

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

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 1004/MUM/2024
(Assessment Year: 2012-13)**

Gehna Jewellers Private Limited,
5, Kakad Palace, Turner Road,
Bandra, Mumbai – 400050.
[PAN: AADCG8796M]

..... **Appellant**

Vs

**Deputy Commissioner of Income Tax
Circle -4(2)(1),** Formerly DCIT Circle
12(2)(2), Room No. 642, 6th floor,
Aayakar Bhavan, M.K. Road,
Mumbai- 400020.

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri V.C. Shah
For the Respondent/Department : Mrs. Beena Santosh/Mr. Pushkraj
Bhange Patil

Date

Conclusion of hearing : 18.10.2024
Pronouncement of order : 04.11.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order dated 12/01/2024, passed by the National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as the '**CIT(A)**'] for the Assessment Year 2012-13 (*incorrectly stated as Assessment Year 2018-19 in the order impugned*), whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 31/10/2019, under Section 144 read with section 147 of the Income Tax Act, 1961 (hereinafter referred to as '**the Act**').
2. Appellant has raised a number of grounds, which are descriptive/argumentative in nature, challenging the validity of the

re-assessment proceedings and the addition of INR 25,66,533/- made on account of alleged bogus purchases.

3. The relevant facts in brief are that the Appellant was, at the relevant time, engaged in the business of retailer in ornaments of gold and jewellery. The appellant filed return for Assessment Year 2012-13 on 29/09/2012 declaring total income at INR.3,04,68,563/-. Initially the case was selected for scrutiny and assessment was completed on 09/03/2015 under Section 143(3) of the Act at assessed income of INR.3,05.52,120/-. Subsequently the assessment was reviewed by Pr.CIT-12, Mumbai as order under Section 263 of the Act was passed on 24/03/2017 against which appeal was preferred before the Tribunal. Vide order dated 22/11/2017 passed by the Tribunal in ITA No. 3530/MUM/2017 the order passed under Section 263 of the Act was set aside and Assessment Order, dated 09/03/2015, passed under Section 143(3) of the Act was restored. Thereafter, issuing notice under Section 148 of the Act was issued on 31/03/2019 and re-assessment proceedings were initiated under Section 147 of the Act which culminated into Assessment Order, dated 31/10/2019 passed under Section 144 r.w.s. 147 of the Act assessing total income of the Appellant at INR.3,31,18,660/- after making addition of INR.25,66,533/- on account of alleged bogus purchases made from the following two parties:

M/s Rajan Gems: INR.11,33,022/-

M/s Kangan Jewels Private Limited: INR.14,33,511/-

INR.25,66,533/-

4. The appeal preferred by the Appellant before the CIT(A) against the above assessment order passed under Section 147 read with Section 144 of the Act was dismissed by the CIT(A) vide order dated 12/01/2024.
5. Now the Appellant has preferred the present appeal before the

Tribunal raising a number of grounds challenging the validity of the re-assessment proceedings and the addition of INR.25,66,533/- made on account of alleged bogus purchases.

6. We note that the re-assessment proceedings have been initiated on the basis of information received from the Principal Director of Income Tax (Investigation) to the effect that the Appellant had taken accommodation entries in relation to bogus purchases from M/s Rajan Gems. The Assessing Officer after verification of records found that the Assessee had made purchases of INR.11,33,022/- from the said party. In our view, in the facts of the present case, the aforesaid information received from the investigation wing formed sufficient tangible material for initiation of re-assessment proceedings under Section 147 of the Act. As per the reasons recorded, the Assessing Officer had formed a belief that income had escaped assessment since the Appellant had booked bogus purchases of INR. 11,33,022/- and thereby, failed to made full and true disclosure during the assessment proceedings. Therefore, we reject the challenge to the validity of the re-assessment proceedings. Since the re-assessment proceedings were validly initiated no fault could be found in the action of the Assessing Officer including in the ambit of re-assessment proceedings, the escapement of income on account of the alleged bogus purchases of INR.14,33,512/- made by the Appellant from Kangan Jewels Pvt. Ltd. (incorrectly stated as M/s. Kangan Jewels) that had subsequently came to the knowledge of the Assessing Officer during the re-assessment proceedings.
7. As regards, the merits of the addition of INR 25,66,533/- made by the Assessing Officer which was sustained by the CIT(A) is concerned, we find some merit in the contention advanced on behalf of the Appellant. On perusal of the order, dated 22/11/2017, passed by the Tribunal in ITA No 3530/MUM/2017

(at paragraph 8) whereby the order of revision passed under Section 263 of the Act for the Assessment Year 2012-2013 (ie. The assessment year before us) was set aside by the Tribunal, we find that the Tribunal has returned the following findings:

"8. We have heard rival contentions and perused the material available on record. We have also applied our mind to the decisions relied upon by both the parties. It is evident from the notice dated 9 th December 2015, issued under section 263 of the Act by the learned PCIT, he exercised his revisional jurisdiction on the issues as enumerated in Para-2 of this order. Undisputedly, after considering the explanation / submissions of the assessee, the learned PCIT has dropped proceedings under section 263 of the Act in respect of issues no.1 and 5. Thus, he has revised the assessment order by considering it as erroneous and prejudicial to the interests of Revenue in respect of issues no.2, 3 and 4. Therefore, we have to examine the validity of exercise of power under section 263 vis-a-vis the aforesaid issues on Gehna Jewellers P. Ltd. which he has revised the assessment order. Before that, we must observe, the learned PCIT is empowered to exercise his powers under section 263 of the Act on fulfillment of two conditions cumulatively. Firstly, the order sought to be revised must be erroneous and secondly, it must be prejudicial to the interests of Revenue. Keeping in view the aforesaid legal position, we have to examine the issue at hand. As stated earlier, in the impugned order the assessment order has been revised on three issues. First issue on which the learned PCIT has revised the assessment order under section 263 is on account of alleged non-furnishing of carat-wise details of gold and diamond jewellery. In this context, a perusal of the tax audit report for the relevant previous year filed along with the return of income, a copy of which is placed in the paper book reveals that in the said audit report all details of raw materials and finished products, such as, opening stock, purchases, consumption, sales and closing stock of 14 carat, 18 carat, 22 carat and 24 carat gold, diamond, platinum, silver, jewellery were given in exhibit attached to the tax audit report. Further, the Assessing Officer in the notice issued under section 142(1) dated 24th January 2015, has called for the month-wise details of opening and closing stock of each item of jewellery and in response thereto, the assessee has furnished month-wise quantitative details of opening and closing stock of each item of jewellery carat-wise. In fact, the learned PCIT in the revision order, though, has accepted the fact that the Gehna Jewellers P. Ltd. Assessing Officer has called

for details of opening stock and closing stock of jewellery and the assessee has also furnished the details, however, he has held the assessment order to be erroneous and prejudicial to the interest of Revenue on the reasoning that the Assessing Officer has not called for carat-wise details of gold and diamond jewellery manufactured and sold.” (Emphasis Supplied)

8. As per the above findings returned by the Tribunal, the Appellant had filed relevant details of opening stock, purchases and closing stock of each item of jewellery before the Assessing Officer. The aforesaid finding returned by the Tribunal has attained finality. Therefore, the addition of entire purchase price in the hands of the Appellant cannot be sustained. Accordingly, by following the judgment of the Hon'ble Bombay High Court in the case of Pr. CIT-17 vs. Mohammad Haji Adam & Co. [2019] 103 taxmann.com 459 (Bom), and keeping in view the overall facts of the present case the Assessing Officer is directed to restrict the addition to the difference, if any, between (a) the gross profits margin offered to tax in relation to genuine purchases and (b) the gross profits margin offered to tax in relation to alleged bogus purchases.
9. In terms of the paragraph 6 to 8 above, the present appeal preferred by the Assessee is partly allowed.

Order pronounced on 04.11.2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 04.11.2024

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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