

**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.607/MUM/2024
Assessment Year: 2011-12**

S. Chirag and Company 820-Parikh Market, 39, Kennedy Bridge, Opera House, Mumbai – 400 004 (PAN : AACFS3699D)	Vs.	Income Tax Officer – 19(3)(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Anant Pai, CA
Revenue : Ms. Rajeshwari Menon, Sr.DR

Date of Hearing : 27.05.2024
Date of Pronouncement : 31.05.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1058764234(1), dated 14.12.2023 passed against the assessment order by the Income Tax Officer – 19(3)(2), Mumbai, u/s.143(3) of the Income-tax Act(hereinafter referred to as the “Act”), dated 19.12.2018 for Assessment Year 2011-12.

2. Grounds taken by the assessee are reproduced as under:

“1. On facts and circumstances of the case and in law, the learned Commissioner (Appeals) erred in sustaining the re-opening action of the learned Assessing Officer u/s 147, which was based on a general confessional statement of alleged bogus purchases and did not refer to the Appellant or its transactions.

The re-opening action is therefore without jurisdiction and deserves to be quashed in appeal.

2. On facts and circumstances of the case and in law, the learned Commissioner (Appeals) erred in sustaining the re-opening action of the learned Assessing Officer u/s 147, which was based on a 'borrowed satisfaction' and not supported by own reasons to believe that income chargeable to tax has escaped assessment in hands of the Appellant.

The re-opening action is therefore without jurisdiction and deserves to be quashed in appeal.

3. On facts and circumstances of the case and in law, even on merits, the learned Commissioner (Appeals) erred in sustaining in part the addition of bogus purchases instead of giving a clear finding for full deletion of the addition.

The addition of bogus purchases may please be deleted in full in this appeal.

4. The learned Commissioner (Appeals) erred in passing his order without granting the Appellant an adequate opportunity of being heard.

The order passed by him is in contravention of the principles of natural justice and hence, bad in law."

2.1. Before us, the Id. Counsel for the assessee has not pressed ground no.1 and 2 and has also not made any submissions thereon. Accordingly, these two grounds are dismissed as not pressed.

3. Brief facts of the case as culled out from records are that assessee filed its return of income on 19.09.2011 reporting total income at Rs.19,236/-. Assessee is engaged in the business of manufacturing, import-export and reselling of diamonds. In the year under consideration, business of the assessee was only export of diamonds. In the course of search and seizure action conducted in the case of Shri Gautam Kumar Jain and group concerns, it was found from the said investigation that assessee had obtained accommodation entries towards purchase of diamonds for the year under consideration, details of which is tabulated as under:

Sl.No.	Name of the hawala party	Bill amount (in Rs.)
1.	Krishna Diam	46,81,160/-
2.	Shri Ganesh Gems	6,49,710/-
3.	Total	53,30,870/-

4. Case of the assessee was reopened u/s.147 of the Act by recording reasons to believe that income to the extent of Rs.53,30,870/- had escaped assessment. Ld. Assessing Officer called for details and explanations in this respect. Assessee furnished detailed submissions corroborated by documentary evidences placed on record. It was submitted that goods purchased from the disputed suppliers have actually been exported and there cannot be denial or ambiguity on the genuineness of the export which is duly supported by customs certified invoices.

4.1. In the course of assessment, assessee submitted the details of purchases with names, addresses, PAN of suppliers, type of material purchased, quantity, details of labour charges, details of export sales including name and address of buyer. Assessee also furnished month wise quantitative details to demonstrate that entire quantity purchased during the year was sold since opening stock continued as the closing stock. This fact is duly reported in the tax audit report in form 3CD at page 11 of the paper book. Elaborate details matching the disputed purchases from the two parties with the corresponding export sales were also submitted to demonstrate that the gross profits earned were either uniform or higher. It was claimed that gross profit earned from the exports ranged between 5.16% and 14.83%, thus no disallowance could be made. It was also asserted that payments to the disputed suppliers were made by account payee cheques and their confirmations were placed on record. The comparative gross profit earned by the assessee on the disputed purchase transactions and the

accepted purchase transactions as furnished by the assessee is tabulated below:

Alleged bogus purchases' transactions			Undisputed purchases' transactions		
Total Purchases + Labour Charges (Rs.)	Total Corresponding Sales (Rs.)	Gross Profit (Amount and %) (Rs.)	Total Purchases + Labour Charges (Rs.)	Total Corresponding Sales (Rs.)	Gross Profit (Amount and %) (Rs.)
55,96,147	60,57,172	4,61,025	44,59,597	47,16,624	2,57,027
		8.24%			5.44%

4.2. Before the Assessing Officer, assessee also submitted details of gross profit earned in respect of purchases from the two parties by matching the purchase with its export sales. In the case of purchase from Shri Ganesh Gems, it was submitted that along with diamonds certain quantity of gold was also used by applying labour, after which the sale took place. The gross profit earned by the assessee on the sale of diamonds along with gold after applying labour from the purchases of diamond from Shri Ganesh Gems is 14.83%. These details of gross profits are extracted below:

KRISHNA DIAM							
DATE OF PURCHASE	CARATS	PURCHASES	DATE OF SALE	CARATS	SALES	GROSS PROFIT	PERCENTAGE
17/05/2010	53.80	1318100.00	21/05/2010	53.80	1389765.00	71665.00	5.16
27/07/2010	17.08	1443260.00	30/07/2010	17.08	1523974.00	80714.00	5.30
20/08/2010	89.78	1346700.00	27/08/2010	89.78	1440885.00	94185.00	6.54
11/03/2011	20.84	573100.00	18/03/2011	20.84	628223.00	55123.00	8.77
SHRI GANESH GEMS							
11/02/2011	92.74	649710.00	diamonds				
Ronak Gems Pvt Ltd							
25/02/2011	84.78	118692.00	gold				
28/02/2011	53.28	90583.00	gold				
Devendranath Dutta							
1-3-11		40000.00	labour				
01/03/2011		16000.00	labour				
01/03/2011							
Total Cost		914985.00	gold	92.74	1074325	159340.00	14.83
			diamonds	138.064			

4.3. After considering the submissions made by the assessee, ld. Assessing Officer observed that purchases made by the assessee from the above two parties and claimed as expenses in its profit and loss

account are not genuine. Thus, an addition of Rs.53,30,870/- was made on account of purchases from the two aforesaid parties. Aggrieved, assessee went in appeal before the CIT(A) and reiterated the submissions made in the course of assessment.

4.4. In addition to the submissions, assessee placed reliance on the decisions of Hon'ble Jurisdictional High Court of Bombay to submit that once the alleged bogus purchases have been shown to be sold, then the entire amount of alleged bogus purchases cannot be disallowed. In such a situation, only the profit embedded in the alleged bogus purchases can be added which is to be restricted to a reasonable profit considering the nature of business in which the assessee is engaged in. The decisions relied upon are as under:

- I. PCIT vs. Vaman International Pvt. Ltd. in ITA no.1940, dated 29.01.2020.
- II. PCIT vs. Paramshakti Distributors in ITA No.413 of 2017 dated 15.07.2019.
- III. PCIT vs. Rushabh Dev Technocable Pvt. Ltd. In ITA No.1330 of 2017, dated 10.02.2020.

4.5. Assessee also placed reliance on the decision of Hon'ble Jurisdictional High Court of Bombay in the case of PCIT vs. Mohammed Haji Adam in [2019] 103 taxmann.com 459 (Bom) to submit that addition or disallowance cannot exceed the gross profit earned in comparable transaction in non-bogus purchase transactions.

