

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**MA No.163/M/2024  
(Arising out of ITA No. 639/Mum/2024)  
Assessment Year: 2012-13**

<b>Essar Diamonds</b> 3 <sup>rd</sup> Floor, Krishna Niwas Junction, Raja Ram Mohan Roy Road, Near Queens Road, Mumbai- 400004. <b>PAN: AAAFE7383G</b>	<b>Vs.</b>	<b>The Deputy Commissioner of Income Tax – Circle 19(1)</b> Matru Mandir, Tardeo Road, Mumbai- 400007.
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for :**

**Assessee by** : Shri Jigar Mehta, CA

**Revenue by** : Smt. Mahita Nair - SR. DR.

**Date of Hearing** : 09 . 08 . 2024

**Date of Pronouncement** : 23 . 08 . 2024

**O R D E R**

**Per: Ratnesh Nandan Sahay, Accountant Member:**

1. This Miscellaneous Application has been filed to seek rectification of the order passed by this Bench in ITA No. 639/Mum/2024 for the

Assessment Year 2012-13. In the M.A under reference,the appellant, has pointed out following mistakes which, according to the appellant, are apparent from record. These are: -

(i) *“The principal contention of the applicant that the applicant had not made bogus purchase from Krishna Diamond Pvt. Ltd. and that there was no information with the respondent in respect of Karishma Diamonds Pvt. Ltd. from whom the applicant had made purchases has not been dealt with in the order. On the contrary, it has been mentioned in the order at Para 5 that "During the course of hearing before us, the assessee admitted that though, there is a bogus purchase of Rs.57,09,725/-...". It is respectfully submitted that the AR never made any such admission.*

(ii) *Further, at Para 7 it has been mentioned that "...both Appellant and the Revenue did not oppose the idea of applying a reasonable gross profit in the present case.” It may be noted that in the course of hearing, the applicant had submitted that even if the purchases are assumed to be bogus, no addition can be made relying on the decision of Mohammad Haji Adam & Co. (supra) as the gross profit declared on the alleged purchases was much higher than the normal gross profit.*

(iii) *The Bombay High Court in the case of Mohammad Haji Adam & Co. (supra) has held that if the purchases are held to be bogus, the addition should be limited to the extent of bringing the GP rate on purchases at the same rate of other genuine purchases. The decision of the Hon'ble High Court does not refer to reasonable profits as has been mentioned in Para 6 and 7 of the Hon'ble ITAT order.*

(iv) *Without prejudice to above, the Hon'ble ITAT at Para 7 of the order has mentioned as under: -*

*"We, therefore, find it reasonable to apply a gross profit rate of 10% which comes to Rs.5,70,972/-, The disallowance is thus, restricted to that amount only."*

*It may be noted that the disallowance in any case ought to have been restricted to the amount of profit estimated as reduced by the amount of gross profit already declared by the applicant on the aforementioned alleged bogus purchases. The said direction has not been given in the order of the Hon'ble ITAT."*

2. We have considered the submissions of the appellant stated as above and we do not find any mistake in the said order which is apparent from record and thus, we do not find any reason to rectify the same. The M.A is therefore, rejected.



3. In the result, the M.A is dismissed.

**Order pronounced in the open court on 23.08.2024**

**Sd/-  
AMIT SHUKLA  
JUDICIAL MEMBER**

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

Mumbai, Dated: 23.08.2024.  
*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.