

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 530/Mum/2024 (A.Y.2011-12)**

Shri Premal Guvant Shah

D/W-4021, 4th floor, Bharat
Diamond Bourse, Bandra Kurla
Complex, Bandra (E)
Mumbai-400 051
PAN: AAHPS4423Q

..... Appellant

Vs.

ITO-19(2) (5)

Matru Mandir,
Grant Road,
Mumbai- 400 020

..... Respondent

Appellant by : Shri Sameer Dalal, Ld. AR
Respondent by : Shri H. M. Bhatt, Ld. DR
Date of hearing : 11/06/2024
Date of pronouncement : 13/08/2024

ORDER

PER GAGAN GOYAL, A.M:

This appeal by assessee is directed against the order of National Faceless Appeal Centre (for short "NFAC") dated 05.01.2024 passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2011-12. The assessee has raised the following grounds of appeal:-

1. *The Income tax Officer 19 (2)-5, Mumbai ("the A.O.") erred in framing the assessment under section 143 (3) read with section 147 of the Income tax Act, 1961 ("the Act").*

2 *WITHOUT PREJUDICE TO THE ABOVE:*

2.1 *The National Faceless Appeal Centre, Delhi, ("the NFAC") erred in confirming the action of the A.O. whereby the A.O. made addition of Rs. 66,30,039/- under section 69 C of the Act as unexplained expenditure alleging the purchases made by the Appellant from M/s. Krishna Diam as non - genuine.*

2.2 *While doing so, the NFAC failed to appreciate that:*

(a) There was no material whatsoever with A.O to show that Appellant had actually incurred any expenditure on purchases outside his books of account;

(b) The purchases were made in regular/normal course of his business;

(c) Proper quantitative details of purchases were maintained by the Appellant;

(d) Confirmation of M/s. Krishna Diam confirming the purchases made from them was also furnished by the Appellant to A.O.;

(e) Copy of income tax return filed by M/s. Krishna Diam for the A.Y. 2011-10 was filed before the A.O.

(f) The amounts have been paid to the purchasers through account payee cheques through proper banking channel.

(g) The sales out of alleged non genuine purchases from M/s. Krishna Diam were accepted by the A.O.

2.3 *It is submitted that in the facts and the circumstances of the case, and in law, no such addition under section 69 C of the Act was called for.*

2.4 *without prejudice to the above, and in alternative it is submitted that the addition of entire purchase of Rs. 66, 30,039/- was not called for.*

3. *the appellant craves leave to refer to and rely upon all or any of the above grounds of appeal and add to, delete, modifies and/or alters the grounds of appeal on or before the date of hearing.*

2. The brief facts of the case are that the assessee individual filed his return of income on 30.09.2011, declaring total income at Rs. 8,41,970/-. There was a search and seizure operations conducted on one Mr. Gautam Jain and others by the office of the DGIT (Inv.), Surat on 03.10.2013. During the search action it was revealed that the companies managed and controlled by Shri Gautam Jain were in the business of providing bogus accommodation entries through various benami concerns operated and managed by them. During the year under consideration, assessee shown purchases worth Rs. 66,30,039/- from one of the firm being managed and controlled by Shri Gautam Jain i.e. M/s. Krishna Diam. In view of above, case of the assessee was reopened and a notice u/s. 148 was issued dated 28th March 2018.

3. The AO discussed the modus operandi of Shri Gautam Jain alongwith his statement (Few Excerpts) which we are reproducing herein below:-

5.10 Admission of facts by Shri Gautam Jain

In his statement recorded under on 6.10.2013 section 131(1A) of the Income Tax Act, 1961 at 8/103, Shri Hari Park, Near Centre Point Building, Sangampura, Surat, Shri Gautam Jain has admitted that he managed and controlled the business affairs of M/s. Krishna Diam, the concern which the assessee had allegedly made purchases of Rs. 5, 49,626/- during the F.Y. 2010-11 relevant to A.Y. 2011-12. The relevant portion of the statement of Shri Gautam Jain's statement dated 6.10.2013 is reproduced below:-

Q.12 Are you Director/Proprietor/Partner in any Concern?

Ans. Sir, I am Director in M/s. Karishma Diamond Pvt. Ltd., partner in M/s. Krishna Diam. and proprietor in M/s. Mihir Diamond.

Q.13 Kindly provides your Sources of income and approximate annual income from each of the sources?

Ans. My income from M/s Karishma Diamond Pvt. Ltd. is Rs. 2 lacs (approx) per annum, from M/s. Krishna Diam share of profit is Rs. 3 Lacs (approx) and from M/s. Mihir Diamond it is Rs. 7 lacs. Short term Capital Gain is around 6 lacs (approx)

Q.15 Please state the nature of your business including the commodity that you deal in? Ans. Sir my business in all the three concern namely M/s. Karishma Diamond Pvt. Ltd., M/s. Krishna Diam, and proprietor in M/s. Mihir Diamond is of trading in rough and polished diamond.

Q.16 Please state the approximate quantity and value of stock as on date?

Ans As on date the quantity and value of stock is NIL.

Q.37 please state how and where the goods (diamonds) are received?

Ans. Sir it is received in my office 5B/1108 A1167/68B Santok Diamond Office No.204.2nd Floor, Somnath Mahadev Ni Sheri, Gajar Falia, Hari Pura, and Surat by my employees.

Q.38 Please provide the names, contact number and addresses of your employees who are responsible for taking the delivery of diamonds which are imported by you and also delivery which is taken locally?

Ans. Sir I have few employees working for me, I cannot provide these details.

Q. 39. Please provide the documents like delivery challan, transportation slip, air cargo import insurance papers and any other supporting for goods free documents please give me some time to produce the same.

Ans. Sir I cannot provide these documents please give me some time to produce the same.

Q. 40. Please provide your import export license fee verification?

Ans. Sir I do not have it with me here the license is in Mumbai I request you to provide me 2 days time to produce the same

Q.41 what are the certificates which accompany the diamonds at the time of import? Please produce the same.

Ans. Sir I do not know about this and therefore I am unable to produce such certificates.

Q.42 what are the parameters involved in determining the quality of a diamond?

Ans. Sir I do not know.

Q.43 what are the characteristics of a diamond that determine its price?

Ans. Sir I am not aware.

Q.44 what is the average per carat price of rough and polished diamond of half, one and nee carat diamond?

Ans. Sir I do not know and cannot tell this.

Q.51 you were required to produce the director/partner/proprietor of the above said concerns.

Ans. I have no contact details of the above mentioned parties. I cannot produce them. I have come in contact with them through some brokers.

Q.52 You have mentioned in answer to Q. No. 33 that your business is carried out solely at 5B/1108 A1167/68B Santok Diamond Office No.204.2nd Floor, Somnath Mahadev Ni Sheri, Gajar Falia, Hari Pura, Surat. Please explain the correctness of this statement in light of the finding during course of search conducted in case of your concerns u/s. 132 of the Act on 03/10/2013 that the premise mentioned by you is not being used at all for any business activity?

Ans. Sir, I would like to state that factually there is no actual business of trading in diamond that is being carried out by me in the above stated three concerns namely M/s. Karishma Diamond Pvt. Ltd., M/s. Krishna Diam, M/s. Mihir Diamond and that is why during the course of search and seizure action u/s. 132 of the I.T. Act on 203/10/2013, the business premises were found vacant and not being in use. Those addresses have been kept only for the purpose of registration of company address, receiving any emails including Income Tax notices if any, bank verification etc. Sir, I would also like to add that not only the above 3 concerns, but I also control the concerns in the name of M/s. Parshwanath Gems Pvt. Ltd. and M/s. Shree Ganesh Gems which also claim to be trading in diamonds but in which no actual business takes place.

Sir, I hereby on my own declare that I am running these paper based companies with no real business activities at all.

Q.53 Please state the modus operandi in detail of the 5 concerns which are controlled by you?

Ans. Various brokers of the diamond market approach me regularly and they give direction from time to time to import diamonds in my books of A/c. Once the diamonds are received they are taken away by these brokers at whose direction these imports were made. For doing these activities, I get a commission. As a result of above, stock of diamonds is reflected in my books without any physical stock being there. Thereafter, at a certain commission I issue bogus sale bills of such diamonds which are appearing in my books as stock in the names of other interested parties/concerns, which is again arranged by these brokers. For this, I get commission. I also give bogus sale bills when there is no stock available in my books. by arranging bogus purchase bills from the local market from various concerns through various brokers. For this type of transaction, I get profit of differential commission received and paid by me. Also, in case some person requires entry for unsecured loan, I give the entry by giving them cheque and in return I receive cash for the same. But most of the times it so happens that I have to pay this cash back to some parties to get cheque entry in my books again so as to maintain the balance in bank accounts. Normally, there is no surplus cash which remains available with me at any point of time. All the local purchases, local sales and loan entries appearing in my books of accounts of 5 concerns controlled by me are totally bogus entries which were done against cash xxxx such entries. None of these entries reflect any genuine transaction at all.

Q. 54. Please xxxxxxxxxx of your sale parties from FY 2006-07 till date which xxxxx whole bags purchase in their hands from your concerned?

Ans. Sir I am hereby producing list of such parties who have received bogus purchases ie only purchase bills and not actual goods from FY 2006-07 till date.

Q.56 Please state whether all the sales shown by you in your books of accounts are not genuine?

Ans. Sir, I have already stated and again repeat that the complete sales shown in my books of accounts are not genuine and only bills have been issued to the interested parties as and when they approach me for the same.

Q. 57 Please state the amount of commission earned in giving bogus bills to interested and who commission earned out of being a front for diamond imports for licensed parties?

Ans. Sir the profit which I have declared in any return is my only commission.

Further, a statement of Shri Gautam Bhanwarlal Jain, partner in M/s. Krishna Diam, was recorded under Section 132(4) of the I.T. Act on 11.10.2013 at A/702, RNA Royal Park CHS, M.G. Road, Dhanukarwadi, Kandivali (W), Mumbai-67 on 11/10/2013. The relevant portion of the said statement is reproduced below :-

Q.7 Please name the concerns in which you are Director/Proprietor/Partner?

Ans. I am Director in M/s. Karishma Diamond Pvt. Ltd., M/s. Parshwanath Gems Pvt. Ltd. and partner in M/s. Krishna Diam, and proprietor of M/s. Mihir Gems.

Q.10 in your statement recorded u/s. 131(1A) of the I.T. Act. 1981 on 06/10/2013 you had stated and accepted that all your concerns namely M/s. Karishma Diamond Pvt. Ltd Ms. Parshwanath Gems Pvt. Ltd M/s. Krishna Diam and M/s. Mihir Gems are all paper concerns with no actual business of any kind. You had also accepted in the said statement that all the bills issued for sales are nothing but bogus bills issued to interested parties and that all loans and advances to interested parties is nothing but "accommodation entries" given against cash. Please confirm the same.

Ans. Yes sir I confirm that whatever that has been recorded in my statement u/s. 131(1A) of the I.T. Act, 1961 on 06/10/2013 is true in all respect and I again confirm that the business in all my concerns namely M/s. Karishma Diamond Pvt. Parshwanath Gems Pvt Ltd., M/s. Krishna Diam, and xxxxxxx all paper concerns with no actual business of any kind. Also, all the xxxxxxx are nothing but bogus bills issued to interested xxxxxx and advances to interested parties are nothing but xxxxxxx given against cash.

THE ABOVE STATEMENT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. THE ABOVE STATEMENT HAS BEEN GIVEN BY ME VOLUNTARILY, WITHOUT ANY THREAT, COERCION OR UNDUE INFLUENCE. I HAVE READ THE ABOVE STATEMENT AND I CONFIRM THAT IT HAS BEEN RECORDED CORRECTLY.

Sd/-
Vibhor Badoni
(ADIT (Inv.)/Unit-VIII (1), Mumbai)

Sd/-
Gautam B. Jain
(Deponent)

From the statement of Shri Gautam Bhanwarlal Jain dated 6/10/2013 and 11/10/2013, the following facts emerge:-

1. Shri Gautam Jain was the partner of M/s. Krishna Diam, from whom the assessee has allegedly purchased diamonds worth Rs. 66, 30,039/-.
2. The quantity and stock of the firm M/s. Krishna Diam was NIL at the time of survey/search operations.
3. That Shri Gautam Jain did not know what certificates accompany the diamonds at the time of import. Nor did he know the parameters involved in determining neither the quality of diamond nor his characteristics of a diamond which determine its price. Thus, it is seen that he is not well aware of diamond operations.
4. In answer to Question No. 52 of his statement dated 6.10.2013, Shri Gautam Jain admitted that there was no actual business of trading in diamond carried out by him in the concern, M/s. Krishna Diam. He admitted on oath that M/s. Krishna Diam was a paper based company with no business activity at all.
5. In answer to Question No. 53, Shri Gautam Jain admitted that he issued bogus sale bill for diamonds which appeared in his books for he received commission from the beneficiary party. All the local purchase/sales appearing in his books in the firm, M/s. Krishna Diam were totally bogus entries which were done against cash taken/given against each entry. None of these entries reflected any genuine transaction at all.
6. During the search proceedings, he provided a complete list of sale parties from F.Y. 2006-07 till 06.10.2013 which listed the concerns who had received bogus purchase in their hand from his concerns.
7. In his statement recorded u/s. 132(4) dated 11.10.2013, Shri Gautam Jain confirmed that M/s. Krishna Diam was a paper concern with no actual business of any kind. Also, all the bills bound for sales were nothing but bogus bills issued to interested parties.

5.11. Benami concerns are not into any genuine business:

Many evidences were found during the course of search which proved that these concerns controlled by Shri Gautam Jain were not into any genuine business. Such findings are enumerated below:

a) No stock of diamond found: During the course of search, all the registered offices, business premises and residential premises of various dummy directors, partners and proprietors including that of Gautam Jain, Rajesh Gautam Jain and Manish Bhanwarlal Jain were covered. At none of these premises, any stock of diamond was found. Any concern which is in genuine business of

diamond trade, at a given point of time would at least have some stock of diamond available. However, the fact that none of the 70 concerns had any stock of diamond as on 03/10/2013 i.e. the day when search commenced raises a suspicion with regard to genuineness of business activity of these 70 concerns.

b) Books of accounts not maintained at the respective registered offices: The registered offices and residential premises of the said 70 concerns and the dummy directors, partners and proprietors along with the residential premise of Gautam Jain, Rajesh Gautam Jain and Manish Bhanwarlal Jain in Surat and Surat were covered during the Search action. However, the team of the Income Tax Authorities did not find any books of accounts of the said 70 benami concerns at any of the premises.

c) Books found at a secret undisclosed back office:- During search 2 back offices of the assessee at 16, Mohan Building, JSS Road, Girgaum and Plot No. 233, Ground Floor, Navkar House, Vitthal Bhai Patel Road, Girgaum (Near Parathana Samaj, VP Road), Surat -04 were discovered where the books of accounts of all the 70 concerns controlled and managed by the Bhanwarlal Jain & family were found.

5.12 The concerns are used for giving accommodation entries.

During the course of search evidences were found, persons were examined on Oath which established that Gautam Jain and Family have been using 70 benami concerns to give accommodation entries in the nature of bogus purchase and bogus unsecured loans to various beneficiaries, examination on Oath of Trusted employees of Gautam Jain and family revealed the complete modus operandi used by Bhanwarlal Jain for giving such accommodation entries of bogus purchases and loans and advances to various beneficiaries which is discussed in following paragraphs.

5.13 Bogus Accommodation entry.

There are many players in the diamond market who purchase diamonds from the grey market and are in need of bogus purchase bills to regularize the corresponding sale. Further, there are others who want to take accommodation entries of bogus purchases with a view to reduce their taxable income by increasing purchase expenses. All such parties approach the bills of Gautam Jain and Rajesh Gautam Jain to get bogus accommodation entry for purchases. The benami concerns of Gautam Jain and Family import diamonds on behalf of real importers to when these diamonds are handed over out of books. But in the regular books of accounts of the benami concerns, the imported diamonds still appears as stock (bogus). This is the reason why during the course of search, no stock of diamond was found from any of the residential or business premises of the assessee and his employees. Against this bogus stock, bogus sale bills are issued to beneficiary parties who are in need of taking accommodation entries for bogus purchases. For this purpose, cheques are issued by the beneficiary parties against the bogus sale bills issued by the benami concerns of Gautam Jain and Rajesh Gautam Jain. Subsequently, cash is returned back to these beneficiary parties through Angadias after deducting commission on the same by Gautam Jain and Rajesh Bhanwarlal Jain.

5.14 Business Modus operandi of these concerns

(i) Their concerns are engaged in merely paper transactions.

(ii) In the name of their numerous concerns, they import rough and cut & polished diamonds for the other clients who do not want to show import in their own books. The physical delivery of the diamonds so imported is immediately handed over to these actual importers after clearance of the consignment by Customs, without recording sales in the books of account.

(iii) Sales bill issued to diamond processing houses and traders against book stock by the benami Importer.

(iv) These concerns issue sale bills/give accommodation entries for a commission to various parties who normally purchase diamonds in cash from undisclosed parties and need bills to show purchases against sales in their account.

(v) Payments are made by cheque against bogus purchases.

(vi) They also provide accommodation entries of unsecured loans against cash.

5.15 Findings of the search action on Gautam Jain & Others:

- The Directors/proprietors of all these concerns admitted on oath that the concerns are nothing but paper companies with no genuine business.
- It was established that the concerns import rough diamonds in their hands at the behest of a third person/interested parties.
- The diamonds once cleared from Customs are immediately taken away by the interested parties (third party).
- These group concerns are thus left with no physical stock; however, the stock is reflected in their books against which bogus bills of sale are issued to interest parties.
- Accommodation entries (unsecured loans) are also given to other interested parties against cash from time to time.

5.16 As a result of the search and seizure action, it is established that the covered concerns run and operated by Shri Gautam B Jain, are having the above mentioned modus operandi. These concerns are involved in providing accommodation purchase entries and accommodation unsecured loan entries. The stock in the books of the concerns is either shown to be imported or procured locally in case of imports the stock upon clearance at Customs is taken away by the real importer. Thus, in the books of the non-genuine concerns, the stock remains however, physically there is no stock. Thereafter, non-genuine sales are shown by these concerns to interest parties, who want to book bogus purchases from time to time. Receipts are by the mode of cheque or RTGS. Upon receipt of which the concerns which had actually imported the stock, makes payment in cash to the other beneficiary concern thus completing the cycle. The non-genuine diamond concerns can thus make the payment to their suppliers of diamond from whom they avail credit period as well.

6. The above finding of the Investigation Wing as summarized in Para No. above clearly establishes the bogus nature of the transaction entered into by the assessee. It also establishes that forming of basis for re-opening of the case was substantive and not based on mere belief. The Investigation Wing has carried out through Investigation and established beyond doubt that the transactions are bogus. The key persons have also admitted to the fact of the bogus transactions as mentioned in above para 8 of this order. 6. Based on findings of investigation and after verifying the documents submitted by the assessee during the proceedings, the assessee was asked to explain vide show-cause notice dated 08.12.2018 as to why an amount of Rs. 66, 30,039/- of which transaction was made from M/s Krishna Diam, being Gautam Jain concern, should not be treated as non-genuine purchases and added to the total income of the assessee.

4. Considering the above statement of entry provider (which is a well known fact and person in all the circles) and a consistent view of all the coordinate benches and even the Hon'ble Apex Court and Jurisdictional High Court in the following cases as under:

- M/s Kachwala Gems vs. JCIT (2006) 206 CTR (SC).
- **[2019] 103 taxmann.com 459 (Bombay) Principal Commissioner of Income-tax-17 v. Mohommad Haji Adam & Co.**
Section 69C of the Income-tax Act, 1961 - Unexplained expenditure (Bogus purchases) - Assessee was a trader of fabrics - In course of assessment, Assessing Officer noted that certain purchases made by assessee were bogus - He thus added said amount to assessee's taxable income - Tribunal noted that there was no discrepancy between purchases shown by assessee and sales declared - Accordingly, Tribunal restricted addition limited to extent of bringing gross profit rate on purchases at same rate as applied in other genuine purchases - Whether, on facts, no substantial question of law arose from Tribunal's order - Held, yes [Paras 8 and 9]
- **[2022] 141 taxmann.com 245 (Bombay) Principal Commissioner of Income-tax v. Batliboi Environmental Engineering Ltd.**
I. Section 69C of the Income-tax Act, 1961 - Unexplained expenditure (Bogus purchases) - Assessment year 2011-12 - Assessing Officer treated purchases made by assessee as bogus purchases and disallowed in totality - Commissioner (Appeals) directed Assessing Officer to disallow 12.5 per cent of bogus purchases and to add 12.5 per cent of amount of purchases to income of assessee - Tribunal upheld view of Commissioner (Appeals) - Revenue contended before High Court that bogus purchases ought to have been disallowed in totality - It was noted that if factum of sales had been accepted by department then even if it was established

that there were bogus purchases, it was not necessary that entire amount of purchases should be added to income of assessee as there could not be a sale without purchase - In instant case sales effected by assessee had been accepted by department - Whether Tribunal was right in upholding view of Commissioner (Appeals) - Held, yes [Para 4] [In favour of assessee]

5. Moreover the assessee himself pleaded before the Ld. CIT (A) that considering the industry and facts of the case, a G.P. rate of 3% should have been applied. To support his contentions, assessee furnished an assessment order of his known /family member M/s. V. Gunvant & Co. for same assessment year u/s. 143(3) r.w.s. 147 of the Act before the AO and the Ld. CIT (A). In view of this fact and respectfully following the decisions relied upon by us (supra), we are of the considered view that the matter of the assessee should also get the same treatment. Hence we direct the AO to apply G.P. @ 3% on alleged bogus purchase and work out the income of the assessee accordingly.

5. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 13th day of August, 2024.

Sd/-

(ANIKESH BANERJEE)

JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 13/08/2024

Dhananjay, Sr. PS

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai