

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.830/M/2024  
Assessment Year: 2012-13**

<b>Galaxy Gems</b> 2107- A, Panchratna, Opera House, Maharashtra- 400004. <b>PAN: AAAFG1085H</b>	Vs.	<b>Ward 19(1)(1)</b> Piramal Chamber, Dr. S. S. Rao Marg, Parel- 400012.
(Appellant)		(Respondent)

**Present for :**

**Assessee by** : Shri Sunil Hirawat, A.R.

**Revenue by** : Ms. Kakoli Ghosh, SR. D.R.

Date of Hearing : 27 . 06 . 2024

Date of Pronouncement : 27 . 06 . 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 (Appeals) passed u/s. 250 of the Income Tax Act [the 'Act' in short] vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1061213023(1) Dated 20/02/2024 for the Assessment Year 2012-13.
2. Following grounds of appeal have been raised by the appellant:

1. *“On facts and in law, the Learned Commissioner of Income Tax (Appeals), NFAC, Delhi (hereinafter referred to as Ld. CIT-A) had erred in confirming the addition of Rs.28,00,000/- being purchases made from Mixima Diam by treating the same as unexplained expenditure under section 69C of the I.T. Act without appreciating the correct facts of the case. Under the facts and circumstances of the matter, he ought not to have confirmed the said addition of Rs.28,00,000/- under section 69C of the I.T. Act.*
  2. *On facts and in law, the Ld. CIT-A had erred is not following the decision of the Hon'ble Bombay High Court (Jurisdictional) in the case of Mohammed Haji Adam & Co. (ITA No. 1004 of 2016) submitted before Ld. CIT-A, NFAC, Delhi during the appellant proceedings. Under the facts and circumstances of the matter, he ought to have followed the decision of Hon'ble High Court (Jurisdictional).*
  3. *On facts and in law, the Ld. CIT-A had failed to appreciate that the entire addition of Rs.28,00,000/- ought to have been deleted as per the ratio laid down by the jurisdictional High Court in the case of Mohammed Haji Adam & Co. (ITA No. 1004 of 2016). Under the facts and circumstances of the matter, he ought to have not failed to appeal the entire addition of Rs.28,00,000/-.*
  4. *The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing of the appeal, so as to enable the Hon'ble ITAT to decide this appeal according to law.”*
3. The facts of the case, in brief, are that the Search & Survey action was conducted in the case of Shri Bhanwarlal Jain and others on 19/03/2013 by the DGIT (Inv.), Mumbai in which dummy directors/partners/proprietors of various concerns which were actually

managed, controlled and operated by Shri Bhanwarlal Jain and his family were also covered. During the course of Search & Seizure proceedings, the statements of directors, partners and proprietors of various concerns managed by Shri Bhanwarlal Jain were recorded and they had committed that they are directors, partners and proprietors of various concerns in name only and everything is being managed and controlled by Shri Bhanwarlal Jain.

4. The assessee was one of the beneficiaries of one of the case namely Mimixa Diam from whom the assessee had taken accommodation entries amounting to Rs.28,00,000/-. The case was therefore reopened and notice u/s. 138 was issued after recording the reasons for the reopening of assessment u/s.147 of the Act. The Ld. AO, thereafter, added a sum of Rs.28,00,000/- u/s. 69C of the Income Tax Act holding that this purchase was bogus purchase and there is no actual delivery of goods only the accommodation entries were taken by the assessee.
5. Aggrieved by the order of the Ld. AO, the assessee preferred the appeal before the Ld. CIT(A). the Ld. CIT(A) vide its Order No. ITBA/NFAC/S/250/2023-24/1061213023(1) Dated 20/02/2024 dismissed the appeal of the assessee on the ground that the appellant could not establish the genuineness of the transaction and the entire purchase was a bogus purchase. Aggrieved by the order of the Ld. CIT(A), this appeal has been filed before us. During the appellate proceedings before us, the

appellant though admitted that the purchases made not be genuine but was unexplained. However, considering the ratio laid down by the jurisdictional High Court in the case of M/s. Mohammad Hazi Adam & Co. (ITA No. 1004 of 2016) the only G.P. addition should have been made is submitted as under:-

*2.19. The jurisdictional High Court in the case of M/s. M. Haji Adam & Co. (ITA NO. 1004 of 2016 dated 01.02.2019) (Annexure-E) after considering the decisions of N. K. Industries Ltd. (Tax appeal no. 240 of 2003, decided on 20.06.2016) has held as under:*

*8. In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. Thus being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases*

*shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of N.K. Industries Ltd. (Supra) cannot be applied without reference to the facts.*

*2.20. As the overall G.P. of the appellant was 4.72% and the G.P. of alleged buyer purchases and consequent sales is also 4.72%. It is therefore submitted that as per the ratio laid down by Hon'ble Bombay High Court in the case of M/s. Mohammad Haji Adam & Co. (Supra), the addition in the total income ought to have been deleted in full.”*

6. The Ld. CIT D.R., on the other hand placed the reliance on the order of the Ld. AO and the Ld. CIT(A). We have considered the rival submissions and find that the Ld. AO has rightly treated the purchases as bogus on the basis of the materials gathered during the course of search & seizure proceedings that the purchases made from the Mimixa Diam amounting to Rs.28,00,000/- is not genuine. However, considering the decision of the jurisdictional High Court of Bombay in the case of M/s.

Mohammad Hazi Adam & Co. (ITA No. 1004 of 2016) the addition should be restricted to the extent of bringing G.P. rate on the alleged bogus purchases wherein it has been held *“That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases”* Here in the instant case, the AO has not doubted that the sales of diamonds have not been made. Thus, the ratio of the above decision is clearly attracted in this case. We, therefore, restrict the addition of 4.72% of the total bogus purchases of Rs.28,00,000/-.

7. In the result, the appeal is allowed.

**Order pronounced in the open court on 27.06.2024.**

**Sd/-  
AMIT SHUKLA  
JUDICIAL MEMBER**

**Sd/-  
RATNESH NANDAN SAHAY  
ACCOUNTANT MEMBER**

Mumbai, Dated: 27.06.2024.

*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.