

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.4001/M/2023
Assessment Year: 2012-13**

M/s. Shine Star BW 3021/3032, Bharat Diamond Bourse, Bandra Kurla Complex, Bandra (E), Mumbai 400051. PAN: AABFS2911F	Vs.	ACIT 19(3) Matru Mandir, Tardeo, Mumbai- 40007
(Appellant)		(Respondent)

Present for:

Assessee by : Shri. Ajay R. Singh- Ld. Advocate,
Shri. Akshay Pawar- Ld. Advocate,
Ms. Hemali R. Soni- Ld. C.A.

Revenue by : Shri Prashant Mahajan, Ld. Sr. A.R.

Date of Hearing : 16 . 04 . 2024

Date of Pronouncement : 30 . 04 . 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the assessee against the order dated 18.09.2023 impugned herein passed by the Ld. National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2012-13.

2. In the instant case, the assessee being engaged in the business of manufacturing, trading, import and export in diamonds had declared its total income of Rs.30,94,760/- by filing its return of income on 28.08.2012, which was processed under section 143(1) of the Act. Subsequently, the case of the assessee was reopened under section 147 of the Act on the information received from DGIT (Inv.), Mumbai to the effect that a search and seizure action was carried out in the case of Bhanwarlal Jain group of cases on 03.10.2013 wherein various incriminating documents qua hawala entries provided by the Bhanwarlal Jain group by way of issuing bogus bills to various persons were recovered. Post search information was received from DGIT(Inv.), Mumbai that assessee had also taken accommodation entries of purchases from following parties for A.Y. 2012-13.

Sl. No.	Name of the Hawala Parties (Bhanwarlal Jain group)	Bill amount
1	M/s. Millennium Stars	Rs.1,63,73,887/-
2	M/s. Mohit Enterprises	Rs.1,82,93,609/-
	Total	Rs.3,46,67,496/-

Consequently the case of the assessee was examined and reopened u/s 147 of the act by the Assessing Officer (AO) and notice under section 148 of the Act dated 25.03.2019 was issued to the assessee, in response to which the assessee filed the details called for. The AO vide assessment order dated 13.12.2019 under section 143(3) read with section 147 of the Act, ultimately made the disallowance of Rs.3,46,67,496/- qua alleged purchases by holding the same as bogus purchases.

3. The assessee, though preferred first appeal before the Ld. Commissioner against the assessment order and also challenged the

said addition, however, in spite of sending various notices, failed to respond the notices sent and therefore in the constrained circumstances, the Ld. Commissioner affirmed the aforesaid addition, which is 100% of the bogus purchases from the aforesaid two entities. The Assessee being aggrieved is in appeal before us.

4. We have given thoughtful consideration to the peculiar facts and circumstances of the case. The Shri Ajay R. Singh, Ld. Counsel of the assessee before us honestly submitted that the assessee do not want to press the challenge to the merits of the case and/or the addition made by the AO as affirmed by the Ld. Commissioner, however, only challenging the percentage of the addition made @100% of the alleged purchases amount. The Ld. Counsel also placed before us the assessment orders relevant to A.Y. 2008-09, 2011-12 & 2013-14 wherein the purchases from M/s. Mohit Enterprises and M/s. Millennium Stars, as involved in this case, were also considered by the AO, who ultimately estimated the profit @ 3% of the polished diamonds and @5% of the rough diamonds and consequently made the addition(s) accordingly, therefore, the same pattern is requested to be followed. The Ld. D.R. did not refute the claim of the assessee, hence, considering the peculiar facts and circumstances of the case in totality and for the just decision of the case and for the ends of litigation and substantial justice, we are inclined to accept the aforesaid claim of the assessee and consequently direct the AO to apply/estimate the profit @ 3% of the purchase value of polished diamonds and @ 5% of the rough diamonds, whatsoever may be, allegedly purchased from M/s. Mohit Enterprises and M/s. Millennium Stars and recompute the liability accordingly.

5. In the result, the appeal filed by the assessee is partly allowed in the aforesaid terms.

Order pronounced in the open court on 30.04.2024.

**Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.