

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.4789/M/2023
Assessment Year: 2011-12**

Shri Snehal Rohit Jhaveri, 4 th Floor, 18 Chowpatty Chambers, Morvi Lane, Mumbai Maharashtra- 400 007 PAN: AABPJ9368F	Vs.	Income Tax Officer- Ward 19(3)(4), 2 nd Floor, Matrumandir, Tardeo, Mumbai – 400007 Maharashtra
(Appellant)		(Respondent)

Present for:

Assessee by : Ms. Aarti Vissanji, A.R.
Revenue by : Smt. Sujatha P. Iyengar, Sr. A.R.

Date of Hearing : 04 . 09 .2024

Date of Pronouncement : 16 . 09 .2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 21.11.2023, impugned herein, passed by the National Faceless Appeal Center (NFAC)/Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2011-12.

2. In the instant case the Assessee is a trader of cut and polished diamonds and has filed his return of income on 07.09.2011 declaring total income at Rs.10,51,210/-, which was processed u/s 143(1) of the Act on 14.10.2011. Lateron, the original return filed was revised by the Assessee by filing revised return of income on 03.10.2012 declaring his total income at Rs.10,34,890/- which was also processed u/s 143(1) of the Act on 23.01.2013.

3. Subsequently, on the basis of search and survey action conducted in the case of Shri Gautam Jain & others by the DGIT(Inv.), Surat on 03.10.2013, wherein it was revealed that the said group concerns were mainly providing the accommodation entries through various benami concerns operated and managed by them and indulged into fraudulent transactions of issuing accommodation/hawala entries which purportedly shows transaction of purchase and sale of material and bogus unsecured loans and advances. The Assessee has also obtained accommodation entries from the hawala entities for the assessment year under consideration of the following amounts:

<i>Sl. No.</i>	<i>Name of the Hawala Party</i>	<i>Bill Amount</i>
1	M/s. Krishna Diam	Rs.6,62,00,777/-
<i>Total</i>		Rs.6,62,00,777/-

3.1 The Assessing Officer (AO) by analyzing various facts and circumstances of the case and the reply & documents filed by the Assessee allegedly held the transaction of Rs.6,62,00,777/- made from M/s. Krishna Diam, as bogus and non-genuine being and ultimately added the same to the total income of the Assessee.

4. The Assessee, being aggrieved, challenged the said addition before the Ld. Commissioner and mainly claimed that the total purchases made from M/s. Krishna Diam was Rs.3,92,92,169/- whereas the AO considered the amount of Rs.6,62,00,777/- without verifying and added a further sum of Rs.2,69,08,608/- without application of mind. The Assessee before the Ld. Commissioner by filing written submissions dated 15.11.2023 also claimed that addition cannot be made @ 100% of the alleged bogus purchases but only profit element embedded therein can be added, which has already been shown @ 3.06% in the year under consideration by the Assessee himself.

5. The Ld. Commissioner though in the impugned noted the aforesaid claim of the Assessee but admittedly did not adjudicate the ground related to the claim of the Assessee that total purchases from M/s. Krishna Diam have been made to the tune of Rs.3,92,92,169/- only but not Rs.6,62,00,777/- as considered by the AO. In effect, the Ld. Commissioner justified the assessment order and/or making the addition by the AO and accordingly upheld the same.

6. The Assessee, being aggrieved, is in appeal before us. At the outset, the Ld. Counsel Ms. Aarti Vissanji has submitted that the Assessee raised the specific issue before the Ld. Commissioner qua total purchases made from M/s. Krishna Diam at Rs.3,92,92,169/- as against the amount of Rs.6,62,00,777/- as considered by the AO, however, inadvertently or by overlooking the said ground remained unadjudicated by the Ld. Commissioner. The Ld. Counsel further submitted that alternatively the profit element embedded in the bogus purchases can only be made as addition but not the alleged bogus purchases in entirety as held by various courts.

7. On the contrary, the Ld. D.R. refuted the claim of the Assessee.

8. We have given thoughtful considerations to the peculiar facts and circumstances of the case and observe that before the AO the Assessee never raised this issue qua purchases made from Krishan Diam to the tune of Rs.3,92,92,169/- only, as it clearly appears in the submissions dated 07.12.2018 at page No.54-55 of the paper book filed before the AO. However, the Assessee before the Ld. Commissioner first time raised this issue. It appears that the Ld. Commissioner, may be inadvertently/overlooking, has not considered this issue and ultimately proceeded to the merit of the case qua making of addition by the AO. In catena of judgments, it is invariably held by various courts that the addition on account of bogus purchases @ 100% of bogus purchases cannot be made but only profit element embedded therein can be taken into consideration for making the addition. Thus considering the peculiar facts and circumstances in totality and for the ends of litigation and for the just decision of the case and for substantial justice, we direct the Ld. Commissioner to verify the fact qua alleged purchases made from M/s. Krishna Diam *“as to whether the same were of Rs.3,92,92,169/- or Rs.6,62,00,777/-, and/or justify the alleged bogus purchases to the tune of Rs.6,62,00,777/- made from M/s. Krishna Diam “* by calling report from the AO, if desires so and then to add 5% of the alleged bogus purchases instead of 100% of the alleges bogus purchase amount, irrespective of the GP rate @ 3.06% as shown by the Assessee. In effect, the addition under consideration to the extent of 5% is upheld, however subject to verification as directed above.

9. In the result, the appeal of the Assessee is allowed for statistical purposes.

Order pronounced in the open court on 16.09.2024.

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

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.