

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER**

**AND**

**RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No. 759/M/2024  
Assessment Year: 2014-15**

<b>Mr. Samir Navin Shah</b> Shreeji Arcade, Shreeji Chambers, Tata Road No. 1 & 2, Opera House, Maharashtra- 400004. <b>PAN: AAZPS9084M</b>	Vs.	<b>Circle 19(3)</b> Matru Mandir, Mumbai
(Appellant)		(Respondent)

**Present for :**

**Assessee by** : Shri V. P. Kothari, A.R.

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

Date of Hearing : 24 . 06 . 2024

Date of Pronouncement : 26 . 07 . 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/250/2023-24/1059063980(1) Dated 26/12/2023 for the Assessment Year 2014-15.

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

1. *“The learned ACIT, has erred in law and on facts-*
  - a. *In confirming the additional gross profit of Rs.11,02,242/- on account of alleged non genuine purchases from Bhanwarlal Jain Group as made by the Assessing Officer without properly considering the facts that all goods have been exported and overall gross profit on such purchases is between 3 to 7% as declared by the appellant which is the normal rate of profit accepted by the department in the diamond industries.*
  - b. *Failed to appreciate that the average gross profit earned on exports of the goods from M/s. Dashk Diamond is 4.83% and M/s. Impex Gems is 5.46% on exports and adding thereto additional 5% as done by the Assessing Officer is impractical in the diamond trade.*
2. *Your appellant craves leave to add, alter and / or amend the above grounds of appeal.”*

3. The facts of the case, in brief, are that the search and seizure action was conducted in the case of Shri Bhanwarlal Jain and other on 3/10/2013 by DGIT (Inv.), Mumbai, in which various concerns of dummy directors were also covered the affairs of which were managed, controlled and operated by Shri Bhanwarlal Jain and group. During the course of search, it was found that all such directors, proprietors of various concerns belong to the native place of Shri Bhanwarlal Jain and family in Rajasthan and have either known Shri Bhanwarlal Jain personally or through their families. In their respective statements recorded during the course of search & survey proceedings, these directors/

partners/proprietors of various concerns admitted that these concerns were managed and controlled by Shri Bhanwarlal Jain and group and this concerns exist in name only and created for the purpose of providing accommodation entries of bogus purchases to various parties. The appellant Shri Sameer Navin Shah was also taken accommodation entries of purchases from the following parties for the assessment year under consideration.

<b>Sr. No.</b>	<b>Name of the Hawala Parties</b>	<b>Bill Amount</b>
1.	Daksh Diamond	Rs. 1,38,08,236/-
2.	Impex Gems	Rs. 82,16,599/-
	Total	Rs. 2,20,24,835/-

4. The assessee, therefore, was asked to substantiate the genuineness of the purchases made from the above parties. The Ld. AO, therefore, concluded after providing the assessee the opportunity of being heard that though it is a fact that the diamond dealers procured the diamonds from grey market to meet their sales obligations and deal in cash and normally do not give any receipts than the diamond dealers who procured diamonds in such a manner, than sale the diamonds and receives the sale proceeds through proper banking channel and to complete the chain of transactions to book the purchases against the sale proceeds. They obtained the bills from entry providers and in the instant case, the assessee had taken that entry from Shri Bhanwarlal Jain and group, the entry providers. The Ld. AO, therefore, held that in the instant case when there was circumstantial

evidence of obtaining the bills from concerns of Shri Bhanwarlal Jain and group. The benefit obtained by the assessee could not be more than 5% of the purchases debited against the group concerns. This could take care of the margin earned by the assessee to indulge into such transactions and accordingly added a sum of Rs.11,01,242/- being 5% of the total purchases of Rs.2,20,24,835/- and added to the total income of the assessee. Aggrieved by the order of the Ld. AO, the assessee filed appeal before the Ld. CIT(A) who upheld the order of the Ld. AO by holding as under : -

***“OBSERVATION AND DECISION:***

*The appellant has filed various case laws and majority of the case laws are against assessment of the whole bogus purchases as income. The AO has accepted that there will be purchases against the sales made and has only added an additional margin of 5% on the transactions which are proved as accounted through bogus purchase bills. The appellant has also filed copy of the following appellate orders in his own case.*

*1. CIT Appeals Order dated 02.01.2018 Assessment Year 2012-2013*

*Appeal No. CIT(A)-52/IT-141/ACIT-19(3)/17-18. The CIT has held*

*that*

*Now the issue to be adjudicated is what is the reasonable profit percentage to be adopted for computing the profits arising from the alleged hawala purchases. It is pertinent to*

*mention that the CBDT through Instruction No. 2/2008 dated 22-02-2008 has revised the rate of profit margin from 8% to 6% in respect of gems and jewellery business. Thus, it can be seen that the Income Tax Department considers 6% of profit margin to be reasonable for the business of Gems & Jewellery. However, this margin of 6% is reasonable for an assessee which is not indulging in hawala purchases. It has been noted by the Hon'ble Gujarat High Court in the case of SumitP Seth (supra) that the margins in respect of hawala purchases are much higher due to savings on account of evasion of various government levies. Therefore, it will be appropriate if the reasonable profit margin arising to the assessee on account of the alleged hawala purchases is adopted of 8%. However, the AO while making the addition on account of the additional profit margins arising on the hawala purchases should reduce the profit margins already shown by the assessee in its books from the said profit margin adopted of 8% for the alleged hawala purchases. Accordingly, all the grounds of the appellate partly allowed.*

- 1. The appeal filed by the appellant against the order of CIT(A) is dismissed by the ITAT in ITAT Order dated 27.12.2018 in ITA No.2582/Mum/2018 Assessment Year 2012-2013.*

2. *CIT Appeals Order dated 28.05.2018 Assessment Year 2013-2014 Appeal No. CIT(A)-52/IT-337/ACIT-19(3)/17-18.*

5.2. *The CIT (A) for AY 2012-13 and AY 2013-14 has upheld the addition made by the AO that the appellant has made an additional profit by arranging bogus bills for purchases. But the CIT (A) has reduced the GP addition from an additional 5% to a total GP of 8%. The ITAT has dismissed the appeal of the appellant and has upheld the decision of the CIT(A).*

5.3. *The appellant has filed certain workings that the rate of GP on the specific transaction was more than 3%. The appellant is admitting that the accounted GP is " The overall G.P during the year is 10.97% (GP of Rs.75,68,818/- on sales of Rs.6,89,21,484/-). "Hence the appellant is admitting that the GP accounted on bogus purchases is less (GRANDTOTAL Rs.2,43,33,682/- Rs.2,56,43,003/- Rs.13,09,321/- =5.16%. The AO has made an addition of 5% only. The appellant is now admitting that the difference in GP on bogus purchase accounted and the GP on other purchases is more than 5%. The AO has made a reasonable addition and the order of the AO is upheld. The grounds raised by the appellant are dismissed.*

5.3. *In the result the appeal is dismissed."*

5. Aggrieved by the order of the Ld. CIT(A), the appellant has filed the appeal before us. We have considered the facts of the case and submission made by the appellant during the course of appellate proceedings. The appellant has also submitted the paper book in which he has given the gross profit declared by the appellant during the assessment year 2013-14 and 2014-15 and submitted that “the normal accepted gross profit in the diamond trade is between 3 to 6%, whereas, the appellant’s gross profit is 7.9%. This is much higher and therefore the addition of another 5% of gross profit on alleged purchases from Shri Bhanwarlal Jain and group is too much excessive and therefore pray to delete the same”.
6. The appellant has also placed reliance on the Hon'ble Gujrat High Court decision in R/Tax Appeal No. 674 of 2022 in the case of PCT 1, Surat vs. M/s. Surya Impex, where the Hon'ble court has observed that :

*“11. having found that the Assessing Officer has chosen not to reject the books of accounts of the assessee and had made the estimated additions of the pieces of the purchases. Both, the CIT (Appeals) and the Tribunal, have concurrently and rightly held to make the additions, which the CIT (Appeals) had done @ 12.5% of the impugned C/TAXAP/674/2022 ORDER DATED: 16/01/2023 purchases, which have been reduced and restricted to 6%. It will not be out of place to make a mention that the Assessing Officer's*

*the copy of the statement of Shri Bhanwarlal Jain and others had been asked for by the assessee, which also had not been provided nor was he allowed a cross-examination. This, of course, could have been a reason for the Authority concerned to restore the matter back to the Assessing Officer, however, noticing the elaborate evidence consisting the details of purchase, PAN, etc., coupled with the Assessing Officer and the CIT (Appeals) dealing with the case of Shri Bhanwarlal Jain and others involved therein, if addition directed of 6% of the disputed purchases by noting that the profit margin in the said industry is 5% to 7% without even going by the estimation of the possible profit margin in the industry, suffice to note that in all cases relating to Shri Bhanwarlal Jain, both, the Assessing Officer and the CIT (Appeals), Mumbai, have chosen to make addition @ 3% to 5% of the bogus purchases. That view of the matter, no purpose is going to be served in interference. There are concurrent findings with sound reasons. We have also given an opportunity on 03.01.2023. An explicit order noting that there is a reference of group of cases of Shri Bhanwarlal Jain and others. The Revenue is not in a position to bring before this Court as to what had happened C/TAXAP/674/2022 ORDER DATED: 16/01/2023 to all those*

*cases that whether they travelled to the High Court or to the Hon'ble Apex Court.*

*12. This Court in Tax Appeal No.200 of 2003 in case of Mayank Diamonds Pvt. Ltd. (supra) was required to decide the estimation of the gross profit @ 12.5% against the gross profit of 1.03% shown by the assessee. The Court allowed the gross profit rate of 5% holding that 12.5% is drastically higher. In N.K. Industries Pvt. Ltd., (supra), where the Court had considered the addition of entire amount on the ground that the fictitious purchases is a factually different than what was already held at M/s. Mayank Diamonds Pvt. Ltd., (supra). In the other cases of Shri Bhanwarlal Jain also, addition rates are 3% to 5% where no further challenge possibly is there or it has not been processed further. This Court finds that no question of law, much less any substantial question of law arises for consideration of this Court.”*

6. The appellant has also placed reliance on the order of the Coordinate Bench in ITA No. 7747/Mum/2019 dated 26/07/2021 in the case of M/s. Sunmoon Enterprises vs. ACIT 19(3), Mumbai, wherein, the Hon'ble ITAT has applied the net profit of 3% in diamond trading. The D.R., on the other hand, placed reliance of the order of the Ld. AO. We have considered the rival submissions and find that the Ld. AO has applied a reasonable G.P. of 5% in the present case on the ground that assessee has

taken accommodation entries from Shri Bhanwarlal Jain group of cases, which is clear case of tax evasion. We, therefore, do not find any reason to interfere with the order of the Ld. CIT(A). The appeal of the assessee is, therefore, dismissed.

7. In the result, the appeal is dismissed.

**Order pronounced in the open court on 26.07.2024.**

**Sd/-  
AMIT SHUKLA  
JUDICIAL MEMBER**

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

Mumbai, Dated: 26.07.2024.  
*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.