5. Ld. CIT(A) found favour with the submissions made by the assessee and noted the legal principle that income on bogus purchases is to be taxed and not the entire amount of purchases, when the credit entries corresponding to the purchases are not questioned/examined. He placed his reliance on the decision of

Hon'ble Jurisdictional High Court of Bombay in the case of PCIT Vs. Mohammed Haji Adam (supra). He further took note of the findings given by the Hon'ble Court in the case of PCIT vs. Nitin Ramdeoji Lohia (2022) 145 taxmann.com 546 (Bom), wherein it was held that gross profit ratio on purchases is to be brought to tax at the same rate as that of other genuine purchases. He also referred to the decision of Hon'ble High Court of Gujarat in the case of PCIT Vs. Surya Impex (2023) 148 taxmann.com 154 (Guj). Despite being convinced with the submissions of the assessee backed by reliance placed on several judicial precedents referred above, ld. CIT(A) worked out figure of sales at Rs.49,42,847/- to hold that entire purchases booked from bogus entities is not shown as sales. Thus, on this amount he held that profit is to be calculated at the same rate as gross profit shown from other purchases to be in line with judicial precedents. However, for the balance amount of Rs.3,88,023/- (53,30,870 – 49,42,847) he held that the entire amount of bogus purchases be added to the total income of the assessee. The said working is tabulated under:

Date	Name of Supplier	Carats	Amount	Date of Sale	Sales
17.05.2010	Krishna Diam	53.80	1318100	21.05.2010	1389765
27.07.2010	Krishna Diam	17.08	1443260	30.07.2010	1523974
20.08.2010	Krishna Diam	89.78	1346700	27.08.2010	1440885
11.03.2011	Krishna Diam	20.84	573100	18.03.2011	628223
	Total		4681160		4942847
11.02.2011	Shri Ganesh Gems	92.74	649710		
	Total		5330870		4942847

6. Aggrieved, assessee is in appeal before the Tribunal.

7. Before us, ld. Counsel for the assessee reiterated the submissions made before the authorities below duly corroborated by documents placed on record in a paper book containing 53 pages. The same are not reiterated as elaborately discussed above. It is an undisputed fact that opening stock continued as the closing stock which evidently demonstrates that all the purchases made during the year were sold within the year. The sales made by the assessee are not disputed which are all export sales. Further, assessee has evidently demonstrated the alleged disputed purchases with the sales made by it giving gross profit earned on these purchases. Assessee has duly disclosed all the material details corroborated by documentary evidences as evident from tax audit report and other submissions on record. We also take note of the fact that ld. CIT(A) had accepted the decisions of Hon'ble Jurisdictional High Court as well as of Hon'ble Gujarat High Court referred above and is convinced on submissions made by the assessee. However, while tabulating the working some mismatch crept in resulting into partial disallowance of Rs.3,88,023/-.

7.1. In this respect, ld. Counsel for the assessee demonstrated that in the table prepared by the ld. CIT(A), against the supplier Shri Ganesh Gems, in the column titled as 'sales', the corresponding sales figure is missing. This has resulted into a mismatch which in fact has been correctly mapped by the assessee in its details. In the submissions made by the assessee in this respect before the ld. Assessing Officer, details of gross profit of 14.83% was worked out which included component of gold and labour charges also apart from the diamonds purchased from this disputed supplier. These details are already extracted above. From the perusal of these details, we take note of the workings done by the assessee which includes details as to gold component and labour charges corroborated by documentary evidences. In the tax audit report, in clause 32, the GP ratio is

reported at 6.17%, whereas the GP on the purchases from Shri Ganesh Gems is worked out at 14.83%. Accordingly, considering all these facts on record and following the binding nature of judicial precedents referred above, we delete the partial addition sustained by the ld. CIT(A) of Rs.3,88,023/-, since for the remaining part of Rs.49,42,847/- ld. CIT(A) has already held that profit is to be calculated at the same rate as gross profit shown from other purchases in tune with the court orders. Ground no.3 taken by the assessee is allowed.

8. In the result, the appeal of assessee is allowed.

Order is pronounced in the open court on 31 May, 2024

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 31 May, 2024

MP, Sr.P.S.

Copy to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai