

**IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.3163/Mum/2023
(A.Y. 2007-08)**

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| Income Tax Officer- 19(2)(2), 503, Piramal Chambers, Income Tax Office, Parel, Maharashtra – 400012 | Vs. | Khodiyar Impex 15-A, Sopariwala Estate, Prasad Chambers Compound, Opera House Maharashtra- 400004 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AADFK2874R | | |
| Appellant | .. | Respondent |

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|-----------------|------------------------------|
| Appellant by : | P.D. Chougule |
| Respondent by : | Kiran Mehta & Ravi Dasija |

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| Date of Hearing | 25.04.2024 |
| Date of Pronouncement | 20.06.2024 |

आदेश / O R D E R

Per Amarjit Singh (AM):

This appeal filed by the revenue in electronic mode is directed against the order passed by the ld. CIT(A) NFAC for A.Y. 2007-08. The revenue has raised the following grounds before us:

- “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 @ 3% as against the 100% addition made by the Assessing office on account of bogus purchases of Rs. 1,86,50,000/, by Ignoring the fact that the DGIT (Inv.), had proved beyond doubt that Mr. Bhawarlal Jain & his Group concerns were involved in providing accommodation entry of sales & purchases without actual delivery of goods and the assessee was one of the beneficiary who 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 @3% as against the 100% addition made by the Assessing office on account of bogus purchases of Rs. 1,86,50,000/-, by Ignoring the fact that the action of the Assessing officer was based on credible information received from the DGIT (Inv), Mumbai 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 3% as against the 100% addition made by the Assessing office on account of bogus purchases of Rs. 1,86,50,000/-, by ignoring the fact that assessee had not responded to the Notices of Assessing officer during the assessment proceedings and failed to establish the genuineness of the purchase parties from whom purchases is claimed to have been made during the year?"*
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 @3% as against the 100% addition made by the Assessing office on account of bogus purchases of Rs. 1,86,50,000/-, by ignoring the fact that during the assessment proceedings, the assessee could neither produce any documents or evidences such as the delivery challans or the transport bills/invoices nor could produce the alleged parties from whom purchases is claimed to have made during the year ?"*
5. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the gross profit @ 3% as against the 100% addition made by the Assessing office on account of bogus purchases of Rs.1,86,50,000/-, by ignoring the fact that, the DGIT Inv.) Mumbai during their course of investigation found that the assessee had made purchases aggregating to Rs. 1,86,50,000/- from two alleged parties ie. Jewel Diam Rs. 80,50,000/- and Mr. Daksh Diamonds Rs. 1,06,00,000/-, which were belong to Bhanwarlal Jain group, engaged in providing only accommodation/bogus purchase bills?"*
6. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate that the assessee has opted for DTVSV for A.Y. 2010-11 & 2011-12, which implies that the assessee has accepted in principle about non-genuineness of the purchase?"*
7. *The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary?"*

2. Fact in brief is that assessee has filed return of income on 30.10.2007 declaring total income at Rs.16,44,320/-. The return was processed u/s 143(1) of the Act. Subsequently, the case was reopened by issuing of notice u/s 148 of the Act on 27.03.2014. The assessing officer received information from the Investigation wing Mumbai that

search and survey action was carried out by the Investigation Wing, Mumbai on 03.10.2013 in the case of Bhanwarlal Jain Group who were involved in providing accommodation entries in the forms of issuing of bogus sales/purchase bills without supplying any goods. As per the list of the parties forwarded by the DGIT(Investigation) details of accommodation entries availed by the assessee for the year under consideration is as under:

| Name of the Hawala Party | F.Y. | Amount in Rs. |
|--------------------------|---------|---------------|
| Jewel Diam | 2006-07 | 80,50,000/- |
| Daksh Diamonds | 2006-07 | 1,06,00,000/- |
| | Total | 1,86,50,000/- |

Therefore, the case was reopened after recording the reasons based on the aforesaid information and assessment u/s 144 r.w.s 147 of the Act was finalised on 30.03.2015. During the course of assessment the assessing officer had issued notice of hearing to the assessee but the assessee had not made any compliance, therefore, the assessing officer had finalised the assessment on the basis of material available on record. During the course of assessment the assessee was asked to furnish the details such as correct and complete address of the parties, purchase bills, invoice/bills, copies of ledger account details, transportation of goods, i.e lorry receipts detail of payment made to those parties etc. however, the assessee failed to make compliance as required by the assessing officer. Consequently the assessing officer concluded that purchases from the aforesaid parties related to Bhanwarlal Jain Group were not genuine, therefore, the entire amount of Rs.1,86,56,000/- shown as purchases was treated as unexplained expenditure and added to the total income of the assessee.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) vide order u/s 250 of the Act restricted the addition to the extent of 3% of the bogus purchases of Rs.1,86,50,000/-.

4. Heard both the sides and perused the material on record. During the course of assessment on the basis of information received from the Investigation Wing Mumbai that assessee has obtained accommodation bills of Rs.1,86,50,000/- from the two entities relating to Bhanwarlal Jain Group the assessing officer has disallowed the entire purchases shown to have been made from the aforesaid two entities. The ld. CIT(A) had considered the report of the task group for diamond sector which reported that the net profit in diamond manufacturing was in the rate 1.5% to 4.5% and in trading in the range of 1% to 3%. Before the ld. CIT(A) the assessee submitted that in the subsequent assessment years for assessment year 2009-10 to 2011-12 on identical issue the assessing officer had made addition of gross profit @ 3% of the non-genuine purchases in the case of the assessee. The ld.CIT(A) has taken into consideration the prevailing rate of profit element found in the case of diamond business and also considered the material fact that AO in the subsequent assessment years for assessment years 2009-10 to 2011-12 has made addition of gross profit @ 3% of non-genuine purchases in assessee's own case. Further we observe that assessing officer has not disproved the corresponding sale made against the purchases by the assessee. In view of the above facts and circumstances we consider that ld. CIT(A) is justified in restricting the addition to the extent of profit element embedded in the transaction reported to have made with the two parties as discussed above which was involved in providing accommodation entries. Therefore, we don't find any reason to interfere in the finding of ld. CIT(A). Accordingly, all the ground of appeal filed by the revenue are dismissed.

5. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 20.06.2024

Sd/-

(Sandeep Singh Karhail)
Judicial Member

Place: Mumbai

Date 20.06.2024

Rohit: PS

Sd/-

(Amarjit Singh)
Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.