

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA Nos. 429 to 433/JP/2024
निर्धारण वर्ष/Assessment Years : 1998-99 to 2001-2002 & 2003-04

Govindam Export, C/o VKG & Co., "Shree Ramam", 58 Shree Gopal Nagar, Gopalpura Bye Pass Road, Jaipur	बनाम Vs.	Dy. Commissioner of Income Tax, Circle-01, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAAFG 7919 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Vijay Agarwal, CA &
Sh. Gulsan Agarwal, CA
राजस्व की ओर से / Revenue by : Sh. Arvind Kumar, CIT-DR

सुनवाई की तारीख / Date of Hearing : 27/06/2024
उदघोषणा की तारीख / Date of Pronouncement: 01/08/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

All these bunch of five appeals filed by the assessee, against the order Commissioner of Income tax (Appeals)-4, Jaipur [hereinafter referred to as 'CIT(A)'] dated 24.01.2024 for A.Y. 1998-99 and AY 1999-2000 and order dated 15-01-2024 for AY 2000-01, A.Y. 2001-02, and AY 2003-04 which in turn arise from the orders dated 31-10-2018 for all these

assessments years passed u/s. 260A (set Aside) r.w.s. 153A of the Act by the Dy Commissioner of Income Tax, Circle-1, Jaipur.

2. Since the issues involved in these appeals are almost identical on facts and are almost common, except the difference in figure disputed / added in each year. Therefore, these appeals were heard together with the agreement of both the parties and are being disposed off by this consolidated order.

3. In this case the registry pointed out that the appeal in these bunch of cases are delayed by 13 days. At the time of hearing of the appeal the Id. AR of the assessee submitted that though the order of the Id. CIT(A) is dated 24.01.2024, but the impugned orders were served on the assessee by speed post by on 15.02.2024 and if that fact is considered there is no delay as such.

3.1 The Id. DR representing the revenue did not raise any objection to the factual aspect of the matter.

3.2 We have considered the facts of the case that the date of communication of the order is not under dispute and the same is

15.02.2024 if that is considered then there is no delay as such and thus all these appeals are admitted for disposal on its merits.

4. The Grounds taken by the assessee in each appeal are as under: -

(i) **AY 1998-99 (ITA No. 429/JPR/2024),**

1. On the facts and in the circumstances of the case and in law the assessment order passed by Ld. Assessing Officer on 31.10.2018 is bad in law, void-ab-initio, and deserves to be annulled for various reasons including following: -

- (i) During the course of search over the assessee no incriminating material of whatsoever nature was found from the premises of the assessee to prove that the purchases made by the assessee is not genuine, therefore, in view of various judgement of including latest Judgment of Hon'ble Supreme Court in the case of **PCIT Central-3 V/s Abhisar Buildwell Private Limited 2023 (4 TMI) 1056** no addition can be made in respect of completed assessment in absence of any incriminating material.
- (ii) The assessment order was passed without complying the provisions of section 153D of the Act.
- (iii) That the order of the Id. Assessing Officer is arbitrary, whimsical, capricious, perverse and against the law and facts of the case.

The CIT (A) erred in not annulling the assessment order and also not deleting the additions so made in toto.

2. On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming the action of Ld. A.O. of rejecting the books of accounts by applying the provisions of section 145(3) of Income Tax Act, 1961.
3. On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in (i) holding that firm was not interested to identified the persons from whom actual purchases has been made and did not produce unregistered dealers, (ii) holding that the purchases to tune of Rs. 2,78,552/- is unverifiable and under invoiced to show more profit to claim the deduction u/s 80HHC, (iii) confirming the addition of Rs. 69,638/- being 25% of alleged unverifiable purchases of Rs. 2,78,552/- (iv) directing to tax the same as income from other sources and (v) holding that assessee paid 25% of doubtful purchases through undisclosed cash/undisclosed source.
4. The appellant prays for leave to Add, to amend, to delete, or modify the all or any grounds of appeal on or before the hearing of appeal.

(ii) AY 1999-2000 (ITA No. 430/JPR/2024)

1. On the facts and in the circumstances of the case and in law the assessment order passed by Ld. Assessing Officer on 31.10.2018 is bad in law, void-ab-initio, and deserves to be annulled for various reasons including following: -
 - (i) During the course of search over the assessee no incriminating material of whatsoever nature was found from the premises of the assessee to prove that the purchases made by the assessee is not genuine, therefore, in view of various judgement of including latest Judgment of Hon'ble Supreme Court in the case of **PCIT Central-3 V/s Abhisar Buildwell Private Limited 2023 (4) TMI) 1056** no addition can be made in respect of completed assessment in absence of any incriminating material.
 - (ii) The assessment order was passed without complying the provisions of section 153D of the Act.
 - (iii) That the order of the Id. Assessing Officer is arbitrary, whimsical, capricious, perverse and against the law and facts of the case.

The CIT (A) erred in not annulling the assessment order and also not deleting the additions so made in toto.

2. On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming the action of Ld. A.O. of rejecting the books of accounts by applying the provisions of section 145(3) of Income Tax Act, 1961.
3. On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in (i) holding that there is no evidence that business of trading in precious and semi-precious conducted by M/s Tirupati Balaji Gems and further erred in holding that Shri Lallu Ji and their partners were real owners and beneficiary of this concern which is contrary to findings of fact as held by Hon'ble ITAT Jaipur in the case of Shri Rakesh R Purohit and others (Lalluji group) and findings of ITAT confirmed by Hon'ble Rajasthan High Court by dismissing the appeal filed by the revenue in the case of Rakesh R Purohit and others (Lalluji Group), (ii) holding that the purchases of Rs. 65,347/- is unverifiable and under invoiced to show more profit to claim the deduction u/s 80HHC, (iii) confirming the addition of Rs. 65,347/- being 25% of purchases of Rs. 2,61,387/- (iv) directing to tax the same as income from other sources and (iv) holding that assessee paid 25% of doubtful purchases through undisclosed cash/undisclosed source.
4. The appellant prays for leave to Add, to amend, to delete, or modify the all or any grounds of appeal on or before the hearing of appeal.

(iii) AY 2000-2001(ITA No. 431/JPR/2024)

1. On the facts and in the circumstances of the case and in law the assessment order passed by Ld. Assessing Officer on 31.10.2018 is bad in law, void-ab-initio, and deserves to be annulled for various reasons including following: -
 - (i) During the course of search over the assessee no incriminating material of whatsoever nature was found from the premises of the assessee to prove that the purchases made by the assessee is not genuine, therefore, in view of various judgement of including latest Judgment of Hon'ble Supreme Court in the case of **PCIT Central-3 V/s Abhisar Buildwell Private Limited 2023 (4) TMI) 1056** no addition can be made in respect of completed assessment in absence of any incriminating material.
 - (ii) The assessment order was passed without complying the provisions of section 153D of the Act.
 - (iii) That the order of the Id. Assessing Officer is arbitrary, whimsical, capricious, perverse and against the law and facts of the case.

The CIT (A) erred in not annulling the assessment order and also not deleting the additions so made in toto.

2. On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming the action of Ld. A.O. of rejecting the books of accounts by applying the provisions of section 145(3) of Income Tax Act, 1961.
3. On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in (i) holding that there is no evidence that business of trading in precious and semi-precious conducted by M/s Vinayak Overseas solely on the statement of Shri Mohan Prakash Sharma, (ii) holding that the purchases of Rs. 3,56,250/- is unverifiable and under invoiced to show more profit to claim the deduction u/s 80HHC, (iii) confirming the addition of Rs. 3,56,250/- being 25% of purchases of Rs. 14,25,000/- (iv) directing to tax the same as income from other sources and (iv) holding that assessee paid 25% of doubtful purchases through undisclosed cash/undisclosed source.
4. The appellant prays for leave to Add, to amend, to delete, or modify the all or any grounds of appeal on or before the hearing of appeal.

(iv) **AY 2001-2002 (ITA No. 432/JPR/2024)**

1. On the facts and in the circumstances of the case and in law the assessment order passed by Ld. Assessing Officer on 31.10.2018 is bad in law, void-ab-initio, and deserves to be annulled for various reasons including following: -
 - (i) During the course of search over the assessee no incriminating

material of whatsoever nature was found from the premises of the assessee to prove that the purchases made by the assessee is not genuine, therefore, in view of various judgement of including latest Judgment of Hon'ble Supreme Court in the case of **PCIT Central-3 V/s Abhisar Buildwell Private Limited 2023 (4) TMI) 1056** no addition can be made in respect of completed assessment in absence of any incriminating material.

- (ii) The assessment order was passed without complying the provisions of section 153D of the Act.
- (iii) That the order of the Id. Assessing Officer is arbitrary, whimsical, capricious, perverse and against the law and facts of the case.

The CIT (A) erred in not annulling the assessment order and also not deleting the additions so made in toto.

- 2 On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming the action of Ld. A.O. of rejecting the books of accounts by applying the provisions of section 145(3) of Income Tax Act, 1961.
- 3 On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in (i) holding that there is no evidence that business of trading in precious and semi-precious conducted by M/s Vinayak Overseas solely on the statement of Shri Mohan Prakash Sharma, (ii) holding that Shri Navratan Maheshwari (proprietor of M/s Ganpati exports) found indulged in the practice of issuing bogus bills during the course of search operation on this person, (iii) holding that the purchases of Rs. 1,86,209/-, made from above named concerns, is unverifiable and under invoiced to show more profit to claim the deduction u/s 80HHC, (iv) confirming the addition of Rs. 1,86,209/- being 25% of purchases of Rs. 7,44,834/- (v) directing to tax the same as income from other sources and (vi) holding that assessee paid 25% of doubtful purchases through undisclosed cash/undisclosed source.
- 4 The appellant prays for leave to Add, to amend, to delete, or modify the all or any grounds of appeal on or before the hearing of appeal.

(v) AY 2003-04 (ITA No. 433/JPR/2024)

1. On the facts and in the circumstances of the case and in law the assessment order passed by Ld. Assessing Officer on 31.10.2018 is bad in law, void-ab-initio, and deserves to be annulled for various reasons including following: -
 - (i) The assessment order was passed without complying the provisions of section 153D of the Act.
 - (ii) That the order of the Id. Assessing Officer is arbitrary, whimsical, capricious, perverse and against the law and facts of

the case.

The CIT (A) erred in not annulling the assessment order and also not deleting the additions so made in toto.

- 2 On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming the action of Ld. A.O. of rejecting the books of accounts by applying the provisions of section 145(3) of Income Tax Act, 1961.
- 3 On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in (i) holding that proprietor/directors of M/s Shruti Gems & M/s Naman Gems private Limited were dummy proprietor/director and these firms had involved in supplying bogus bills and the finding is solely based on the self-serving statements/affidavits of proprietor/director of respective concern which is contrary to the findings of facts as held by Hon'ble ITAT Jaipur Bench in the case of Shri Umesh Saboo prop of Shruti Gems and in the case of M/s Naman Gems Pvt Ltd (ii) holding that the purchases to tune of Rs. 15,28,323/-, made from above named concerns, is unverifiable and under invoiced to show more profit to claim the deduction u/s 80HHC, (iii) confirming the addition of Rs. 15,28,328/- being 25% of alleged unverifiable purchases of Rs. 61,13,313/- (iv) directing to tax the same as income from other sources and (iv) holding that assessee paid 25% of doubtful purchases through undisclosed cash/undisclosed source.
- 4 The appellant prays for leave to Add, to amend, to delete, or modify the all or any grounds of appeal on or before the hearing of appeal.

5. Brief facts of the case are that the assessee is a partnership firm and engaged in the business of export of gemstones. The Income Tax Department carried out the search and seizure operation on business premises of the assessee on 24-06-2003 and in consequent to that the assessment proceedings were initiated u/s 153A of the Act. In compliance to notice issued u/s 153A of the Act, the assessee filed its return on 02-01-2006 declaring same income as declared in original returns. As the assessee has taken a technical ground of making the addition in the year

under consideration as to the nature of addition based on the incriminating material or not, it would be thus also necessary to tabulate the details of filing of the original return u/s 139 (1) vis a vis time limit for issue of notice u/s 143(2) and date of issue of the notice u/s 143(2) of Income Tax Act, 1961 for these assessment years as well. The position of that aspect is tabulated herein below: -

Assessment Year	Date of filing return	Income declared in return u/s 139(1) (Rs.)	Time limit for issue of notice u/s 143(1)	Date of issue of Notice u/s 143(1)
1998-1999	16-11-1998	1690	30-11-1999	08-12-2004
1999-2000	15-06-1999	0	30-06-2000	08-12-2004
2000-2001	18-07-2000	0	31-07-2001	08-12-2004
2001-2002	11-09-2001	13,15,817	30-09-2002	08-12-2004
2003-2004	19-11-2003	35,82,887	Search on 24-06-2003	

Original Assessment Proceedings / First round of litigation

6. Pursuant to the search assessments of the assessee the year mentioned herein below were completed u/s 153A read with section 143(3) of Income Tax Act 1961 on 22.03.2006 wherein the total income of the assessee was computed tabulated here in below :-

Assessment Year	Income declared in return u/s 139(1) (Rs.)	Income Assessed u/s 153A (Rs.)
1998-1999	1690	4,56,069

1999-2000	0	5,38,911
2000-2001	0	60,57,063
2001-2002	13,15,817	47,44,200
2003-2004	35,82,887	1,31,02,491

The issue taken up for all these years are on similar contention holding that the purchases made by the assessee are tainted / bogus / unverifiable. The details of the amount considered as tainted or bogus with respect to the each of the parties considered in each of the year is also tabulated here in below :

Astt Year	Purchases held by AO in original Assessment proceedings as bogus/unverifiable
1998-1999	a) Shree Nath Impex Rs. 2,77,128/- b) From various unregistered dealers Rs. 2,78,552/-
1999-2000	M/s Tirupati Balaji Gems Rs. 2,61,387/-
2000-2001	a) M/s Meena Gems Rs. 16,55,104/- b) M/s Vinayak Overseas. Rs. 14,25,000
2001-2002	a) M/s Ganpati Export, Rs. 5,25,000/- b) M/s Arham Gems, Rs. 7,29,375/- c) M/s S.V. Enterprises, Rs. 14,20,290/- and Rs. 5,81,360/- d) M/s Agarwal Gems Centre, Rs. 4,21,800/-and e) M/s Vinayak Overseas. Rs. 2,19,834
2003-04	a) M/s Shruti Gems Rs. 47,87,521/- b) M/s Naman Gems Pvt Ltd Rs. 13,25,792/ c) Real Gems INC Rs.7,15,465/- d) Bright Gems Rs, 2,42,500/-

While making the addition for all these purchases, the Id. AO rejected the books of accounts for all these years by resorting to the provision of section 145(3) of the Act.

7. In respect of the assessment year 1998-99 and AY 2001-2002 Id. AO estimated the net profit of the assessee @ 20% of total turnover declared by the assessee and calculated the net profit of the assessee at Rs. 2,77,840/- and Rs. 23,37,099/- respectively as against net profit of Rs. 7,33,909/- for AY 1998-99 and Rs. 64,14,944/- for AY 2001-2002 declared by the assessee in the returns and held that an excess profit of Rs. 4,56,069/- and Rs. 40,77,845/- for AY 1998-99 and AY 2001-2002 respectively was excess profit declared by the assessee to claim excess deduction u/s 80HHC by holding that the assessee has made under invoiced purchases and the payment of balance purchases of Rs. 4,56,069/- & 40,77,845/- for AY 1998-99 and AY 2001-2002 respectively was made from its undisclosed sources, and based on these findings he treated this income as income from other sources of the assessee.

8. For assessment year 1999-2000, AY 2000-01 and AY 2003-04, then assessing officer held the assessee has **declared purchases from the persons who were simply issuing bogus purchases vouchers and**

there were no export sales by assessee and only laundering of unaccounted money was made for claiming deduction u/s 80HHC by bringing the foreign remittance in India through Hawala. The learned assessing officer treated the entire export sales of Rs. 5,98,789/- for AY 1999-2000, Rs. 67,30,870/- for AY 2000-01 and Rs. 1,45,58,323/- for AY 2003-04 as unaccounted income brought in the shape of foreign remittance and after reducing the expenses @ 10% of total sales (expenses incurred in bringing unaccounted money under the cover of foreign remittance) the balance income calculated as under was assessed as income of the assessee from other sources and deduction u/s 80HHC was not allowed to the assessee.

Particulars	AY 99-00	AY 2000-01	AY 2003-04
Turnover Declared by assessee	5,98,789/-	67,30,070/-	1,45,58,323/-
Export declared by AO as bogus	5,98,789/-	67,30,070/-	1,45,58,323/-
Less :- 10% Expenses to achieve bogus export remittance	59,878/-	6,73,007/-	14,55,832/-
Export sales treated as bogus (after allowing expenses @10% of turnover)	5,38,911	60,57,063	1,31,02,491
Total Addition by AO	5,38,911	60,57,063	1,31,02,491

First appellate proceeding / First round of litigation

9. The assessee challenged the finding of the Id. AO for all these years before the Id. CIT(A). While dealing with these appeals of the assessee he confirmed the action of the Id. AO in rejecting the books of accounts of the assessee. But at the same time, he holds that the export sales made by the assessee cannot be considered as not genuine. In that appeal finding the Id. CIT(A) considered the purchases of the parties listed in the table herein below are not verifiable and held that the genuineness of purchases made from other than these parties cannot be doubted as there is nothing incriminating against such parties in the assessment order. Then CIT (A) confirmed the addition of income being 25% of unverifiable purchases treating the same made to inflate the export profit and directed to treat the same as Income from other sources. This impacted to the addition in total income of the assessee resulted the following figures :

Astt Year	Purchases held by AO in original proceedings as bogus/unverifiable	Amount of unverifiable purchases (Rs.)	Addition confirmed @ 25% of unverifiable purchases (Rs.)
1998-1999	From various unregistered dealers	2,78,552/-	69,638/-
1999-2000	M/s Tirupati Balaji Gems	2,61,387/-	65,347/-
2000-2001	M/s Vinayak Overseas.	14,25,000	3,56,250/-
2001-2002	a) M/s Ganpati Exports Rs. 5,25,000/- b) M/s Vinayak Overseas. Rs. 2,19,834/-	7,44,834/-	1,86,209/-

AY 2003- 2004	a) M/s Shruti Gems Rs. 47,87,521/- b) M/s Naman Gems Pvt Ltd Rs. 13,25,792/	61,13,313/-	15,28,328/-
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Second appellate proceeding / First round of litigation

10. Aggrieved from the order of the Id. CIT(A) both the parties preferred appeal before the ITAT. The revenue filed the appeal and the assessee filed the cross objections. The relevant finding of the ITAT in the first round of litigation for all these years are reproduced here in below :

For AY 1998-99 (in para 11 at Page 14 of its order dated 30.05.2008)

“Under these circumstances we are of the view that there was no reason with the lower authorities to doubt the genuineness of the purchase made from the claimed parties by the assessee and to reject the books by invoking the provisions of S. 145(3) of the Act on that account to estimate the income if the assessee applying a different G.P. rate. We thus while setting aside additions made and sustained by the lower authorities direct the A.O. to delete the addition of Rs. 69,638/- sustained by the Ld. CIT (A). The ground No. 1 to 7 of the appeal for A.Y. 1998-99 preferred by the department are rejected and objection No. 1 & 2 of the cross objection are allowed.”

For AY 1999-2000 (in para 14 at Page 17 of its order dated 30.05.2008)

“Under these circumstances, we are of the view that when the assessee had furnished all the necessary information supported with documents for the claimed purchases from the named parties and exports of the said goods with necessary documents in support, there was no occasion before the AO to reject the books of account on that basis and estimate the income of the assessee. The Ld. CIT (A) was also not justified in upholding the application of S. 145(3) of the Act and treating the purchases claimed to have been made from M/s Tirupati Balaji Gems as non- genuine. We thus while setting aside additions made and sustained by the lower authorities and direct the A.O. to delete the addition of Rs. 65,347/- sustained by CIT (A) in this regard while allowing objection No. 1 & 2 of the cross objection preferred by the assessee and reject the grounds of appeal preferred by the revenue as not maintainable.”

For AY 2000-2001 para 20 at Page 22 of its order dated 30.05.2008

“Under these circumstances, we are of the view that the A.O. was not justified in doubting the correctness of claimed purchases made from M/s Vinayak Overseas and M/s Meena Gems and export of the said goods and in invoking the provisions of section 145(3) of the Act to estimate the income of the assessee. Under these circumstances, we while setting aside the adverse finding of the lower authorities against the genuineness of the claimed purchases and exports direct the A.O. To delete the addition of Rs. 3,56,250/- sustained by the Ld. CIT (A). The grounds of the appeal preferred by the department are thus rejected and objection Nos. 1 &2 of the cross objection are allowed.”

For AY 2001-2002 para 22-24 at Page 27 of its order dated 30.05.2008

“We are of the view that when the assessee has discharged its initial burden by furnishing the necessary information supported with evidence to establish the genuineness of the claimed purchases made from the above named two parties i.e. M/s Vinayak Overseas and M/s Ganpati exports, there was no reason before the Ld. CIT (A) to disbelieve the same in absence of better evidence filed by the A.O. to rebut the claim of the assessee. We thus while setting aside adverse finding of the lower authorities on the issue direct the A.O. to delete the addition of Rs. 1,86,209/- sustained by the Ld. CIT (A) and the action of the lower authorities in upholding the application of S. 145(3) of the Act on account of unverifiable purchases made from the above parties. The grounds of the appeal preferred by the department are thus rejected and objection Nos. 1 & 2 of the cross objection are allowed.”

For AY 2003-2004 para 27-28 at Page 29-32 of its order dated 30.05.2008

“Under these circumstances, we are of the view that initial onus was discharged by the assessee to establish the genuineness of the claimed purchases made from the above named parties, hence, there was no reason before the A.O. to doubt the same in absence of any positive evidence and estimating the income after invoking provisions of S. 145(3) of the Act. Ld. CIT (A) was thus also not justified in holding that purchase made from M/s Shruti Gems and Naman Gems Pvt. Ltd were not verifiable upholding the invocation of S. 145 of the Act on this account despite holding that entire export sales are proved with reference to the relevant documents and that the assessee had received foreign remittance as sales consideration of exported goods. We thus, while setting aside the adverse finding of the lower authorities against the genuineness of the claimed purchases claimed by the assessee from the above-named parties and export of the same, direct the A.O. to delete the addition of Rs. 15,28,328/- sustained by the Ld. CIT (A).

29. In result, grounds of appeal preferred by the revenue are rejected whereas cross objection Nos 1 & 2 questioning the addition of Rs. 15,28,328/- and application of s. 145(3) of the Act are allowed. The objection No. 3 is dismissed as not pressed.”

Appeal to High Court / First round of litigation

11. Feeling dissatisfied the revenue filed appeal before Hon'ble Rajasthan High Court challenging the order passed by ITAT in the above case. Hon'ble Rajasthan High Court, vide order dated 03.05.2017 remanded matter back to the file of the Id. Assessing Officer. The relevant finding of the jurisdictional high court is reproduced here in below for the sake of brevity:

“3. Counsel for the appellant contended that the issue is squarely covered by the decision of this court in the case of Commissioner of Income Tax, Jaipur-I, New Central Revenue Building, Statute Circle, Jaipur Vs. M/s. Gems Paradise, Gulab Niwas, M. I. Road, Jaipur in D. B. Income Tax Appeal no. 201/2010 decided on 2nd November, which reads as under:

3. Considering the law declared by the Supreme Court in the case of Vijay Proteins Ltd. Vs. Commissioner of Income Tax, Special leave to Appeal (C) No. 8956/2015 decided on 06.04.2015 whereby the supreme court has dismissed the SLP and confirmed the order dated 09.12.2014 passed by the Gujrat High Court and other decisions of the High Court of Gujarat in the case of Sanjay Oilcake Industries Vs Commissioner of Income Tax (2009) 316 ITR 274 (Guj) and N. K. Industries Ltd Vs Dy. C.I.T. Tax Appeal No. 240/2003 decided on 20.06.2016, the parties are bound by the principal of law pronounced in the aforesaid three judgement.

4. We remit back the case to the Assessing Officer for deciding afresh on the factual matrix. The authority will accept the law but the transaction whether it is genuine or not will be verified by the Assessing Officer on the basis of the aforesaid three judgements. The issues are answered accordingly. The appeal is accordingly disposed of.”

4. Counsel for the respondent was not in a position to assail the aforesaid factual position.

5. In that view of the matter, the issue is covered by the aforesaid judgement and the matter is remitted back to the Assessing Officer who will look in the matter afresh.

6. In view of the decision rendered hereinabove, the appeals are disposed off.”

Second round litigation proceeding before the Id. AO after the hon’ble Rajasthan high court order setting aside all these years assessment.

12. The assessment in all these cases completed As the jurisdictional high court set aside the issue of tainted purchase to the file

Assessment Year	Income declared in return u/s 139(1) (Rs.)	Income Assessed u/s 153A (Rs.) first round	Income Assessed u/s 260A(set aside) r.w.s. 153A second round
1998-1999	1690	4,56,069	4,56,069
1999-2000	0	5,38,911	5,38,911
2000-2001	0	60,57,063	60,57,063
2001-2002	13,15,817	47,44,200	47,44,200
2003-2004	35,82,887	1,31,02,491	1,31,02,491

As it is evident that the income assessed in the second round of litigation, the Id. AO did not make any further investigations or findings. He has assessed the income of the assessee at the same figure based on the similar contention as it was in the first round and therefore, the same are not repeated.

13. Aggrieved from the finding of the Id. AO the assessee preferred the first appeal in the second round of litigation before the Id. CIT(A). The issue

raised by the assessee with that of the finding of the Id. CIT(A) is tabulated herein below for the sake convenience :

S. No.	Main Issue in appeal	Whether decided against the assessee or favour of assessee	Finding of in CIT (A)
1.	For AY 1998-99 to AY 2001-02 No addition can be made in completed assessment without any incriminating material relying on decision of Hon'ble Supreme Court in the case of PCIT Central-3 V/s Abhisar Buildwell Private Limited 2023 (4 TMI) 1056	Decided against the assessee	The CIT (A) held that the present proceedings being arising the set aside proceedings as per the directions, no fresh ground can be raised which is not emanating from the/in consequence to the directions of the Hon'ble High Court.
2.	The requirement of 153D of the Act did not comply i.e. the approval of Joint Commissioner was not obtained	Decided against the assessee	The CIT (A) held that it cannot be presumed that the approval was not granted or not obtained merely on the basis that there is no express mention of the same in the assessment order. It is not the case of the appellant that inquiries were done from the assessing officer and as per the information provided it was found that whether the approval was obtained or not. The issue has been raised in the ground of Appeal without exact factual basis for the same and is based on the inference only. The CIT (A) further held that the present proceedings being arising the set aside proceedings as per the directions, no fresh ground can be raised which is not emanating from the/in consequence to the directions of the Hon'ble High Court.
2.	Genuineness of Export	Decided in	The CIT (A) held that export of the

	Sales	favour of assessee	goods cannot be treated as fictitious looking into several documentary proofs submitted by the assessee only on a single ground that the purchases have been treated as bogus. The only presumption in such circumstances available is that the assessee might have purchased the goods from the others.
3.	Rejection of books of accounts	Decided against the assessee	Confirmed the rejection of books of accounts, which rejected by applying the provisions of section 145(3) of Income Tax Act, 1961 solely on the ground of alleged not verifiable/bogus purchases.
4.	Genuineness of purchases made	Partly decided in favour of assessee	Summarized in below para.

The bench noted that in the second round of litigation even the Id. CIT(A) also given the same finding as it was in the first round of litigation and the resultant income assessed after his order remains same as it was in the first round of litigation. By doing so he held that the genuineness of purchases made from other then the parties listed herein below cannot be doubted as there is nothing incriminating against such parties in the assessment order. Ld. CIT (A) confirmed the addition of income being 25% of unverifiable purchases treating the same to be made to inflate the export profit and directed to treat the same as Income from other sources. Meaning which the business profit reduced by this addition and

consequently the deduction u/s 80HHC was also reduced and the Income from other sources increased from this amount. This impacted to the addition in total income of the assessee as under: -

Astt Year	Purchases held by AO in original Assessment proceedings as bogus/unverifiable	Amount of unverifiable purchases (Rs.)	Addition confirmed @ 25% of unverifiable purchases (Rs.)
1998-1999	From various unregistered dealers	2,78,552/-	69,638/-
1999-2000	M/s Tirupati Balaji Gems	2,61,387/-	65,347/-
2000-2001	M/s Vinayak Overseas.	14,25,000	3,56,250/-
2001-2002	a) M/s Ganpati Exports Rs. 5,25,000/- b) M/s Vinayak Overseas. Rs. 2,19,834/-	7,44,834/-	1,86,209/-
2003-2004	a) M/s Shruti Gems Rs. 47,87,521/- b) M/s Naman Gems Pvt Ltd Rs. 13,25,792/	61,13,313/-	15,28,328/-

14. Aggrieved from the order of the Id. CIT(A), the assessee preferred the present bunch of five appeals on the various grounds raised in the respect appeal memos filed for each year. The Id. AR of the assessee filed separate submission and paper book for each of the year disputed repeating the facts of the first round of appeal and the finding of the Id. CIT(A) in the second round of litigation. Since the dispute is similar for all these years the same is decided all together based on the ground disputed in each year.

15. Ground no. 1 raised by the assessee in A. Y. 1998-99 to 2001-2002 and A. Y. 2003-04 challenges the validity of the assessment orders and the additions made therein. In support of the arguments the Id. AR of the assessee submitted that for AY 1998-99 to AY 2001-02 no addition can be made in completed assessment without any incriminating material relying on decision of Hon'ble Supreme Court in the case of PCIT Central-3 V/s Abhisar Buildwell Private Limited [149 Taxmann.399 (SC)]. He submitted that it is admitted fact that the department has carried out search operations over the assessee and has not discovered any incriminating material in possession of the assessee, to support that it had made bogus purchase bills or inflated export profit or export profit of the assessee is not genuine. He submitted that return of income filed by the assessee as per provision of section u/s 139 of Act for A.Y. 1998-99 filed on 16-11-1998 and time limit for issue of notice u/s 143(2) of the Act was 30-11-1999 for this year. Similarly, it filed return for A.Y. 1999-2000 on 15-06-1999, for AY 2000-2001 on 18-07-2000 and for AY 2001-2002 on 11-09-2001 and time limit for issue of notice u/s 143(2) for these years was 30-06-2000, 31-07-2001, and 30-09-2002 respectively. The Ld. AO issued notice on 08-12-2004 in all the above said assessments years. Therefore, the completed assessments can be assessed qua the incriminating material and in the

absence of the incriminating documents / material found from the possession of the assessee, the addition made merely on the ground that the assessee is accounted bogus purchases. He further submitted that the approval of higher authorities as required u/s 153D was not obtained as nothing has been mentioned about the obtaining of approval from Additional Commissioner or Joint Commissioner as mandated in section 153D of Income Tax Act in the order under disputed. The details of approval, if any taken, have not mentioned in the body of assessment order. Even if it is presumed that approval u/s 153D was granted, it cannot be in mechanical manner and opportunity of hearing should be provided to the assessee. He submitted that the CBDT issued the Manual of Office Procedure in February 2003 in exercise of the powers under Section 109 of the Act. Para 9 of Chapter 3 of Volume-II (Technical) of the Manual reads as under:

“9. Approval for assessment: An assessment order under Chapter XIV-B can be passed only with the previous approval of the range JCIT/ADDL.CIT (For the period from 30-6-1995 to 31-12-1996 the approving authority was the CIT.). The Assessing Officer should submit the draft assessment order for such approval well in time. The submission of the draft order must be docketed in the order-sheet and a copy of the draft order and covering letter filed in the relevant miscellaneous records folder. Due opportunity of being heard should be given to the assessee by the supervisory officer giving approval to the proposed block assessment, at least one month before the time barring date. Finally once such approval is granted, it must be in writing and filed in the relevant folder indicated above after making a due entry in the order-sheet. The assessment order can be passed only after the receipt of such approval.

The fact that such approval has been obtained should also be mentioned in the body of the assessment order itself.”

16. Thus, the requirement of prior approval under Section 153D of the Act is comparable with a similar requirement under Section 158BG of the Act. The only difference being that the latter provision occurs in Chapter-XIV-B relating to “special procedure for assessment of search cases” whereas Section 153D is part of Chapter-XIV. A plain reading of Section 153D itself makes it abundantly clear that the legislative intent was to obtain “prior approval” by the Id. AO when he is below the rank of a Joint Commissioner, before he passes an assessment order or reassessment order under Section 153A(1)(b) or 153B(2)(b) of the Act. Ld. AR of the assessee relied upon the decision of Hon’ble Orissa High Court in the case of ACIT, Circle-1 (2) Vs. Serajuddin and Co. In para 23 of the order of Hon’ble Orissa High Court held that:-

23. In the present case, it is an admitted position that the assessment orders are totally silent about the AO having written to the Additional CIT seeking his approval or of the Additional CIT having granted such approval. Interestingly, the assessment orders were passed on 30th December 2010 without mentioning the above fact. These two orders were therefore not in compliance with the requirement spelt out in para 9 of the Manual of Official Procedure.

17. The Id. AR further submitted that Hon'ble Orissa High Court had quashed the Assessment Order on the basis of finding recorded in para 25 of its order as under:-

25. For all of the aforementioned reasons, the Court finds that the ITAT has correctly set out the legal position while holding that the requirement of prior approval of the superior officer before an order of assessment or reassessment is passed pursuant to a search operation is a mandatory requirement of Section 153D of the Act and that such approval is not meant to be given mechanically. The Court also concurs with the finding of the ITAT that in the present cases such approval was granted mechanically without application of mind by the Additional CIT resulting in vitiating the assessment orders themselves.

18. The Id AR further submitted that Hon'ble Supreme Court in SLP (Civil) Dairy No. 44989/2023 vide order dated 28/11/2023, dismissed the SLP filed by the Department of Revenue against the order dated 15/03/2023 in ITA No. 43/2022 passed by the Hon'ble High Court of Orissa at Cuttack. He further submitted that the legal issues which do not require any verification of facts can be raised at any stage of proceedings. He submitted the direction given by Hon'ble High Court in the case of the assessee is in para 5 of the order which is as under: -

"5. In that view of the matter, the issue is covered by the aforesaid judgement and the matter is remitted back to the Assessing Officer who will look in the matter afresh."

19. Thus, he submitted that when the matter is to be looked afresh, the AO is competent to make any fresh inquires or the assessee can submit fresh documents, so the assessee can take legal ground at any stage of proceedings and there is no estoppel against law in taking that ground.

20. Per contra, the Id. Sr. DR relied on the order of the Id. CIT(A). He strongly objected to the ground and submitted that in set aside proceedings no fresh legal ground can be taken. The set aside proceedings is limited to the issue of addition on account of bogus purchases only.

21. We have heard the rival contentions and perused the material available on record. The bench noted that in this case the Hon'ble jurisdictional while allowing the appeal of the revenue set aside the assessment to be done a fresh. While doing so the Hon'ble High Court has followed the finding so given in the case of M/s. Gems Paradise in DB IT no. 201/2010 directing the assessing officer to verify the transactions are genuine or not. The bench noted that in that set aside proceeding the Id. AO did not verify the issue which was set aside by the High Court and the same addition which was done in the first round of litigation was done. Even the Id. CIT(A) also given the same finding that was recorded in the earlier order issued in the first round.

22. Ground No 2 raised by the assessee for the A.Y. 1998-99, A.Y. 1999-2000, A.Y. 2000-01, A.Y. 2001-2002 and A.Y. 2003-04 is as regard the rejection of books of account. The Id. AR of the assessee submitted that the lower authorities have not made any findings as regard that the accounts are incomplete or not correct or the assessee is not following the proper method of accounting regularly or not following the accounting standards notified by Central Government. Therefore, merely on allegation of unverifiable purchases books of account cannot be rejected in toto. The Ld. AR further submitted that no show cause notice as required u/s 145 was given to the assessee before rejecting the books results. Further if the books of account are rejected then the assessment is required to be completed u/s 144 of the Act.

23. On the other hand, the Id. SR. DR relied upon the findings of CIT(A) and that of the AO. The Id. DR vehemently argued that based on the detailed reasons mentioned in the order of the assessment the books of accounts of the assessee has rightly been rejected by the Id. AO and also confirmed by the Id. CIT(A).

24. We have heard the rival contentions and perused the material placed on record. As it is clear from the finding so recorded in the order of the

assessment that assessment order does not deal any show cause notice showing defect in the books of account. To apply the provisions of section 145(3) of Income Tax Act, there must be finding on the ingredients of section 145(3) of I. Tax Act which is not so in the order of lower authorities. Further the assessments were completed u/s 260A read with section 153A of the Act not u/s 144. In case if the Assessing Officer was unsatisfied about correctness and completeness of the accounts of the assessee or where proper method of accounting is not following regularly or where accounting standards notified by Central Government are not following by the assessee, then only section 145(3) requires that the assessment must be completed u/s 144 of I. Tax Act, which has not been done by AO. As in this case the provision of section 145(3) is invoked, it would be better go through the provision that section and the same reads as under :

Method of accounting.

145. (1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

(2) The Central Government may notify in the Official Gazette from time to time income computation and disclosure standards to be followed by any class of assessee or in respect of any class of income.

(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) has not been regularly followed by the assessee, or income has not been computed in accordance with the standards

notified under sub-section (2), the Assessing Officer may make an assessment in the manner provided in [section 144](#).

25. As it is evident that the provision of section 145(3) can be invoked in the following circumstances:

- When the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee.
- When the method of accounting provided in Section 145 (1) has not been regularly followed by the assessee.
- When the accounting standards notified under Section 145 (2) have not been regularly followed by the assessee.

26. From the observations recorded in the order of the lower authority none of the condition is satisfied and same is also not evident from the finding of the lower authority. Not only that the bench also observed that when the provision of section 145(3) is to be invoked the assessment is to be completed as per the manner provided in section 144 of the Act and the proper opportunity is required to be given by pointing out the defects in the books of account which we observe that the same is not followed and thus the order is not correct. To drive home to this contention we get strength to support our view based on the provision of the Act and decision of the Hon'ble Jurisdiction Rajasthan high court in the case of CIT Vs. Pink City Developers [99 taxmann.com 422 (Rajasthan)]. In that case the Hon'ble High court held that;

7. The counsel for the respondent contended that the Tribunal while considering the objection of section 145(3) of the Income-tax Act has rightly observed as under :

"(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) or accounting standards as notified under sub-section (2), have not been regularly followed by the assessee, the Assessing Officer may make an assessment in the manner provided in section 144."

8. Taking into considerations, the overall facts and circumstances of the case, we are of the opinion that the Tribunal while confirming the order passed by the Commissioner of Income-tax (Appeals) has not committed any error, therefore, the issue is answered in favour of the assessee and against the Department.

Based on the discussion so recorded even in the second round of litigation the Id. AO could not find any defects in the books of account, we considered ground no. 2 in favour of the assessee.

27. Ground No 3 raised by the assessee is for the A.Y. 1998-99, A.Y. 1999-2000, A.Y. 2000-01, A.Y. 2001-2002 and A.Y. 2003-04 is regarding sustaining the addition @ 25% of unverifiable purchases. The CIT(A) upheld the purchases made from the following parties as unverifiable and while do so he sustain the addition @ 25% on the said unverifiable purchases as tabulated herein below : -

Astt Year	Purchases held by AO in original Assessment proceedings as	Amount of unverifiable purchases	Addition confirmed @ 25% of
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	bogus/unverifiable	(Rs.)	unverifiable purchases (Rs.)
AY 1998-1999	a) From various unregistered dealers Rs. 2,78,552/-	2,78,552/-	69,638/-
AY 1999-2000	M/s Tirupati Balaji Gems Rs. 2,61,387/-	2,61,387/-	65,347/-
AY 2000-2001	a) M/s Vinayak Overseas. Rs. 14,25,000	14,25,000	3,56,250/-
AY 2001-2002	a) M/s Ganpati Exports Rs. 5,25,000/- b) M/s Vinayak Overseas. Rs. 2,19,834/-	7,44,834/-	1,86,209/-
AY 2003-2004	a) M/s Shruti Gems Rs. 47,87,521/- b) M/s Naman Gems Pvt Ltd Rs. 13,25,792/	61,13,313/-	15,28,328/-

28. While dealing with ground no 3 the Id. AR of the assessee vehemently argued the assessee has submitted the quantitative details of purchases and sales. The assessee also showed the nexus of export with purchases. He stated that the very basis of doubting the purchase made from Shri Mahesh Kumar Sharma (Prop. of Tirupati Balaji Gems), Shri Gauri Shankar Pareek (Prop. of Vinayak Overseas, Shri Umesh Kumar Saboo (Prop. of M/s Shruti Gems) and Naman Gems Pvt Ltd., the issue of their being genuine or not were travelled up to ITAT, Jaipur Bench, Jaipur. That order of the bench for that assessee was placed before us in Paper Book filed for AY 1999-2000 as under;-

Name of alleged bogus supplier	PB Page No.
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➤ Shri Umesh Kumar Saboo (Proprietor of M/s Shruti Gems)	159 to 181
➤ Shri Mahesh Kumar Sharma (Proprietor of M/s Tirupati Balaji Gems)	56 to 63
➤ M/s Naman Gems Private Limited	224 to 233
➤ Shri Gauri Shankar Pareek (Prop. of M/s Vinayak Overseas)	234 to 244

Out of the parties for which the Id. AO as well as Id. CIT(A) held that these parties were engaged in providing bogus bills. The finding of the Id. ITAT in the case of Shri Umesh Kumar Saboo(Proprietor of M/s. Shruti Gems) is reproduced here in below :

18. Now, the other issue involved in the grounds raised by the revenue and assessee is in respect of issue of bogus purchase bills and estimation of commission income thereon. We found that the AO has no material except the self-serving affidavit/statements of the assessee before the AO during the course of assessment proceedings. We have already held that the affidavit and statements of the assessee filed/made during the course of assessment proceedings is self-serving and it cannot be relied upon for the reasons mentioned above. The AO has not brought on record any positive material to show beyond doubt that the assessee has issued bogus purchase bills and earned commission on issue of bogus purchase bills. On the other hand the assessee has made detailed statements before the Investigation Wing wherein he has clearly admitted the delivery of goods against the sales. The assessee reiterated the same facts before the statements recorded by the Custom Authorities u/s 108 of Custom Act. We found that the lower authorities have estimated the income of the assessee in respect of the commission from issue of bogus purchase bills without having documentary evidence. The department has carried out intensive search operations and no documentary evidence was brought to our notice to support the findings of the lower authorities. Therefore, in the circumstances and facts of the case, the findings of the lower authorities in this regard cannot be sustained.

The bench noted this bench in its order for the above named person held that these parties are genuine supplier and they are acting their own and are not benami of Rakesh R Purohit, Shri Ramesh Maheshwari and Shri Manmohan

Bagla. The AR of the assessee submitted the appeals filed by the department in the case of Shri Umesh Kumar Saboo (Prop M/s Shruti Gems) and Shri Gauri Shanker Pareek (Prop M/s Vinayak Overseas) against the order of ITAT in their case was also dismissed. The copy of the order of Hon'ble Rajasthan High Court has been placed in the Paper Book for AY 1999-2000 as under:-

Copy of Order of Hon'ble Rajasthan High Court in the cases of: -	
➤ Shri Umesh Kumar Saboo (Proprietor of M/s Shruti Gems)	245
➤ Shri Gauri Shankar Pareek (Prop. of M/s Vinayak Overseas)	246 to 247

The bench also noted that in the case of Rakesh R Purohit, Shri Ramesh Chand Maheshwari and Shri Manmohan Krishna Bagla, ITAT has categorically held that these persons were not benami of Shri Rakesh R Purohit, Shri Ramesh Chand Maheshwari and Shri Manmohan Krishna Bagla. The department filed appeal against the order of ITAT in the case of Shri Rakesh R Purohit, Shri Ramesh Chand Maheshwari and Shri Manmohan Krishna Bagla which has also been dismissed by Hon'ble Rajasthan High Court. The copy of the order of ITAT and Rajasthan High Court has been filed in paper Book for AY 1999-2000 as under: -

Copy of Orders of Hon'ble ITAT, Jaipur Bench Jaipur given in the cases of: -	
➤ Shri Rakesh R. Purohit,	248 to 259
➤ Shri Ramesh Chand Maheshwari	260 to 281
➤ Shri Manmohan Krishan Bagla.	282 to 304
Copy of Order of Hon'ble Rajasthan High Court in the cases of Shri Rakesh R. Purohit, Shri Ramesh Chand Maheshwari and Shri Manmohan Krishan Bagla.	305 to 316

The statements recorded by search party u/s 132(4) of Shri Umesh Saboo prop of M/s Shruti Gems confirms that he was actual supplier of goods. Statement recorded by Custom Authorities further confirms the fact of supply of goods. The copy of statements of these persons are as under in the paper book for AY 1999-2000;

Copy of statement of Shri Umesh Kumar Saboo recorded by search party on 30.06.2003	95 to 115
Copy of statement of Shri Umesh Kumar Saboo recorded by Custom Authorities under Section 108 of Custom Act, 1962	116 to 125
Copy of affidavit filed by Shri Gauri Shankar Pareek, Prop. M/s. Vinayak Overseas before the Assessing Officer	126 to 127
Copy of statement of Shri Gauri Shankar Pareek, Prop. M/s. Vinayak Overseas recorded by Custom Authority under Section 108 of Custom Act	128 to 146

Thus, bench noted that revenue has no material to support that the assessee has made any bogus or unverifiable purchases. Further, the assessee filed confirmation letter of M/s Ganpati Exports which was rejected not on the basis of material but on surmises and conjectures.

29. Per contra, the Id. DR representing revenue heavily relied upon the findings recorded in the order of the Id. AO and that of the Id. CIT(A).

30. We have heard the rival contentions and perused the material placed on record. The bench noted that this is the second round of litigation. In the

first round of litigation the Hon'ble Rajasthan High Court set aside the assessment by observing that;

“3. Counsel for the appellant contended that the issue is squarely covered by the decision of this court in the case of Commissioner of Income Tax, Jaipur-I, New Central Revenue Building, Statute Circle, Jaipur Vs. M/s. Gems Paradise, Gulab Niwas, M. I. Road, Jaipur in D. B. Income Tax Appeal no. 201/2010 decided on 2nd November, which reads as under:

3. Considering the law declared by the Supreme Court in the case of Vijay Proteins Ltd. Vs. Commissioner of Income Tax, Special leave to Appeal (C) No. 8956/2015 decided on 06.04.2015 whereby the supreme court has dismissed the SLP and confirmed the order dated 09.12.2014 passed by the Gujrat High Court and other decisions of the High Court of Gujarat in the case of Sanjay Oilcake Industries Vs Commissioner of Income Tax (2009) 316 ITR 274 (Guj) and N. K. Industries Ltd Vs Dy. C.I.T. Tax Appeal No. 240/2003 decided on 20.06.2016, the parties are bound by the principal of law pronounced in the aforesaid three judgement.

4. We remit back the case to the Assessing Officer for deciding afresh on the factual matrix. The authority will accept the law but the transaction whether it is genuine or not will be verified by the Assessing Officer on the basis of the aforesaid three judgements. The issues are answered accordingly. The appeal is accordingly disposed of.”

4. Counsel for the respondent was not in a position to assail the aforesaid factual position.

5. In that view of the matter, the issue is covered by the aforesaid judgement and the matter is remitted back to the Assessing Officer who will look in the matter afresh.

The bench also noted that in the second round of litigation no fresh enquiries or no new material brought on record no enquiries said to have been made which the revenue pleaded before the Hon'ble High Court. Even the order of the Id. AO as well as of the Id. CIT(A) remained on the same finding as that of in the first round.

31. The bench also noted from the assessment order it does not appear that the Id. AO has made any fresh inquiries to controvert the findings of ITAT made in the case of Shri Gauri Shanker Pareek (Prop M/s Vinayak Overseas), Shri Mahesh Kumar Sharma (Proprietor of M/s Tirupati Balaji Gems), M/s Naman Gems Private Limited and Shri Umesh Kumar Saboo (Proprietor of M/s Shruti Gems) and in absence of any further inquiry to controvert the findings of ITAT in these cases, these persons cannot be held as bogus entry providers as per finding of the ITAT in those parties whose purchases are disputed by the revenue in this case.

32. Now, the limited issue in the second round of litigation as emerges from the order of the Id. CIT(A) is to decide whether the estimation of profit @ 25 % decided by the Id. CIT(A) is correct or not in respect of the bogus purchases made by the assessee. The bench noted that recently the jurisdictional Hon'ble Rajasthan High court while dealing the estimation of gross profit on account of bogus purchase while dealing with the case of **COMMISSIONER OF INCOME TAX (CENTRAL), JAIPUR vs. M/S CLARITY GOLD (P) LTD.** [100 CCH 0396 RajHC] held as under:

4. Facts of the case are that the assessee company derives its income from business of manufacturing of jewellery and in trading of gems stones. The background of search action on the Clarity Group was survey under Section-133A conducted in FY2007-08 by the BCTT Wing of the Investigation Directorate

of Jaipur which revealed that Clarity Gold Pvt Ltd. And its sister concerns M/s Marine Minerals and Herbal Remedies Pvt. Ltd. Jaipur had obtained bogus purchase bills amounting to Rs.13.59 crores from various entry providers, who provided bogus sale bills without supplying the goods mentioned in the bills. After search (20.05.2009) the case of the assessee was centralized with ACIT, Central Circle-1, Jaipur, who issued notice under Section-153A to the assessee company on 23.09.2009. In response the return was filed on 28.04.2011, declaring income of Rs. 17,86,470. Assessment was completed at Rs. 98,87,157 through order dated 23.08.2011 passed under Section-143(3) r.w.s.153A by the ACIT, Central Circle-1, Jaipur.

5. We have heard Mr. Mehta counsel for the appellant and Mr. Gupta counsel for the respondents.

6. Taking into consideration the evidence on record, the Tribunal while considering the matter has totally deleted the amount of addition. In our considered opinion, taking into account the industry which is running the business, the addition which has been made on the bases of GP which has been shown of the identical industry whose case is also heard together. The GP rate of previous years reads as under:-

A.Y.	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2009-10 unaudited	2010-11
Sales	198490	1426903	5466428	68749794	97777586	10306287	1072033	1540384
Stock Dif.	144657	5147868	0	71450573	6769267	83951400	83334242	5750095
Total	2129557	1941690	5466428	75894851	1054510	11145801	11553681	2115394
Purchases	181023	1698878	4962283	68670235	9376682	96584379	99103051	1574824
Direct Cost	0	6118276	9962436	1409772	1312092	8607118	10319346	8163403
Total	181023	1760061	5061907	70080007	9507891	97445091	10013498	1956458
Grow	3193228	1816292	4045206	5514844	9466185	14012920	15401828	1589358
G. P. rate	16.08%	12.72%	7.40%	8.45%	9.68%	13.59%	14.36%	10.31%

Taking into account the average GP rate which will be applied in the present case will be 12 per cent. It is made clear that where ever the profit is more than 12 per cent, the same will not be refunded to the assessee but where it is less than 12 per cent, the income will be assessed on the basis of 12 per cent GP.

8. In view of above, all the appeals stand allowed to the aforesaid extent.

The assessee relying on the judgment submitted that the profit rate disclosed by the assessee. The Id. CIT(A) over and above profit already disclosed applied the profit rate @ 25 % on the unverifiable purchases over

and above the profit already disclosed. The bench noted that the assessee for the year under consideration disclosed the gross profit as tabulated here in below:

Assessment Year	Turnover	Gross Profit	GP rate
1998-1999	13,89,201	8,33,521	60%
1999-2000	5,98,789	3,37,402	56.34%
2000-2001	67,30,870	35,88,537	53.32%
2001-2002	1,04,42,157	62,65,989	60.01%
2003-2004	1,45,58,323	73,53,296	50.51%

As it is evident from the above chart that in all the years under consideration the Gross Profit declared by the Assessee is more than 12% as decided by the jurisdictional high court. The Id. DR did not controvert this finding of the jurisdictional high court. Respectfully, following the rate of gross profit to be estimated in case where the issue of bogus purchase are involved and the estimation of profit we noted that in all the case the profit is higher that what is decided by the High Court. Even the high court while dealing with the case noted that where the assessee is shown higher profit no relief will be granted then what profit is disclosed by the assessee. Based on this observation we see no reason to sustain the estimate addition @ 25 % of purchases confirmed by the Id. CIT(A). In the result we follow the decision of Hon'ble Rajasthan High Court in the case of Clarity

Gold Private Limited D.B. Income Tax Appeal No. 125 to 128/ 2014 order dated 19.09.2017 no addition can be made even if the purchases held as unverifiable as the gross profit rate are higher in the year under consideration, then what is decided by the jurisdictional high as profit to be decided in such cases.

33. The bench also noted that the assessee in his submission submitted GP chart of other comparable cases, which shows the GP declared by the assessee is in conformity of other parties in the same trade, this submission of the assessee has not been controverted by the revenue on facts. We also take note of the fact that the search party recorded the statement of Shri Ramesh Manihar u/s 132(4) of the Act, who is one of the partner in the assessee firm and he stated the profit rate is about 50% in his business of M/s. Govindam Exports. This statement submitted before the search party also confirms the GP rates declared by the assessee.

Based on the discussion recorded herein above we hold that no further addition deserves to be made in the case of assessee on account of unverifiable purchases. We direct the Id. AO to delete the addition sustain by CIT(A) for the A.Y. 1998-99, A.Y. 1999-2000, A.Y. 2000-01, A.Y. 2001-

2002 and A.Y. 2003-04. Thus, ground no. 3 raised by the assessee is allowed.

34. Ground no. 1 raised by the assessee is legal ground challenging the order of the lower authority on technical ground. Since we have allowed the appeal of the assessee on merits this ground raised by the assessee becomes educative and does not require our finding. Ground no. 4 being general in nature, it does not require our adjudication.

In the results all the appeals filed by the assessee ITA Nos. 429 to 433/JP/2024 stands allowed.

Order pronounced in the open court on 01/08/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 01/08/2024

*Ganesh Kumar, Sr. PS

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

1. The Appellant- Govindam Export, Jaipur
2. प्रत्यर्थी / The Respondent- Dy. Commissioner of Income Tax, Circle-01, Jaipur
3. आयकर आयुक्त / The Id CIT

4. आयकर आयुक्त(अपील)/The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA Nos. 429 to 433/JP/2024)

आदेशानुसार/ By order,

सहायक पंजीकार/ Asst. Registrar