

**IN THE INCOME-TAX APPELLATE TRIBUNAL "F" BENCH,
MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 2680/Mum/2024
(A.Y. 2012-13)**

Jignesh Harshad Mehta 16/40, 10 th Floor, Navjeevan Society, Mumbai Central, Mumbai-400008	v/s. बनाम	National Faceless Appeal Centre, Delhi
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABPM4811C		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

**ITA No. 3182/Mum/2024
(A.Y. 2012-13)**

Assistant Commissioner of Income Tax, Circle 20(1) 6 th Floor, Piramal Chambers, Lalbaug, Lower Parel, Mumbai-400012	v/s. बनाम	Jignesh Harshad Mehta 16/40, 10 th Floor, Navjeevan Society, Mumbai Central, Mumbai-400008
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABPM4811C		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Madhur Aggarwal
Respondent by :	Shri Krishnakumar

Date of Hearing	21.08.2024
Date of Pronouncement	23.08.2024

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

These cross appeals are filed by the assessee and the revenue against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai-



32/National Faceless Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"] dated 15.04.2024 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for Assessment Year [A.Y.] 2012-13.

2. The grounds of appeal raised by the assessee are as under:

"1. On the facts and circumstances of the case as well as in Law, the Learned Assessing Officer has grossly erred in re-opening assessment proceedings under section 143(3) read with section 147 of the Income Tax Act, 1961. The reopening of assessment is without jurisdiction, illegal and infractions ab-initio.

2. On the facts and circumstances of the case as well as in Law, the Learned Commissioner of Income Tax (Appeals), NFAC has grossly erred in confirming addition of 25% of the alleged bogus purchases of Rs. 7,20,30,027, based on unsubstantiated information received by the Learned Income Tax Officer from the Learned Income Tax Officer, Ward 19(2)(3). Mumba/ the DGIT(Inv.), Mumbai.

3. On the facts and circumstances of the case as well as in Law, the Appellant has been denied the opportunity to cross-examine the evidence / persons based on whom the addition of alleged bogus purchases has been directed by the Learned Assessing Officer.

4. Under the circumstances the Appellant has been denied a reasonable opportunity to present its case.

5. The order u/s 143(3) r.w.s 147 of the act is not only bad in law and invalid, but also against the principles of natural law of equity and justice.

3. The grounds of appeal raised by the revenue are as under:

1. "Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) has not appreciated the facts of the case and modus operandi as a detailed investigation has been carried out by the Investigation Wing in the case of Rajendra Jain or his group entities."

2. "Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) has not appreciated the facts that in such bogus transactions of purchase are not affected for commercial purpose but to create artificial gains and complete the cycle of circular trading with a view to evade taxes."



3. "Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition to Rs. 180,07,506/- (i.e 25% of the bogus purchases of Rs.720,30,027/-) made u/s. 69C of the IT Act, 1961 being unexplained purchases without appreciating that the statement recorded of Shri Rajendra Jain and his associates has confirmed that accommodation entries provided to assessee".

4. This appeal is being filed as it is covered under the exception provided in CBDT's Circular No.05/2024 dated 15.03.2024.

4. Brief facts are that the assessee, a diamond merchant, filed his return for AY 2012-13 declaring total income of Rs. 10,42,328/-. The return was processed u/s 143(1) of the Act. Subsequently, the AO received information from the Investigation Wing regarding accommodation entries taken by the assessee from Rajendra Jain Group Concerns. Accordingly, the case was reopened u/s 148 of the Act. The assessee submitted return declaring income of Rs. 10,42,328/- on 05.11.2019 in response to the said notice. It was seen that the assessee had taken accommodation entries from the following parties during the year under consideration:

Sr No.	Name of the parties	Bill amount
1	Dharam Impex	3,51,80,127
2.	Kangan Jewels Pvt. Ltd.	3,68,49,900
	Total	7,20,30,027

5. After making requisite enquiries, the AO came to the conclusion that the assessee had taken accommodation entries from above two parties and the purchase of diamond shown from these parties are not genuine. Accordingly, total amount of Rs. 7,20,30,027/- was added u/s 69C of the Act.



6. Aggrieved with the said order, the assessee filed an appeal before the Ld. CIT(A). Vide order dated 15.04.2024, Ld. CIT(A) reduced the addition to 25% of the bogus purchases of Rs. 7,20,30,027/- being the estimated net profit element in such purchases. Before us, the assessee is contesting the addition of 25% whereas the revenue is in appeal against relief given by the Ld. CIT(A) and are aggrieved with the restriction of addition to only 25% as against the entire amount.

7. We have heard the rival submissions. Ld. AR pointed out that in assessee's own case for AY 2011-12 as well as for AY 2014-15 rate of 3% has been applied on alleged bogus purchases by the AO. In this regard, submissions were made during the course of assessment proceedings but the same have been disregarded by the AO. Relevant portion of the assessment order is reproduced below:

3. ".....considering the facts or the case, If your honour is still contemplating addition, what can be taxed is only the profit not the whole of the sales. Attention is also invited to completed Assessments for A.Y. 2014-15 & A.Y. 2011- 12 where on similar facts for some of the same parties addition was restricted to 3% of the alleged bogus purchases. Assessee pleads that considering the background and in terms of maintain continuity, even if your honour is contemplating addition, the contemplated addition needs to be similarly restricted.

The submission of the assessee has been perused, however, the same is not acceptable. If at all the transaction was genuine, the assessee was suppose to produce the parties for confirmation. Further, Rajendra Jain and his associates has confirmed that accommodation entries has been provided to the various parties and assessee is one of them. From the submission of the assessee, it is very clear that the assessee is very much involved in such type of transactions in the earlier years also and has taken accommodation entries In lieu of cash. The assessee himself has admitted

that during the course of Asst. Year 2011-12 and 2014-15 such transaction were assessed and the same has been accepted by the assessee.”

With these observations, the AO proceeded to add entire amount of Rs. 7,20,30,027/- u/s 69C of the Act.

8. For AY 2014-15, the AO while finalizing the assessment u/s 143(3) of the Act has decided as under:

“4.6.9 In such a scenario, wherein there are circumstantial evidences of obtaining of bills from Bhanwarlal Jain group concerns, but having GP margin in such instances which is even more than the normal GP of the assessee, the benefit obtained by the assessee would not be more than 3% of the purchase cost debited against Bhanwarlal Jain group concerns. This should take care of the margin earned by the assessee to indulge into such transaction. The reason, why this margin looks practical is that most of the traders In the market actually operate at this level of margin in the open market. In fact, this fact was also Identified in the Report of the Task Group constituted by Department of Commerce in 2013, in which the margin in diamond trading was accepted to be in the range between 1 to 3%. Hence, the margin for a petty dealer in the market would not be more than 3%, which is the same margin that is now being adopted for purchases made from such dealers by assessee and for which the bills are procured from the Bhanwarlal Jain group concerns. Accordingly, the profit margin embedded in these transactions is taken at 3% of the value of the purchases made from the abovementioned parties and the said amount of Rs. 4,50,126/- is added to the total income of the assessee for the assessment year under consideration. Penalty u/s 271(1)(c) Is initiated for concealment and furnishing inaccurate particulars of Income.”

9. In view of the above facts and circumstances of the case, when the revenue has made the addition to the extent of only 3% on bogus purchases for same parties in different years, there is no reason to make 100% addition on the



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alleged bogus purchases in the year under consideration. We, accordingly, direct the AO to reduce the addition to 3% of the total impugned purchases of Rs. 7,20,30,027/-.

10. In the result, appeals of the assessee and revenue are partly allowed.

Order pronounced in the open court on 23.08.2024.

Sd/-

PAVAN KUMAR GADALE

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 23.08.2024

अनिकेत सिंह राजपूत/ स्टेनो

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.