12.5%, wherein the Tribunal has restricted the addition to 5%. Thus, once, the Tribunal itself has upheld the GP rate of 5% then, there is no question of adding the entire purchases.

4. In view of the aforesaid facts that now in the case of the assessee for the same assessment year in assessee's appeal the

Tribunal has restricted the GP addition @5% after observing and holding as under:-

“5. We have considered the submissions of both sides and perused the material available on record. In the present case, on the basis of the information received from the DGIT (Investigation), Mumbai that the assessee is the beneficiary of bogus purchases, reassessment proceedings in the case of the assessee were initiated. It is evident from the record that the AO made the addition of the entire alleged bogus purchases made by the assessee, however, the learned CIT(A) restricted the disallowance to 12.5% of the alleged bogus purchases. It is the claim of the assessee that it is a dealer in cut and polished diamonds, gold and silver, precious and semi-precious stones. Further, it is the claim of the assessee that the assessee has purchased cut and polished diamonds, and all the payments were made by account payee cheque. However, we find that before the lower authorities, the assessee could not prove the genuineness of the transaction with sufficient documentary evidence. From the material available on record it is evident that the assessee has failed to prove the genuineness of the purchases made from the supplier. However, at the same time, it is evident from the record that the Revenue has not doubted the sale of diamonds by the assessee. Further, it cannot be doubted that without the purchase of diamonds, the assessee cannot carry out the sale. Therefore, it appears to be a case of bogus bills arranged from the aforesaid entities and diamonds purchased from somewhere else at a lower cost. Thus, we are of the considered view that a reasonable disallowance of the purchases would meet the possibility of revenue leakage.

6. During the hearing, the learned AR by referring to the assessment orders passed in assessee's own case for the assessment years 2008-09, 2010-11, 2011-12, 2013-14, and 2014-15 submitted that the AO made the addition of 5% of the non-genuine purchases from the entities controlled by Mr. Bhanwarlal Jain and his group. The learned AR further submitted that the addition of 5% of the non-genuine purchases in the aforesaid assessment years has been accepted by the assessee and these assessment orders are also not altered pursuant to any revision proceedings. Since the profit margin embedded in the

transaction of alleged bogus purchases of cut and polished diamonds has been accepted at 5% in other years in assessee's own case, following the rule of consistency in view of the peculiar facts of the present case, we deem it appropriate to restrict the disallowance to 5% of the disputed purchases in the year under consideration. As a result, grounds raised by the assessee on merits are partly allowed.

5. In view of the aforesaid order of the Tribunal that once the addition has been restricted to 5% by applying GP rate then entire purchase cannot be added. Thus, the grounds raised by the Revenue are dismissed.

6. In the result, both the appeals of the Revenue are dismissed.

Order pronounced on 30th April, 2024.

Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 30/04/2024
KARUNA, sr.ps

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,

(Asstt. Registrar)
ITAT, Mumbai