

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A", MUMBAI  
BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

**ITA No. 3999/Mum/2023 (A.Y. 2012-13)**

**M/s. Aarti Impex,**

HW-1050, Bharat Diamond Bourse,  
Bandra Kurla Complex,  
Bandra East,  
Mumbai - 400 051.

**PAN: AAGFA3166K**

..... Appellant

Vs.

**ACIT, Circle- 19(1),**

Piramal Lalbaug,  
Mumbai – 400 012.

..... Respondent

**ITA No. 3899/Mum/2023 (A.Y. 2012-13)**

**ACIT, Circle- 19(1),**

Piramal Lalbaug,  
Mumbai – 400 012.

..... Respondent

Vs.

**M/s. Aarti Impex,**

HW-1050, Bharat Diamond Bourse,  
Bandra Kurla Complex,  
Bandra East,  
Mumbai - 400 051.

**PAN: AAGFA3166K**

..... Appellant

Appellant by : Shri K.A. Vaidyalingan, Ld. AR  
Respondent by : Shri Manoj Kumar Sinha, Sr. DR  
Date of hearing : 29/04/2024  
Date of pronouncement : 16/05/2024

**ORDER**

**PER GAGAN GOYAL, A.M:**

These appeals by the assessee and revenue are directed against the order of the National Faceless Appeal Centre (NFAC), Delhi dated 20.09.2023 u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2012-13. The assessee has raised the following grounds of appeal: -

1. *The learned CIT (A) erred in dismissing the ground taken by the Appellant relating to the validity of the reassessment as the reassessment was only due to change of opinion and there was no failure on the part of the Appellant to disclose fully and truly all material facts necessary for the assessment which was originally completed u/s. 143 (3) of the Act.*
2. *The learned CIT (A) erred in upholding the addition/disallowance made by the learned AO even to the extent of Rs. 77,97,761/- (though quantum addition is reduced from Rs.6,23,82,093/-) of alleged bogus purchases which is contrary to the binding judgment of the jurisdictional Bombay High Court in Mohommad Haji Adam & Co. (Appeal No. 1004 of 2016).*
3. *On the facts and in the circumstances of the case, the learned CIT (A) erred in upholding the addition/disallowance made by the learned AO even to extent of Rs. 77,97,761/- (though quantum addition is reduced from Rs. 6,23,82,093/-) of the alleged bogus purchases without appreciating the fact that said addition was made merely on the basis of statement made by a third party and without furnishing to the appellant a copy of the said statement or affording to the appellant an opportunity to cross examine the third party.*
4. *On the facts and in the circumstances of the case, the learned CIT (A) erred in upholding the addition/disallowance made by the learned AO even to the extent of Rs. 77,97,761/- (though quantum addition is reduced from Rs. 6,23,82,093/-) of the alleged bogus purchases ignoring umpteen number judicial pronouncements of the coordinate Benches of the Hon. ITAT wherein either no addition was sustained or addition was restricted to 2 to 3% of the impugned alleged bogus purchases.*
5. *On the facts and circumstances of the case, the learned CIT (A) erred in upholding the addition/disallowance made by the learned AO even to the extent of Rs. 77, 97,761/- (though quantum addition is reduced from Rs. 6, 23, 82,093/-) of the alleged bogus purchases, which is purely based on suspicion, surmises and conjectures and even though all evidences in support of the genuineness of the impugned purchases were filed.*
6. *On the facts and circumstances of the case, the learned CIT (A) erred in upholding the addition/disallowance made by the learned AO even to the extent of Rs. 77, 97,761/- (though quantum addition is reduced from Rs. 6, 23, 82,093/-) of the alleged bogus purchases as unexplained expenditure u/s. 69C of the Act even though the impugned transactions were*

*recorded in the duly audited regular books of account of the Appellant and all payments were made through banking channel.*

*All the above grounds of appeal are independent and without prejudice to one another.*

*The Appellant craves leave to add, amend, alter, amplify, modify or withdraw any of the grounds of appeal."*

The Revenue has raised the following grounds of appeal: -

1. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A), has erred in reducing gross profit @ 12.5% as against the 100% addition made by the Assessing officer u/s. 69C of I.T. Act, on account of bogus purchases of Rs. 6, 23, 82,093/-, by ignoring the fact that the DGIT (Inv.), had proved beyond doubt that Shri. Rajendra Jain group concerns were involved in providing accommodation entry of sales & purchases without actual delivery of goods and the assessee was one of the beneficiary accepting accommodation entries for the purchases of goods?"*

2. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A), has erred in reducing gross profit @ 12.5% as against the 100% addition made by the Assessing officer u/s. 69C of I.T. Act, on account of bogus purchases of Rs. 6,23,82,093/-, by ignoring the fact that the action of the Assessing officer was based on credible information received from the DGIT (Inv.) and that the assessee during the course of assessment proceedings failed to prove the genuineness of the purchase transaction?"*

3. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A), has erred in reducing gross profit @ 12.5% as against the 100% addition made by the Assessing officer u/s. 69C of I.T. Act, on account of bogus purchases of Rs. 6,23,82,093/-, without appreciating the fact that the purchases from bogus parties are debited in P & L Account for which the assessee had not submitted any evidences, and the same was not allowable ?"*

4. *"Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A), has erred in reducing gross profit 12.5% as against the 100% addition made by the Assessing officer w/s. 69C of I.T. Act, on account of bogus purchases of Rs. 6,23,82,093/-, ignoring the fact that the assessee has tried to substantiate its claim as to genuineness of the alleged purchases with the help of book entries and documents prepared by itself, which were only*

*unilateral acts of the assessee and especially when contrary evidences were on records in the form of findings of investigation wing, Mumbai showing the sellers as bogus entities?"*

5. *"Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A), has erred in reducing gross profit @ 12.5% as against the 100% addition made by the Assessing officer u/s. 69C of 1.T. Act, on account of bogus purchases of Rs. 6,23,82,093/-, without appreciating the ratio in the decision of the Hon'ble Supreme Court in the case of N.K. Proteins Ltd., wherein the Court has held that when the purchases are from bogus suppliers, the entire purchases are liable to be disallowed?"*

6. *"The Ld. CIT (A) erred in reducing gross profit @12.5% as against the 100% addition made by the Assessing officer on account of bogus purchases of Rs. 6,23,82,093/-, without appreciating the fact that in the case of Swetamber Steels Ltd.(supra), the Hon'ble ITAT, Ahmadabad had confirmed the disallowance of the bogus purchase in entirety 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 also Hon'ble Supreme Court."*

7. *"Whether on the facts and circumstances of the case and in law the order of the Ld. CIT (A) has not appreciating the fact that during the assessment proceedings, the Assessing Officer has conducted independent enquiry by issuing notices u/s. 133(6) of the I.T. Act to 16 vendors/parties, of which most of the vendors found bogus and those found has not produced sufficient documentary evidences, books of accounts etc which were substantiate their claim of genuine purchases?"*

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

2. The brief facts of the case are that the assessee is a partnership firm, and filed its return of income on 25.09.2012, declaring total income at Rs. 29,21,394/-. The case of the assessee was selected for scrutiny and assessed u/s. 143(3) of the Act vide order dated: **10.11.2014** at returned income. A search and seizure action was carried out in the case of Shri Rajendra Jain Group (An established entry provider) on **03.10.2013**. The search action

resulted in a collection of evidence and other findings relating to beneficiaries from various Shri Rajendra Jain Group entities, including the assessee firm. It was alleged by the department that an entity controlled and owned by Shri Rajendra Jain Group, i.e. M/s. Mayank provided bogus purchase invoices to the assessee firm amounting to Rs. 6,23,82,039/-.

3. Considering, this information received by the revenue from the office of DGIT (Investigation), Mumbai, the assessee's case was re-opened u/s. 147 of the Act and a notice u/s. 148 of the Act was issued vide dated: 13.03.2019. The case of the assessee firm was assessed at Rs. 6,53,03,490/- (Rs. 29,21,394/- + Rs. 6,23,82,093/-). The assessee firm is aggrieved with this order of AO passed u/s. 147 r.w.s. 143(3) of the Act preferred an appeal before the Ld. CIT(A), who in turn deleted the addition of Rs.6,53,03,490/- and applied a G.P. rate of 12.5% resulting in the addition of Rs. 77,97,761/-. The assessee firm and revenue both feel aggrieved and prefer the appeals before us. For the sake of convenience and suitability of the matter, we are taking the appeal of the assessee first for disposal. Ground No. 1 raised by the assessee is withdrawn during the course of hearing, Ground Nos. 2 to 6 are interlinked and adjudicated together.

4. We have gone through the orders of the AO and the order of the Ld. CIT (A) and submissions of the assessee along with grounds taken before us. A similar, issue has been discussed numerous times before the Hon'ble High Courts (Including Hon'ble Jurisdictional High Court) and coordinate benches. We have gone through the facts of the present case and law as pronounced by the Hon'ble Jurisdictional and other High Courts on the issue. Before us, there is a very narrow compass in which, the issue is to be adjudicated, i.e. the rate of G.P. to be applied. Considering various judgements and facts of the case along with the report of the Task Force Group for the diamond industry constituted

under the aegis of the Ministry of Commerce, after considering the BAP Scheme, recommended presumptive tax @ 2% for trading activity and @ 3% for manufacturing activity. It is also pertinent to mention here that the operating profit in the case of the diamond industry for computation of ALP by the Transfer Pricing wing of the department is around 1.75% to 3% consistently.

5. The assessee firm relied on the following judicial pronouncements to support its grounds:

- i). PCIT vs. M/s. Mohommad Haji Adam & Co. I.T.A. No. 1004 of 2016 (Bombay High Court)
- ii). ACIT vs M/s. Vardhman Exports Tax Appeal No. 265 of 2008 (Gujarat High Court)
- iii). M/s. Dia Jewel vs ITO I.T.A. No. 2948/Mum/2023
- iv). M/s. Star Brillian vs ITO I.T.A. No. 1551/Mum/2020
- v). M/s. Creative International vs ITO I.T.A. No. 4528/Mum/2019
- vi). M/s. Shri H Dinesh and Company vs ACIT I.T.A. No. 924/Mum/2022
- vii). M/s. Oopal Diamond vs ACIT I.T.A. No. 1499/Mum/2020

Respectfully, following the decisions of the Hon'ble High Courts and coordinate bench along with facts of the matter discussed in para 4 (supra), we are of the considered view that, addition to the extent of 3% (Over and above already shown by the assessee) has to be sustained as the purchases are tainted as the same were made from Shri Rajendra Jain Group concerns and certainly without any additional advantage in terms of profit, the assessee firm would not entered into the same.

6. In the above terms, the order of the Ld. CIT (A) is confirmed except for a modification in the G.P. rate of 3% instead of 12.5%. **As a result, the appeal of the assessee is partly allowed.**

7. The appeal of the revenue, has to be considered in the light of the facts and decision of the appeal order in the case of the assessee, as decided (supra). As the facts of the matter have already been discussed in detail in the assessee's appeal (supra), We do not find any force in the contentions of the

revenue, hence the same is dismissed. **As a result, the appeal of the revenue is dismissed.**

**8. In nutshell, appeal of the assessee is partly allowed and the appeal of the revenue is dismissed.**

The order was pronounced in the open court on 16<sup>th</sup> May 2024.

Sd/-

(ANIKESH BANERJEE)

JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 16/05/2024

*Sr. PS (Dhananjay)*

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

BY ORDER,

(Asstt. Registrar)

**ITAT, Mumbai**