

**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. 3988/MUM/2023**

**(Assessment Year: 2011-12)**

Sama Jewellery Private Limited, 313, Vasan Udyog Bhavan, Off Senapati Bapat Marg, Lower Parel, Mumbai 400013. <b>PAN No. AAAAT3419K</b>	Vs.	DCIT-8(1)(1) 6 <sup>th</sup> Floor, Aayakar Bhawan, M.K. Road, Mumbai 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

**Assessee by** : Shri Himanshu Gandhi – CA  
**Revenue by** : Shri Prashant Mahajan – Sr. AR

**Date of hearing:** 16.04.2024  
**Date of pronouncement :** 30.04.2024

**ORDER**

**Per: Ratnesh Nandan Sahay, Accountant Member:**

1. This appeal has been filed against the order of the Ld. CIT Appeal passed u/s 250 of the Income Tax Act [the 'Act' in short] vide DIN & Order No. ITBA/ NFAC/S/250/2023-24/1056140099(1) Dated 15.9.2023 for the Assessment Year 2011-12.
2. The facts of the case, in brief, are that the appellant is a Private Limited Company engaged in the business of manufacturing and trading of jewelry. For the assessment year under consideration, the appellant filed its return of income electronically on 28.09.2011 declaring total income of Rs.1,35,53,039/- which was processed u/s. 143(1) of the Income Tax Act accepting the returned income.
3. In the meantime, a survey u/s. 133A was conducted in the business premises of the appellant on 04.2.2011 and certain discrepancy was



found in the stock which was accepted by the director of the appellant company who offered, in the statement recorded u/s. 131 of the Income Tax Act, an additional income of Rs.50,00,000/- to cover up the discrepancies found during the course of survey. The regular assessment u/s. 143(3) was completed on 18.03.2014 determining the total income at Rs.1,35,53,039/-.

4. Subsequently, the assessment was reopened u/s 147 by issue of notice dated 30.03.2016 u/s. 148 of the Income Tax Act, 1961 on the ground that the assessee had received accommodation entries from one Mr. Rajendra Jain, an entry operator to the tune of Rs. 42,67,255/- in the Financial Year 2010-11.
5. The AO, in order to verify the genuineness of the transactions issued notice u/s 133(6) of the Act to the parties from whom the assessee had purchased the goods. When no confirmation was received and the notices returned 'unserved' the AO treated these purchases as bogus and made an addition of Rs. 48,79,486/- on this count.
6. The assessee filed appeal before the Ld. CIT, Appeal challenging both the reopening of the assessment made u/s 147 of the Act and the addition on account of bogus purchases. The Ld. CIT, Appeal upheld both the reopening of assessment and addition on the ground of bogus purchase. However, the Ld. CIT, Appeal restricted the addition of bogus purchases to Rs.23,42,153 being 48% of the bogus purchases. Aggrieved by the order of Ld. CIT Appeal this appeal has been preferred.
7. During the course of hearing before this Bench, the appellant also filed paper books containing the confirmation of accounts from the parties from whom alleged bogus purchases were made.

8. On careful consideration of the facts of the case, submissions made by the AR of the appellant as well as the Departmental Representative it is held that there is no infirmity in the order of the Ld. CIT, Appeal so far the genuineness of the purchases is concerned. However, we are not convinced with the addition @48 % of the bogus purchases of Rs.48,79,486/- This appears to be on higher side considering the various decisions of the Coordinate Benches of the Hon'ble ITAT which have been quoted by the Ld. CIT, Appeal himself where profit rates of 3% have been applied which are as under:
1. On identical facts and circumstances, Hon'ble ITAT Mumbai in the case of H Dinesh & Co. in ITA No. 924/Mum/2022 and 925/Mum/2022 dt. 28/7/2022 where in assessee is a trader in diamonds in whose case also entire alleged bogus purchase was disallowed, Bombay ITAT relied on the report of task group for diamond sector submitted to Dept of Commerce who suggested a net profit @ 1.5 to 4.5 % for manufacturing and 1 to 3% for trading. 3% was adopted as profit.
  2. In appellants own case for A.Y. 2007-08 and 2008-09 A.Y. on identical facts and circumstances the CIT(Appeal) restricted the addition to 3%.
  3. In the case of Denish Harilal Shah (IT Act No. 3618/MUM/2018) restricted the addition to 3% only. Referring to Radhasoami Satsang (1992) 193 ITR (SC) 321.
9. We, therefore, remand this issue to the file of the Ld. CIT, Appeal with a direction to apply the same ratio in the present case also on account of bogus purchases to maintain consistency.
10. In the result, the appeal is partly allowed.

**Order pronounced in the open court on 30.04.2024.**



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

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

Mumbai, Dated: 30.04.2024.

*Snehal C. Ayare, Stenographer*

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.