

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

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

AND

SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER

**ITA No. 639/M/2024
Assessment Year: 2012-13**

Essar Diamonds 3 rd Floor, Krishna Niwas Junction, Raja Ram Mohan Roy Road, Near Queens Road, Mumbai- 400004. PAN: AAAFE7383G	Vs.	The Deputy Commissioner of Income Tax- Circle 19(1) Matru Mandir, Tardeo Road, Mumbai- 400007.
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Jigar Mehta, C.A.
Revenue by : Shri P. D. Chougule (Addl. CIT) Sr. D.R.

Date of Hearing : 28 . 05 . 2024

Date of Pronouncement : 31 . 05 . 2024

O R D E R

Per: Ratnesh Nandan Sahay, Accountant Member:

1. This appeal has been filed by the appellant against the order of the Ld. CIT Appeal passed vide its order no. ITBA/NFAC/S/250/2023-24/1059591515(1) dated 11/01/2024 for assessment year 2012-13.
2. Following grounds of appeal have been raised.

1. (a) *The Ld. CIT(A) erred in law and facts in upholding the decision of Ld. Assessing Officer of treating the purchase of diamonds from M/s Krishna Diamonds Pvt. Ltd. amounts to Rs.57,09,725/- as bogus without appreciating the facts of the case and the documents submitted by the appellant during the course of assessment proceedings.*
 - (b) *The Ld. CTT(A) erred in law and facts in treating 12.5% of the purchase from M/s. Krishna Diamonds Pvt. Ltd. of Rs.57,09,725/- as reduced by Gross Profit already disclosed on record without acknowledging the decision of Hon'ble Bombay High Court in case of PCIT v. Mohommad Haji Adam & Co. [2019] 103 taxmann.com 459 (Bombay).*
 - (c) *The Ld. CIT(A) erred in law and facts in ignoring the fact that the gross profit offered by the appellant on sale of diamonds purchased from M/s Krishna Diamonds Pvt. Ltd. Le. 8.29% is higher than the gross profit offered on other sales i.e. 0.90%.*
 - (d) *All the above grounds are independent and without prejudice to each other.*
 - (e) *The Appellant craves leave to add, amend, delete and modify the above grounds of appeal.*
3. The facts of the case, in brief, are that the appellant is a partnership firm engaged in the business of import and export of diamonds. The assessment was reopened in this case on the basis of information received from DGIT investigation, Mumbai that during the assessment year 2012-13 the assessee has taken accommodation entries from one M/s. Krishna Diamonds Pvt. Ltd., one of the entities of Shri. Gautan Jain Group who had provided bogus accommodation entries to various beneficiaries. As per the information received by the Assessing officer, the assessee was also one of the

beneficiaries who received entries of bogus purchases to the tune of Rs.57,09,725/- during the assessment year under consideration. Accordingly, the assessing officer reopened the assessment and issued a notice u/s. 148 of the Income Tax Act to the assessee.

4. During the assessment proceedings, the assessing officer asked for various details from the assessee and after considering the same, the assessing officer added a sum of Rs.57,09,725/- u/s. 69C of the Act. Aggrieved by the order of the AO, the assessee filed appeal before the Ld. CIT Appeal who decided the appeal vide its order no. ITBA/NFAC/S/250/2023-24/1059591515(1) dated 11/01/2024 for assessment year 2012-13 and restricted the disallowance of bogus purchases to 12.5% of the total bogus purchases on the ground that the assessee was able to establish, on the basis of sales and purchases invoices, the value of purchases of 466.10 cts. of diamond from M/s. Krishna Diamonds Pvt. Ltd. worth Rs.57,09,725/- and sale of the same to M/s. Kaarvi Gems LLC, UAE for Rs.61,83,209/- The Ld. CIT (Appeal) has also observed that the traders in diamond market usually purchase diamond from the grey market and obtain bogus purchase bills to regularize the corresponding sales. Thus, only the

gross profit on the entire sales and purchase transactions is required to be taxed as has been held by the Hon'ble ITAT (Mumbai) in the case of M/s. D. C. Engineers Private Limited vide order ITA No.736/Mum/2019 dated 01/01/2021 which upheld the disallowance @ of 12.5% of all bogus purchases as reduced by the gross profit declared by the assessee.

5. Not satisfied with the findings of Ld. CIT Appeal, the instant appeal has been preferred. During the course of hearing before us, the assessee admitted that though, there is a bogus purchase of Rs.57,09,725/- yet a reasonable gross profit should only be disallowed as disallowance @12.5% of the bogus purchases will be too high and arbitrary in the prevailing diamond business.
6. To support the above contention, the appellant has also placed reliance on the decision of the Hon'ble High Court of Bombay in the Income Tax Appeal No. 1004 of 2016 with Income Tax Appeal No. 1013 of 2016 with Income Tax Appeal No. 1059 of 2016 with Income Tax Appeal No. 1064 of 2016 with Income Tax Appeal No. 1075 of 2016 with Income Tax Appeal No. 1095 of 2016 with Income Tax Appeal No. 1204 of 2016 with Income Tax Appeal No. 1012 of 2016 that a reasonable profit rate should be applied in the case of the

assessee. On the other hand, the departmental Representative from the Revenue side, supported the findings of the Ld. AO and the Ld. CIT (Appeals).

7. We have considered the facts of the case, material available on record and submissions made by both the parties and found that both Appellant and the Revenue did not oppose the idea of applying a reasonable gross profit in the present case. So far, the decisions of the Hon'ble High Courts and the Tribunals are concerned, it has already been held, as quoted above, that when the sales are not disturbed a reasonable gross profit should only be disallowed. Now coming to the case of the appellant, it has already shown a gross profit rate of 8.29% of the total bogus purchases of Rs.57,09,725/- as against the gross profit rate at 12.5% applied by the Ld. CIT Appeal. We, therefore, find it reasonable to apply a gross profit rate of 10% which comes to Rs.5,70,972/- The disallowance is thus, restricted to that amount only.
8. In the result, the appeal is partly allowed.

Order pronounced in the open court on 31.05.2024.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Mumbai, Dated: 31.05.2024.
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.