

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, AM &
SHRI SUNIL KUMAR SINGH, JM**

**I.T.A. No. 4689 /Mum/2023
(Assessment Year: 2012-13)**

DCIT-191, Room No.506, 5 th Floor, Piramal Chamber, Lalbaug, Mumbai-400012.	Vs.	Bhavin P Mehta 10, 4 th Floor, Kalyan Building, 130, Khadilkar Road, Girgaon, Mumbai-400004 PAN : AFXPM7654J
Appellant)	:	Respondent)

Revenue/Respondent by : Ms. Rajeshwari Menon, Sr. DR

Appellant/Assessee by : Shri Navin Gandhi, CA

Date of Hearing : 10.07.2024

Date of Pronouncement : 19.08.2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue is directed against order dated 23.10.2023, passed by the Ld. Commissioner of Income Tax (Appeals) - National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] for Assessment Year (AY) 2012-13, raising following grounds:

“1 (1) "Whether on the fact and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting 100% addition made by the Assessing Office on account of bogus purchases of Rs.2,22,06,9221/- from five hawala entities/parties , by ignoring the fact that the DGIT(Inv.), had proved beyond doubt that Mr. Bhawarlal Jain & his Group concerns

were involved in providing accommodation entries of sales & purchases without actual delivery of goods and the assessee was one of the beneficiary who has accepting accommodation entries for the purchases of Goods ? "Ground

2 (2) "Whether on the fact and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting 100% addition made by the Assessing Office on account of bogus purchases of Rs.2,22,06,9221/- from five hawala entities/parties, without appreciating the facts that during the search operation statement of Mr. Bhawarlal Jain & his Group concerns recorded u/s. 132(4) of the I.T. Act , in which he has categorically stated that those hawla entities/parties to whom the assessee claimed to have made purchases are managed and controlled by him for providing the accommodation entry only with no real business?"

3 (3)" Whether on the fact and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting 100% addition made by the Assessing Office on account of bogus purchases of Rs.2,22,06,9221/-, from five hawala parties, without appreciating the facts that AO has completed second assessment on 16.12.2019, on the basis of fresh set of information received from the DGIT(Inv.), Mumbai, after conducting search u/s 132 & 131 of the Act, and these information of hawala entities and bogus purchases was quite different from set of information on which earlier assessment completed u/s 143 r.w.s. 147 on 24.12.2016 ?"

4 (4) "Whether on the fact and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting 100% addition made by the Assessing Office on account of bogus purchases of Rs. 2,22,06,9221/- from total Five hawala parties.. without appreciating the facts that during the search operation no stock of diamond was found in the premises of the group entities of Mr. Bhawarlal Jain & his Group concerns, to whom the assessee claimed to have made purchases?"

5 (5) "Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in deleting 100% addition made by the Assessing Office on account of bogus purchases of Rs. 2,22,06,9221/- from total Five hawala parties by ignoring the fact that action of the Assessing Officer was based on credible information received from the DGIT(Inv.), Mumbai and that the during the course of assessment proceedings the assessee has failed to prove the genuineness of the alleged purchase transactions?"

6 (6) *"Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in deleting 100% addition made by the Assessing Office on account of bogus purchases of Rs. 2,22,06,9221/- from five hawala parties are in the nature of unexplained and without giving any satisfactory grounds on which the Ld. CIT(A) is defended?"*

7 (7) *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting 100% addition made by the Assessing Office on account of bogus purchases of Rs. 2,22,06,9221/- from five hawala parties - parties, without appreciating the ratio of the decision of the Hon'ble Apex Court in the case N.K. Protiens Ltd Vs Dy. CIT (2016)292 CTR(GUJ) 354, wherein the Hon'ble Court has held that, when the purchases are from bogus suppliers, the entire purchases are liable to be disallowed?"*

8 (8) *"Whether on the facts and in the circumstances of the case and in law, the order of the Ld. CIT(A) is perverse in not considering the order of Hon'ble Supreme Court, in the case of N. K. Protiens Ltd Vs Dy. CIT (2016)292 CTR (GUJ) 354, Dated. 16.01.2017, which is on the similar issue of bogus purchases and when the Hon'ble Apex Court order was already the law of the land when the Ld. CIT(A) has pronounced its order on 23.10.2023?"*

9 (9) *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting 100% addition made by the Assessing Office on account of bogus purchases of Rs. 2,22,06,9221/- without appreciating the fact that in the case Swetamber Steels Ltd. (Supra), the Hon'ble ITAT, Ahmadabad had confirmed the disallowance of the bogus purchase in entirety stating that the purchases shown from respective Parties were found non-genuine and the decision of the ITAT was upheld by Hon'ble Gujarat High Court and Hon'ble Supreme Court?"*

10 (10) *"The appellant craves, leave to amend or alter any grounds or add a new ground which may be necessary?"*

2. Briefly stated facts of the case are that the assessee filed return of income for year under consideration on 22.08.2012 declaring total income at Rs. 13,95,513/-. The return of income filed by the assessee was processed under section 143(1) of Income Tax Act, 1961 (in short 'the Act'). Thereafter, an information was

received by the Assessing Officer from the Investigation Wing of Income Tax, Mumbai that the assessee received accommodation entries of bogus purchases from the concerns controlled and managed by Shri Bhanwarlal Jain as found out during the course of search action on 03.10.2013 in the case of Shri Bhanwarlal Jain and his Group concerns. In view of the information, the Assessing Officer (AO) recorded reasons to believe that income escaped assessment and, accordingly issued notice under section 148 of the Act. The AO completed the re-assessment under section 147 r.w.s. 143(3) of the Act, wherein, he held purchases of Rs. **1,33,53,475/-** from three parties as bogus and estimated 3% of such bogus purchase as the benefit obtained by the assessee through accommodation entries and accordingly he made addition at the rate of 3% of Rs. 1,33,53,475/-, which was worked out of Rs. 4,00,604/-.

2.1 Subsequently, the AO again re-opened the assessment after recording reasons and issued notice under section 148 of the Act dated 25.03.2019. In the reasons recorded again, the AO referred to the information gathered during the course of search action at the premises of Shri Bhanwarlal Jain and accommodation entry of bogus purchase received by the assessee from the concerns controlled and managed by Shri Bhanwarlal Jain, however, this time amount of bogus purchase mentioned is of **Rs. 3,08,94,220/-** from five parties.

2.2 The AO while passing the reassessment order dated 16/12/2019 , however reduced the amount of Rs. 1,33,53,475/- which was already held as bogus purchases in first re-assessment order dated 24.12.2016, and made addition for the difference amount of bogus purchases of Rs. 2,22,06,921/-.

3. Aggrieved with the second re-assessment order, the assessee filed appeal before the Id. CIT(A) and challenged the validity of the re-assessment as well as addition made on merit.

4. Before the CIT(A), the assessee contested that reasons recorded by the AO in first re-assessment proceedings and second re-assessment proceeding are identical and therefore, the second re-opening is based on the 'change of opinion'. The assessee filed a copy of reasons recorded for first re-assessment proceedings before the Id CIT(A), as mentioned on page 22 of the impugned order of the CIT(A). The Id CIT(A) also reproduced relevant contents of reason recorded for first reopening as provided by the assessee in paragraph 3.3.1 onward on page 21 of the impugned order.

4.2 The CIT(A) has also reproduced the text of the reasons recorded in second re-assessment i.e. present re-assessment, which is available on page 23 to 24 of the impugned order.

5. Before the Id CIT(A), the assessee raised the issue by way of the additional ground and submitted that the Assessing Officer in second reassessment proceedings only repeated the reasons to believe, which was recorded in first reassessment, therefore is no fresh material for while reopening second time. Considering the submission of the assessee, the CIT(A) quashed the re-assessment proceedings and directed the AO to delete the addition. The relevant finding of the CIT(A) is reproduced as under:

"7.1 I have considered the facts and circumstances of the case and material available on record. Appellant filed its return of income for AY 2012-13 on 22.08.2012 declaring income of Rs. 13,95,513/-. Initially an order u/s 143(3) r.w.s 147 was passed on 24.12.2016 determining total income at Rs. 17,96,120/-. Later, AO received information that the appellant has made accommodation entries amounting to Rs.3,08,94,220/- from various entities managed and operated by the Bhanwarlal Jain group. Accordingly, notice u/s 148 of the I.T. Act was issued on 25.03.2019. In response on 05.09.2019, appellant submitted to consider its return filed on 22.08.2012 as return filed in response to notice u/s 148 of the I.T. Act.

Thereafter, notice u/s 143(2) of the I.T. Act was issued on 26.09.2019 and notice u/s 142(1) of the I.T Act was issued on 01.10.2019. Further, a final show cause notice dated 28.11.2019 was issued. As appellant filed its response on 09.12.2019. After considering the response filed by the appellant, AO finalized the assessment order determining total income at Rs.2,40,03,041/- after making an addition of Rs.2,22,06,921/- u/s 69C of the I.T. Act.

7.2 Appellant is contending that while framing the present re- assessment the Ld. AO failed to appreciate that the present re-assessment has been initiated without any new tangible material information coming into the possession of the AO, based on the very same facts already on record on the basis of which the original assessment was framed u/s 143(3) r.w.s. 147 of the Act vide order dated 24.12.2016. Appellant has submitted the copy of order u/s 143(3) r.w.s 147 of the I.T. Act dated 24.12.2016 along with the reasons provided for reopening the case. On perusal of the same, it is seen that the case was reopened on account of information received due to search action on Shri Bhanwarlal Jain and his Group concerns. Details of the Hawala party as provided in the reasons for reopening is as under.

PAN	Name of the Hawala party	AY	Amount of Bill
CVEPS0399P	MARC GEMS	2012-13	15,31,070
ADMPL5673R	MARU DIAMONS	2012-13	35,54,574
AAQFM7140P	MERIDIAN GEMS	2012-13	1,04,42,823
AATFM3999B	MOTHER EXPORTS	2012-13	57,74,761
AANFR5945A	RAHUL EXPORTS	2012-13	95,90,992
	Total		3,08,94,220

However, while framing the assessment order u/s 143(3) r.w.s 147 of the I.T. Act dated 24.12.2016, AO considered the following accommodation entries of bogus purchase from various concerns during the FY 2011-12 relevant to AY 2012-13.

<i>Sr. No.</i>	<i>Name of the entry Provider</i>	<i>Amount (Rs.)</i>
1	M/s A2 Jewels	46,66,176/-
2	M/s Meridian Gems	47,92,209/-
3	Mother Exports	38,95,090/-
	<i>Total</i>	<i>1,33,53,475/-</i>

AO concluded that the benefits obtained by the assessee would not be more than 3% of the purchase cost. Accordingly, AO added Rs.4,00,604/- (i.e 3% of 1,33,53,475/-) and determined total income at Rs.17,96,120/-.

7.3 On perusal of the current second re-assessment order u/s 143(3) rws 147 of the I.T. Act, the information received by the AO from the DGIT(Inv), Mumbai is as under.

<i>PAN</i>	<i>Name of the Hawala party</i>	<i>AY</i>	<i>Amount of Bill</i>
<i>CVEPS0399P</i>	<i>MARC GEMS</i>	<i>2012-13</i>	<i>15,31,070</i>
<i>ADMPL5673R</i>	<i>MARU DIAMONS</i>	<i>2012-13</i>	<i>35,54,574</i>
<i>AAQFM7140P</i>	<i>MERIDIAN GEMS</i>	<i>2012-13</i>	<i>1,04,42.823</i>
<i>AATFM3999B</i>	<i>MOTHER EXPORTS</i>	<i>2012-13</i>	<i>57,74,761</i>
<i>AANFR5945A</i>	<i>RAHUL EXPORTS</i>	<i>2012-13</i>	<i>95,90,992</i>
	<i>Total</i>		<i>3,08,94,220</i>

However, the details of hawala entities from whom the appellant had obtained accommodation entries for the year under consideration are given a under.

<i>Sr.No.</i>	<i>Name of the hawala entities</i>	<i>A.Y.</i>	<i>Amount involved (In Rs.)</i>
1	MARC GEMS	2012-13	15,31,070/-
2	MARU DIAMONS	2012-13	35,54,574/-
3	MERIDIAN GEMS	2012-13	56,50,614/-
4	MOTHER EXPORTS	2012-13	18,79,671/-

5	RAHUL EXPORTS	2012-13	95,90,992/-
	Total		3,08,94,220

AO disallowed the entire bogus purchase and added Rs.2,22,06,921/- to the income of Rs. 17.96,120/- as determined u/s 143(3) rws 147 dated 24.12.2016.

From the above it is clear, that no fresh information was received by the AO. Both the time, case has been reopened on the basis of exactly the same information. Hence it can be concluded that the very same material has been utilized to reopen a case on an issue which has already been considered for re-assessment the income of the appellant. The very fact was also brought before the AO during the assessment proceedings but AO has not bothered to discuss the issue while passing the assessment order. Hence, assessment order passed on an issue which has been already decided/ assessed is not justified and this is only change of opinion. On comparison of reasons for reopening, both the times, case was reopened on same set of reasons. In the second time reopening of the case, no fresh information was available before AO for reopening the case.

This aspect has been brought out very lucidly in several decisions and the earliest of such decisions is that of the Constitution Bench of the Hon'ble Supreme Court in the case of Calcutta Discount Co. Ltd. v. ITO [1961] 41 ITR 191. The sum and substance of the decision of the Constitution Bench is that the Assessing Officer is only entitled to reopen the assessment, but he cannot review an assessment in the sense that there cannot be a rethinking or different opinion on the same material, which was the subject matter of the original assessment proceedings.

In this case already the case was reopened and the assessment order u/s.143(3) rws 147 was passed on 24.12.2016. The case was again reopened on same set of reasons by notice u/s.148 dated 25.3.2019 without any fresh material information on record is merely change of opinion. In view of the above, the reopening at second time on same reasons is not justified and legally not valid. Therefore, AO is directed to delete that addition of Rs.2,22,06,921/- made u/s 69C of

the I.T. Act. Hence ground no 2, 3 and additional ground of appeal are hereby allowed.”

(emphasis supplied by us)

6. Before us, the ld. Counsel for the assessee has filed a Paper Book (PB) containing pages 1 to 34 and 1 to 32. The ld counsel also separately filed one page of copy of reasons recorded for first reassessment.

7. The ld. Departmental Representative (DR) referred to ground no.3 challenging the finding of the CIT(A) on the validity of the re-assessment on the basis of the fact that second re-assessment dated 16.12.2019 was re-opened on the basis of fresh set of the information received and which was quite different from the set of information on which earlier re-assessment order under section 147 of the Act dated 24.12.2016 was reopened. The ld. DR submitted that confusion was regarding the reasons recorded for re-assessment proceedings. He submitted that list of parties in the reasons recorded reproduced by the AO in the first re-assessment order dated 24.12.2016 contains only three parties as under:

Sr. No.	Name of the entry Provider	Amount (Rs.)
1	M/s A2 Jewels	46,66,176/-
2	M/s Meridian Gems	47,92,209/-
3	Mother Exports	38,95,090/-
	Total	1,33,53,475/-

8. Whereas, the table of purchase parties mentioned by the assessee in the copy of the reasons recorded for first reassessment filed before the CIT(A), which has been reproduced by the CIT(A) on page 22 of the impugned order, contains list of the five parties having total bogus purchase of Rs. 3,08,94,220/-. Thus, according to him the assessee has obtained the order from the CIT(A) by misrepresentation of the facts and therefore, the matter need to be restored back to the file of the CIT(A)

for deciding this issue afresh after verifying the reasons recorded during the first re-assessment proceeding.

9. On the contrary, the Id. Counsel for the assessee submitted that in the first re-assessment proceedings also the information was in respect of the following five parties:

PAN	Name of the Hawala party	AY	Amount of Bill
CVEPS0399P	MARC GEMS	2012-13	15,31,070
ADMPL5673R	MARU DIAMONS	2012-13	35,54,574
AAQFM7140P	MERIDIAN GEMS	2012-13	1,04,42,823
AATFM3999B	MOTHER EXPORTS	2012-13	57,74,761
AANFR5945A	RAHUL EXPORTS	2012-13	95,90,992
	Total		3,08,94,220

10. In the present re-assessment proceeding also in the reasons recorded, the AO has mentioned the same five parties and same amount of bogus purchases and therefore the second re-assessment proceeding is based on the mere 'change of opinion'.

11. We have heard the rival submissions of the parties and perused the relevant material on record. The CIT(A) has quashed the second re-assessment proceeding on observation that list of hawala/bogus purchase parties mentioned in the reasons recorded during first re-assessment proceedings as well as second re-assessment proceeding being identical. He concluded that second re-opening has been made on the basis of exactly the same information and on same set of reasons, therefore, there was no fresh information available before the AO for re-opening. However, on perusal of the re-assessment order dated 24.12.2016, we find that in the reasons

recorded only three parties namely (1) M/s A2 Jewels Rs. 46,66, 176/- (2) M/s Meridian Gems- Rs. 47,92,209/- and (3) Mother Exports – Rs. 39,95,090/- totaling of Rs. 1,33,53,475/- have been mentioned. Before us the Id. Counsel for the assessee has filed a copy of the reasons recorded during the first re-assessment proceedings. On perusal of the said reasons recorded available on page 4 of PB-2, we find that only first page of the letter which was addressed by the AO to the assessee calling for show-cause as to why relevant purchases may not be treated as bogus, has been referred. The second page of the said letter is not available on the paper book of the assessee. A copy of allegedly reasons recorded for first reassessment provided separately by the Id counsel during hearing also does not contain name or designation of the AO. Therefore, it is disputed that in the reasons recorded during the first re-assessment proceedings whether the information was available in respect of the three bogus parties amounting to Rs. 1,33,53,475/- or the information in respect of five bogus parties amounting to Rs. 3,08,94,220/-. Since the CIT(A) has decided the validity of the re-assessment on the basis of the copy of the reasons recorded in first re-assessment supplied by the assessee wherein list of five parties amounting to Rs. 3,08,94,220/- is available and therefore, he has invalidated the second re-assessment. In our opinion correct facts in the matter are need to be ascertained for determination of the issue of the validity of the re-assessment. Unless, it is confirmed from records of the Assessing officer that both reassessment have been initiated based on same set of five bogus parties, any decision on validity of reassessment will not be correct. In view of the above discussion, we find it appropriate to set-aside the finding of the CIT(A) and restore the matter back to him for verification of the reasons recorded during first re-assessment proceedings from the records of the AO and thereafter decide the issue of validity of reassessment and if required so he may decide the issue on

merit of the addition. The ground no.3 of the revenue's appeal is accordingly allowed for statistical purposes.

12. Since the CIT(A) has not decided the issue on merit in the impugned order therefore we are not required to adjudicate the other grounds raised by the revenue as same are rendered academic in nature and hence dismissed as infructuous.

13. In the result, the appeal of the revenue is partly allowed for statistical purposes.

Order pronounced in the open court on 19 -08-2024.

Sd/-
(SUNIL KUMAR SINGH)
Judicial Member

**SK, Sr. PS*

Sd/-
(OM PRAKASH KANT)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai