

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

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

AND

SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER

ITA NO. 4805/MUM/2023 (A.Y: 2012-13)

ACIT – 19(1) Room No. 506, 5 th Floor Piramal chambers, Lalbaug Mumbai - 400012	v.	M/s. Auro Exports 401, Mehta Mahal Opp. Roxy cinema, Charni Road Opera House, Mumbai – 400004 PAN: AAFA9339G
(Appellant)		(Respondent)

CO.NO. 31/MUM/2024

[ARISING OUT OF ITA NO. 4805/MUM/2023 (A.Y: 2012-13)]

M/s. Auro Exports 401, Mehta Mahal Opp. Roxy cinema, Charni Road Opera House, Mumbai – 400004 PAN: AAFA9339G	v.	ACIT – 19(1) Room No. 604, 6 th Floor Piramal chambers, Lalbaug Mumbai - 400012
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Suchek Anchaliya
Department Represented by	:	Shri Manoj Kumar Sinha
Date of conclusion of Hearing	:	14.05.2024
Date of Pronouncement	:	14.05.2024

ORDER

PER NARENDRA KUMAR BILLAIYA (AM)

1. ITA No. 4805/MUM/2023 and CO No. 31/MUM/2024 are appeal by the revenue and cross objection by the assessee preferred against the order dated 27.10.2023 by National Faceless Appeal Centre, Delhi [hereinafter in short "Ld. CIT(A)"] pertaining to A.Y.2012-13.

2. The appeal and cross objection were heard together and are disposed off by this common order for the sake of convenience and brevity.

3. The grievance of the revenue read as under: -

"1. Whether on the fact and in the circumstances of the case and in law, the Ld. CIT(A) has erred in reducing gross profit @3%, as against the 100% addition made u/ s 69C of the I.T. Act, by the Assessing Office on account of bogus purchases of Rs. 3,57,18,846/- from two hawala parties (M/s.Marvin Enterprises & M/S. Purshpak Gems), by ignoring the informative fact that the DGIT(Inv.), had proved beyond doubt that Mr. Bhawarlal Jain & his Group concerns were involved in providing accommodation entries of sales & purchases without actual delivery of goods and the assessee was one of the beneficiary who has accepting accommodation entries for the purchases of Goods ? "

2 Whether on the fact and in the circumstances of the case and in law, the Ld. CIT(A) has erred in reducing gross profit @3%, as against the 100% addition made by the Assessing Office on account of bogus purchases of Rs.3,57,18,846/- from two hawala parties (M/s.Marvin Enterprises & M/S. Purshpak Gems), without appreciating the

fact that during the search operation statement of Mr. Bhawarlal Jain & his Group concerns recorded u/ s. 132(4) of the I.T.Act, in which he has categorically stated that those hawla entities/parties 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 fact and in the circumstances of the case and in law, the Ld. CIT(A) has erred in reducing gross profit @ 3%, as against the 100% addition made by the Assessing Office on account of bogus purchases of Rs.3,57,18,846/- from two hawala parties (M/S. Marvin Enterprises & M/S. Purshpak Gems), without appreciating the facts that during the search operation no stock of diamond was found in the premises of the group entities of Shri. Mr. Bhawarlal Jain & his Group concerns, to Whom the assessee claimed to have made purchases"*

4 *"Whether on the fact and in the circumstances of the case and in law, the Ld. CIT(A) has erred in reducing gross profit @ 3%, as against the 100% addition made by the Assessing Office on account of bogus purchases of Rs.3,57,18,846/- from two hawala parties (M/S. Marvin Enterprises & M/S. Purshpak Gems), by ignoring the fact that action of the Assessing Officer was based on credible information received from the DGIT(Inv.), Mumbai and that the during the course of assessment proceedings the assessee has failed to prove the genuineness of the alleged purchase transactions?"*

5 *"Whether on the fact and in the circumstances of the case and in law, the Ld. CIT(A) has erred in reducing gross profit @ 3%, as against the 100% addition made by the Assessing Office on account of bogus purchases of Rs. 3,57,18,846/- from two hawala parties (M/S. Marvin Enterprises & M/S. Purshpak Gems), are in the nature of unexplained and without giving any satisfactory ground on which the Ld. CIT(A) is defended?"*

6 *"Whether on the fact and in the circumstances of the case and in law, the Ld. CIT(A) has erred in reducing gross profit @ 3%, as against the 100% addition made by the Assessing Office on account of bogus purchases of Rs. 3,57,18,846/- from two hawala parties (M/S. Marvin Enterprises & M/S. Purshpak Gems), without appreciating the ratio of the decision of the Hon'ble Apex Court in the case N.K. Protiens Ltd Vs Dy. CIT (2016)292 CTR(GUJ) 354, wherein the Hon'ble Court*

has held that , when the purchases are from bogus suppliers, the entire purchases are liable to be disallowed ?"

7 *"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 N. K. Protiens Ltd vs Dy. CIT (2016)292 CTR (GUJ) 354, Dated. 1601.2017, 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 27.10.2023?"*

8 *"Whether on the fact and in the circumstances of the case and in law, the Ld. CIT(A) has erred in reducing gross profit @ 3%, as against the 100% addition made by the Assessing Office on account of bogus purchases of Rs. 3,57,18,846/- from two hawala parties (M/S. Marvin Enterprises & M/S. Purshpak Gems), without appreciating the fact that in the case Swetamber Steels Ltd.(Supra), the Hon'ble ITAT, Ahmadabad had confirmed the disallowance of the bogus purchase in entirely 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 Hon'ble Supreme Court?"*

9 *"The appellant craves, leave to amend or alter any grounds or add a new ground which may be necessary?"*

4. The grievance of the assessee raised in the cross objection read as under: -

"1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the amount of addition of alleged bogus purchases to 3% of such purchases and not deleting the addition amount in its entirety, in the face of the overwhelming evidence provided by the respondent to prove the genuineness of the alleged bogus purchase transactions.*

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the amount of addition of alleged bogus purchases to 3% of such purchases and not deleting the addition amount in its entirety, solely on the basis of the search action on a third party, without appreciating the fact that respondent has not carried out any transaction with*

the said third party, without providing copy of statement and the opportunity of cross examination to the respondent.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not holding the impugned assessment order as void ab initio as the order passed by the Ld. Assessing Officer dated 15.12.2019 does not bear any Document Identification Number (DIN) on its assessment order body as mandated by the Circular No. 19/2019 issued by the CBDT.

4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) (NFAC) erred in 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 u/s 147 of the Act have not been fulfilled.

5. The Respondent craves to add, alter, classify, reclassify, delete or modify any of the above grounds of appeal and requests to consider each of the above grounds without prejudice to one another."

5. At the very outset, it has been brought to our notice that the underlying facts in the issues are identical to the facts considered by this Tribunal in assessee's own case in A.Y. 2009-10 in ITA No. 6343/MUM/2016.

6. We have carefully perused the orders of the authorities below and have given a thoughtful consideration to the order of the Coordinate Bench in ITA No. 6343/MUM/2016.

7. We find that the underlying facts are identical. Therefore, following the principle of consistency, we refer to the findings of the Coordinate Bench which read as under: -

"6. First issue relates to validity of reopening of assessment. Learned AR invited our attention to the reasons recorded by the Assessing Officer and submitted that the Assessing Officer, in paragraph 2, has mentioned about search and survey operation conducted in the case of Mr. Bhanwarlal Jain and Group and stated that the said group is engaged in providing accommodation entries of bogus unsecured loans and advances to various beneficiaries. He submitted that the Assessing Officer did not mention anything about the bogus accommodation bills provided by them in this paragraph. He submitted that though the Assessing Officer has recorded details of alleged bogus purchases in paragraph 4 of the reasons, yet there is no connection between paragraph 2 & 4. Accordingly he submitted that the reasons recorded by the Assessing Officer would get vitiated. Accordingly he contended that the reopening is bad in law.

7. On the contrary, learned Departmental Representative submitted that search and seizure action conducted in the hands of Mr. Bhanwarlal Jain and Group has revealed that they are engaged in providing accommodation entries by way of bogus unsecured loans and advances and also by way of providing bogus purchase bills. The Assessing Officer has listed out actual amount of purchases made by the assessee from the above said group in paragraph 5 of the reasons and clearly stated that income chargeable to tax to the tune of ₹.3.29 crores, being alleged bogus purchases, has escaped from assessment. Accordingly, the Ld D.R submitted that the Assessing Officer has reopened the assessment after recording proper reasons and hence reopening is valid in the eyes of the law.

8. We have heard the rival contentions on this issue and perused the record. A careful perusal of the reasons recorded by the Assessing Officer would show that the Assessing Officer has

only reopened the assessment in order to assess the alleged bogus purchases or any other income which has escaped assessment. In paragraph 4 of the reasons, the Assessing Officer has listed out the names of the concerns and the quantum of purchases made from them. Hence, in our view the Assessing Officer has reopened the assessment on proper reasoning. Learned AR has invited our attention to paragraph 3 of the reasons and submitted that the Assessing Officer did not mention anything about the bogus purchase bills. In our view, one has to consider the reasons recorded by the Assessing Officer in totality and then examine as to whether the Assessing Officer was having proper reasons for reopening the assessment or not. In paragraph 2, the AO has simply mentioned about the sources of his information and only in paragraph 4, the AO records reasons for reopening of assessment. In our view the Assessing Officer has recorded proper reasons for reopening the assessment on the basis of material available with him and hence reopening cannot be held to be invalid in law. Accordingly, we uphold the order passed by the learned CIT(A) on this issue.

9. The assessee has also challenged the order passed by the learned CIT(A) in partially sustaining the addition made by the Assessing Officer. As stated earlier, the Assessing Officer added 8% of alleged bogus purchases and the learned CIT(A) has reduced the same to 3%.

10. We heard the parties on this issue and perused the record. We noticed that the learned CIT(A) has reduced the addition to 3% of the alleged bogus purchases with the following observations :-

8.14 However AO estimated the profit margin @8% and the reasons given are that, 'most of the traders in the market actually operate at this level of margin in the open market, this fact was identified by the GOT introducing the Benign Assessment Procedure (BAP) for the assesses who are into manufacturing and/ or trading of diamonds. BAP was to be applicable for those diamond merchants, who were showing a profit margin of 8% of their turnover. Although, this BAP talks about the net

profit margin (NP), for a petty dealer, operating without any establishment, the GP would be almost similar to NP. Hence, it was assumed that the margin in the market, for a petty dealer, would be 8%, which is the same margin that is now being adopted for purchases made in cash from the grey market and for which the bills are procured from the Bhanwarlal Jain group concerns. Though I am in agreement with the reasoning of the AO for estimating of the profit percentage, I feel that the AO has not given the correct reasoning for estimation of the profit percentage @ 8% in this nature of trade. While deciding the profit element embedded in the bogus purchase cases, Gujarat High court adopted the profit @ 12.5% by taking the benefit derived out of the saving of taxes, considering the profit margin in that line of trade. In the light of the above, one has to see in the present case, who are in the manufacturing and trading of diamonds, the profit element embedded estimation @ 8% is correct or not. In diamond trade the rate of VAT is stated to be 1% and in some places like Surat the same is fully exempt. Coming to the profit margin in the trade, the task force group for diamond industry constituted by the Government of India, Ministry of Commerce and Industry, after considering the BAP scheme, recommended presumptive tax for net profit calculated @2% of trading activity and @3% for manufacturing activity or @2.5% across the board. It is also ascertained that the operating profit in case of diamond trading for computation of ALP by the TP wing is consistently in the region of around 1.75% to 3%. It is also brought to my notice that the AOs are also adopting 3% on the purchases made from Bhanwarlal group concerns, as the profit element embedded, in the subsequent assessments finalised on the similar set of facts. In view of the same and also since the profit margin is lesser in this sector, adopting 8% by the AO, is not based on correct footing. Considering the lesser profit margin in this sector i.e. around 2 to 3 percent and the taxes saved is around 1% and also on purchases made from places like Surat, there is no levy of tax; I am of the considered opinion that if the addition is sustained to the extent of 3% of the purchases made as the profit

element embedded in such purchases from the two parties belonging to the Bhanwarlal Group concerns, the same will meet the ends of justice. Accordingly I direct the AO to restrict the addition @3%, on the total purchases of 23,29,95,433/- from the three parties as the profit element embedded in such purchases. Grounds raised on this issue are 'Partly Allowed.

11. We heard the parties on this issue and gone through the order passed by the learned CIT(A). We noticed that the learned CIT(A) has taken note of the fact that the assessee has maintained quantity details and Assessing Officer has not doubted the genuineness of the sales. Further, the learned CIT(A) has taken note of the report given by the task force group for diamond industry and accordingly restricted the addition to 3% of the purchases. Before us, the assessee could not furnish any other material which would compel us to interfere with the decision taken by the learned CIT(A). Accordingly, we uphold the order passed by the learned CIT(A) on this issue."

8. On finding parity of facts, respectfully following the findings of the Coordinate Bench (supra), appeal of the revenue is dismissed and cross objection by the assessee is also dismissed.

Order pronounced in the open court on 14th May, 2024.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Mumbai / Dated 14.05.2024
Giridhar, Sr.PS

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

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, Mum