

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER**

**AND**

**RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.966/M/2024  
Assessment Year: 2012-13**

<b>M/s. Manoharlal Kanayalal Takhtani</b> 702, DheerajDhan, St. Alexious Road, Bandra (West) S.O., Mumbai- 400052. <b>PAN:AABPT2851P</b>	Vs.	<b>Deputy Commissioner of Income Tax, Circle 22(1)</b> Pirmal Chambers, Dr. S. S. Rao Marg, Parel- 400012.
(Appellant)		(Respondent)

**Present for :**

**Assessee by** : Ms. Manisha Ghind, A.R.

**Revenue by** : Smt. Kakoli Uttam Ghosh, D.R.

Date of Hearing : 24 .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/APL/S/250/2023-24/1059319289(1) Dated 03/01/2024 for the Assessment Year 2012-13.

2. Following grounds of appeal have been raised by the appellant:

1. *“The Hon'ble CIT (Appeal) has erred in passing an order, dismissing the appeal without having provided a reasonable opportunity of being heard.*
2. *The Hon'ble CIT (Appeal) has erred in upholding the action of Ld. Assessing officer without appreciating the fact/law that in assesses case original assessment was completed u/s. 143(3) and hence his validly completed assessment could only have been reopened if there was any failure on the part of the assessee to disclose fully and truly material facts for completion of his assessment which failure had neither been pointed out but the Ld. Assessing officer nor the Hon'ble CIT (Appeals).*
3. *The Hon'ble CIT(Appeals) has erred in conforming the order passed by Ld. Assessing Officer, without appreciating the fact that the order had been passed in contravention of principles of natural justice in as much as without even providing the copy of statement of Shri. Rajendra Jain, stated to have been recorded on the basis of which re-assessment proceedings had been initiated and without making the said person available for cross examination.*
4. *Without prejudice to the above, the appellant submits that the Hon'ble CIT, has failed to appreciate that even on merits the additions made by the Ld. Assessing Officer, being 100% of the alleged bogus purchase was not called for and also the fact that in appellants own case for the A.Y. 2009-10 the addition/disallowance @ 5% of the alleged bogus purchase.*
5. *The Hon'ble CIT has erred in upholding the order passed by the Ld. Assessing Officer without having considered even the legal grounds raised before him.”*

3. The facts of the case, in brief, are that the appellant is an individual and has filed his return of income for the assessment year under consideration declaring total income of Rs.19,74,004/- The assessment was made u/s. 143(3) of the Income Tax Act and the income was assessed at Rs.20,64,890/-. The Ld. AO, thereafter, reopened the assessment u/s. 147 of the Income Tax Act and notice u/s. 148 was issued to the assessee on the ground that the information was received from DGIT (Inv.), Mumbai informed that search & seizure action was carried out in the case of Shri Rajendra Jain, Sanjay Choudhary, Dharmichand Jain and their group concerns on 03/10/2013. During the course of Search & Survey action, it was revealed that this group concerns were merely providing accommodation entries through various benami concerns operated and managed by them. It was also found out that these concerns were indulged into fraudulent transactions of issuing accommodation entries for purchases, sales and unsecured loans and advances and the assessee was one of the beneficiaries of this accommodation entries which he had taken from one M/s. Kalash amounting to Rs.2,42,465/- and M/s. Maniprabha amounting to Rs.5,83,650/- which were the dummy concerns of the said Jain Group. The Ld. AO, therefore, added a sum of Rs.8,26,000/- u/s. 69C of the Income Tax Act treating this as bogus purchases as the assessee could not establish the genuineness of this purchases.

4. Aggrieved by the order of the Ld. AO, the assessee filed the appeal before the Ld. CIT(A) who dismissed the appeal of the assessee on the ground that the assessee has failed to substantiate that the purchases made from the above two concerns are genuine. The Ld. CIT(A) has also noted in its appellate order that the assessee despite given sufficient opportunity to substantiate the genuineness of the purchases, the assessee did not even bother to pursue its appeal before the Ld. CIT(A). The Ld. CIT(A) also held that even on merit no case is made out by the appellant with cogent evidence to explain the genuineness of the purchases. Aggrieved by the order of the Ld. CIT(A), this appeal has been filed before us.
5. During the course of appellate proceedings before us, the counsel of the appellant submitted a paper book in which he has given various details to show that the entire purchases were genuine. The appellant also challenged the reopening of assessment u/s. 147 of the Income Tax Act on the ground that the assessment in this case was already made u/s. 143(3) of the Income Tax Act on 14/12/2019 all had disclosed all material facts before the AO and thus, the reopening of the assessment is bad in law.
6. We have considered the facts of the case, orders of the Ld. AO as well as the Ld. CIT(A) and it is found that the Ld. AO had received information from the Investigation Wing of the department that assessee had taken accommodation entries amounting to Rs.8,26,115/- from two persons

who were dummies of the proprietor Shri Rajendra Jain group of cases and therefore, the Ld. AO was right in initiating the reopening proceedings u/s. 147 of Income Tax Act as the assessee had failed to disclose this material fact to Ld. AO that these purchases were made from the concerns which are dummies of Jain Group and has provided accommodation entries without having actual delivery of good.

7. So far the addition of Rs.8,26,115/- being the alleged bogus purchases, is concerned, the appellant has admitted that even in the case of bogus purchases, only G.P. addition has to be made as has been held by the jurisdictional High Court and Coordinate Benches of the ITAT that the purchases cannot be rejected without disturbing the sales in case of a trader. The Departmental Representative relied on the orders of the AO and the Ld. CIT (A).
8. We have considered the rival submissions and respectfully following the decisions of the jurisdictional High Court and the coordinate benches of the ITAT, we restrict the addition to 4.72% of the total bogus purchases of Rs.8,26,115/- considering the margin of profit in diamond cases.
9. In the result, the appeal is partly 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.