

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)**

**ITA Nos. 4613 & 4644/MUM/2023
Assessment Year: 2011-12 & 2012-13**

ITO-23(3)(1),
Room No. 525A, 5th floor,
Piramal Chambers,
Lal Baug, Parel,
Mumbai-400012.

Appellant

Satguru Gems,
DW-4280, Bharat Diamond
Vs. Bourse, Bandra Kurla Complex,
Bandra (East),
Mumbai-400051.
PAN NO. AALFS 3350 C
Respondent

Assessee by : Mr. K A Viadyalingan
Revenue by : Ms. Rajeshwari Menon, Sr. DR

Date of Hearing : 11/07/2024
Date of pronouncement : 30/08/2024

ORDER

PER OM PRAKASH KANT, AM

These two appeals by the Revenue are directed against two separate orders both dated 23.10.2023, passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2011-12 and 2012-13 respectively.



2. In both these appeals a common issue of disallowance of bogus purchases is involved and therefore, both these appeals were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

2.1 The grounds raised by the Revenue in both the assessment years are identical except change of amount. In assessment year 2011-12, the Ld. CIT(A) has restricted disallowance at the rate of 3% on the bogus purchases of Rs.2,01,67,404/- whereas in assessment year 2012-13 he has restricted the disallowance to 3% in respect of bogus purchases of Rs.3,88,09,001/-. Therefore, for ready reference, only grounds of the Revenue for assessment year 2011-12 are reproduced as under:

1. *"Whether on the fact and in the circumstances of the case and in law, the Ld. CIT(A) has erred in reducing gross profit @ 3%, as against the 100% addition made by the Assessing Office on account of bogus purchases of Rs. 2,01,67,404/- from two Hawala parties, by ignoring the fact that the DGIT(inv.), had proved beyond doubt that Mr. Rajendra 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 ?*

2. *"Whether on the fact and in the circumstances of the case and in law, the Ld. CIT(A) has erred in reducing gross profit @ 3%, as against the 100% addition made by the Assessing Office on account of bogus purchases of Rs. 2,01,67,404/- from two Hawala parties, without appreciating the facts that during the search operation statement of Mr. Rajendra Jain recorded u/s132(4) of the I.T. Act, in which he has categorically stated that those two 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. "Whether on the fact and in the circumstances of the case and in law, the Ld. CIT(A) has erred in reducing gross profit @ 3%, as against the 100% addition made) by the Assessing Office on account of bogus purchases of Rs. 2,01,67,404/- from two 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 Shri. Rajendra Jain, to whom the assessee claimed to have made purchases ?"

4 " Whether on the facts and in the circumstances of the case and in law, the La CIT(A) has erred in reducing gross profit @ 3% as against the 100% addition made by the Assessing office on account of bogus purchases of Rs. 2,01,67,404/ - from two entities by ignoring the fact that action of the Assessing Officer was based on credible information received from the DGIT(Inu.), Mumbai and that the during the course of assessment proceedings the assessee has failed to prove the genuineness of the alleged purchase transactions ?"

5 -Whether on the facts and in the circumstances of the case and in law, the ld C/2(A) has erred in reducing gross profit @ 3% as against the 100% addition made by the Assessing office on account of bogus purchases of Rs. 2,01,67,404/- from two entities are in the nature of unexplained and without giving any satisfactory ground on which the Ld. CIT(A) is defended?"

6 "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in reducing gross profit @ 3% as against the 100% addition made by the Assessing Office on account of bogus purchases of Rs. 2,01,67,404/- without appreciating the ration 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 ?"

7 "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?"

8. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in reducing the gross



profit @ 3% as against the 100% addition made by the Assessing Office on account of bogus purchases of Rs.2,01,67,404/-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 ?"

3. The assessee filed return of income for assessment year 2011-12 on 08.09.2011 declaring total income at Rs.3,75,830/-. The return of income filed was processed u/s 143(1) of the Income-tax Act, 1961 (in short 'the Act'). Subsequently, a search action was conducted in the case of Shri Rajendra Jain and other on 03.10.2013 by the Investigation Wing of the Income-tax Department, Mumbai wherein he found that various concerns controlled, managed and operated by Shri Rajendra Jain and family were engaged in providing accommodation entries of sales of diamonds etc. to various persons. The Investigation Wing found that assessee is one of the beneficiaries of obtaining bogus accommodation entry of purchase of diamond from the firm controlled and managed by family of Shri Rajendra Jain. The specific information related to the purchases by the assessee from two firms managed and controlled by Shri Rajendra Jain were provided to the Assessing Officer of the assessee. The name, PAN number and amount of purchase have been reproduced by the Assessing Officer in para 2.1 of the impugned assessment order. For ready reference, details of said purchases is reproduced as under:



Sr. No.	Name of the Hawala Parties	PAN No.	Bill amount in Rs.
1.	M/s Aadi	AHOPJ3837B	70,69,293/-
2.	M/s Kalash	AFRPJ9962J	1,30,98,111/-
Total			2,01,67,404/-

3.1 In view of the above information, the Assessing Officer recorded reason to believe that income escaped assessment and following due procedure of law, he issued notice u/s 148 of the Act on 28.03.2018. During the course of the re-assessment proceedings, the assessee was asked to justify genuineness of the purchases. In view of adverse observations in respect of purchase made by the assessee from those two concerns namely M/s Aadi and M/s Kalash, the assessee contested that corresponding bills from those parties are duly entered in the books of account of the assessee and payment was made through bank, therefore, purchases were genuine. However, the Ld. Assessing Officer referred to observations during the course of the search in the case of Shri Rajendra Jain and others, which *interalia*, include (i) name sake directors, partners in the firms controlled and managed by Shri Rajendra Jain, (ii) all such directors partners and proprietors of those firms were associated or related to Shri Rajendra Jain and family, (iii) directors partners or proprietor of those firms were working as employees with Shri Rajendra Jain and family, (iv) those persons were not having genuine knowledge of diamonds business, (v) they were receiving salary as employee of the firms of Shri Rajendra Jain (vi) those persons were residing in houses/flats owned by Shri Rajendra Jain and family, (vii) those firms were



stated to be operating and premises by Shri Rajendra Jain & Family, (viii) those persons were not having any contacts with any of the importers from whom diamonds had been shown to be purchased under those firms (ix) admission by Shri Rajendra Jain that those persons were dummy directors and partners and all the business affairs of those entities were managed and controlled by Shri Rajendra Jain and (x) no stock of diamond was found any of the business premises of those entities. The Assessing Officer further concluded that onus was on the assessee to establish the genuineness of the purchases made from those two parties and mere filing of the evidence in the form of purchase bills and payment through account payee cheque was not conclusive and sacrosanct. Accordingly, he concluded that the purchases in the books of account of the assessee to the extent of shown from two parties remain unverifiable and hence, held bogus purchases for the purpose of suppressing the true profit of the assessee. The Assessing Officer accordingly made addition for entire amount of the bogus purchases amounting to Rs.2,01,67,404/- in the assessment order passed u/s 147 r.w.s. 143(3) of the Act dated 17.12.2018.

4. On further appeal, the assessee challenged the validity of the reassessment proceedings as well as addition on merit. The Ld. CIT(A) rejected the ground challenging validity of the reassessment. As far as issue on merit is concerned the Ld. CIT(A) has



conclusively held that the purchases recorded in the books of accounts in respect of those two parties namely M/s Aadit (Rs.70,69,293/-) and M/s Kalash (Rs.1,30,98,141/-) are bogus. But according to the Ld. CIT(A) disallowance for 100% of such bogus purchases was not warranted and according to him in view of various decisions of the Co-ordinate Bench of the Tribunals and High Court only profit element embedded in those two bogus purchases should only be added. Accordingly, he restricted 3% of the bogus purchases as profit element additionally earned by the assessee and he sustained the disallowance to the extent of the 3% of such bogus purchases.

5. Before us, no appeal has been preferred by the assessee. In the present appeal filed, the Revenue is agitated only with the issue of disallowance restricted by the Ld. CIT(A) @ 3% as against 100% disallowance which was made by the Assessing Officer.

6. Before us, the Ld. counsel for the assessee has filed a Paper Book containing paged 1 to 267.

7. We have heard rival submission of the parties and perused the relevant material on record. The assessee in its books of accounts for the year under consideration has shown purchases from two parties namely M/s Aadit (Rs.70,69,293/-) and M/s Kalash (Rs.1,30,98,141/-). On the basis of information gathered in the course of search action at the premises by the Rejendra Jain and



family (supra), the Assessing Officer was of the view that assessee had obtained bogus bills of accommodation entry only for reducing its profits to be declared for the purpose of the taxation and accordingly, he disallowed 100% of such bogus purchases. The Ld. CIT(A) has though sustained that purchases are bogus however, considered 3% of such bogus purchases as reasonable for addition. Thus, the issue in dispute before us is whether in a case where purchase from two parties have been established as bogus and not disputed by the assessee, then, what should be the addition in the hands of the assessee corresponding to such bogus purchases. We are of the view that wherever, an assessee is under the cloud of obtaining bogus purchases bills, the Assessing Officer should primarily first verify, whether purchase quantity corresponding to bogus purchase bills is entered in day to day stock register. If not, then 100% amount of bogus bills is liable for disallowance.

7.1 But if purchase quantity is entered in day to day stock register, then the AO should verify whether the sales corresponding to the bogus purchases are verified or genuine. For this purpose, the Assessing Officer should verify the day to day inventory register and identify the quantity of purchase recorded in stock register corresponding to bogus purchases bills, then identify corresponding sales. Once, he identify the parties to whom the sales corresponding to bogus purchases are made, the Assessing Officer is required to examine those parties and verify their sales after verification of the



evidence in support of delivery, transportation expenses etc. Wherever, sales are made to Government agencies or export, it is presumed that those sales are verified, as export sales are through custom boundary, where physical goods are verified. Wherever, sales corresponding to bogus purchases are not verified, and then the sales made by the assessee will also amount to be in the nature of the 'accommodation entry bills' only. Once, the bills of the purchases and sales both are in the nature of accommodation entry, then the assessee falls in the category of bogus biller engaged in providing accommodation entry bills and in that case addition for the commission for providing entry bills can be made.

7.2 But, wherever, sales by an assessee corresponding to the bogus purchases are verified, then only presumption is that the assessee must have purchased the goods in cash from the grey market and supplied to the sales parties. Thus in such a situation, the assessee is taking bills from one party for recording purposes in his books of accounts, whereas goods recorded in those bogus bills are purchased from grey market in cash for supplying to the sales party. In the Co-ordinate Benches of the Tribunal and Hon'ble High Courts, which have been cited by the assessee, it is held that in such cases the assessee has obtained benefit of discount on the cash purchases and addition should be restricted to the extent of benefit obtained by the assessee . In the instant case, the Ld. CIT(A)



has restricted that cash discount to the extent of 3% as higher gross profit earned by the assessee on bogus purchases.

7.3 However, one more situation which needs to be examined in such cases. In such cases, it is to be seen from the day to day stock register, as when the goods had arrived in warehouse or godown of the assessee. The date of entry in warehouse or godown is deemed to be the date of the cash purchase by the assessee and assessee must have paid cash for purchase of goods from grey market, but source of which, the assessee is required to explain. It is further need to be examined when the assessee has made payment through cheque in respect of bogus purchases debited in the books of accounts. It can be presumed that assessee must have received cash back from those parties and same could have been utilized for funding the purchase of goods in cash for supplying to sales parties. In such a situation, the availability of the unexplained cash in the hands of the assessee need to be examined and wherever no cash is available with the assessee for such purchase, the addition for unexplained cash purchases also need to be considered. This issue has not been examined by the Ld. CIT(A) in the instant case and therefore, we feel it appropriate to restore this issue back to the file of the Assessing Officer for examination and verification of the stock inventory of purchase and sales relevant to those two parties and date of payments debited in bank account for corresponding purchases from those two parties. Accordingly, we restore the issue



in dispute to the file of the Assessing Officer. The grounds of appeal of the Revenue are accordingly allowed for statistical purposes.

7.4 The grounds raised by the Revenue in assessment year 2012-13 are identical to the grounds raised in assessment year 2011-12 and therefore, the grounds raised in assessment year 2012-13 are adjudicated *mutatis mutandis*.

8. In the result, both the appeals of the Revenue are allowed for statistical purposes.

Order pronounced in the open Court on 30/08/2024.

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 30/08/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai