

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH MUMBAI

**BEFORE MS KAVITHA RAJAGOPAL, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 3217/MUM/2024
Assessment Year: 2007-08**

Super Diamond Exports, AE, 7050, 7 th Floor, Bharat Diamond Bourse, Bandra Kurla Complex, Bandra East, Mumbai – 400 051 (PAN : AAGFS8464C)	Vs.	Deputy Commissioner of Income Tax, Circle – 19(3), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Sunil Hirawat, CA
Revenue : Shri Shambhu Yadav, Sr. AR

Date of Hearing : 19.08.2024
Date of Pronouncement : 11.11.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), vide order No. ITBA/NFAC/S/250/2024-25/1065316497(1), dated 31.05.2024 passed against the assessment order by Assistant Commissioner of Income Tax-19(3), Mumbai, u/s. 143(3) r.w.s. 147 of the Income-tax Act (hereinafter referred to as the "Act"), dated 27.03.2015 for Assessment Year 2007-08.

2. Grounds taken by the assessee are reproduced as under:

"1. On facts and in law, the Leamed Commissioner of Income Tax Appeal (hereinafter referred to as Ld. CIT-A) had failed to appreciate that no valid proceedings us. 148/147 were initiated in the case of the appellant, hence assessment order based on the invalid proceedings is bad-in-law and ought to have been quashed.

2. On facts and in law, the Ld. CIT-A had erred in confirming the addition of Rs. 23,44,461/-being 8% of Rs. 2,93,05,756/- in the total income. Under the facts and circumstances of the matter, he ought not to have confirmed the said addition of Rs. 23,44,461/-,

3. On facts and in law the Ld. CIT-A had erred in confirming the addition and totally ignoring the fact that the appellant had already shown the G.P. of 7.37% on the alleged transactions as against the overall G.P of 7.02% of the appellant.

4. On facts and in law, the Ld. CIT-A erred in not directing the Assessing Officer not to reject the Books of Accounts as provided u/s. 145(3) without following the due procedure contemplated in the Income-tax Act.

5. On facts and in law, Ld. CIT-A had erred in pushing the appellant to unwanted and unnecessary litigation without discharging his quasi jurisdictional authority. Under the facts and circumstances of the matter suitable direct cost (appeal fees and counsel fees) and indirect cost (harassment and mental agony) ought to have been awarded to the appellant."

6. The appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at the time of hearing of the appeal, so as to enable the Hon'ble ITAT to decide this appeal according to law."

3. Brief facts of the case are that assessee filed its return of income on 01.10.2007 reporting total income at Rs.53,36,620/-. Case of the assessee was taken up for re-assessment by initiating proceedings u/s. 147 for which notice u/s.148, dated 25.03.2014 was issued after recording reasons to believe. In the reasons to believe recorded by ld. Assessing Officer, it was observed that assessee had made purchase of Rs.2,93,05,756/- from M/s. Kothari & Co., which is a concern controlled and managed by one, Shri Bhanwarlal Jain. In the case of Shri Bhanwarlal Jain group, a search and survey action was

conducted on 03.10.2013. Post search, in this group, ld. Assessing Officer of the assessee received certain information from DGIT(Inv.), Mumbai that assessee had taken accommodation entries of purchase from M/s. Kothari & Co. To ascertain the genuineness of the said purchase transaction, explanation and details were called for from the assessee. Assessee furnished its details that purchases were made from M/s. Kothari & Co., who had also confirmed their sale. Assessee furnished a statement showing purchases made from M/s. Kothari & Co. and corresponding export sales of cut and polished diamonds. In the statement, it was demonstrated that gross profit earned by the assessee from the said transaction was @ 7.37% which was higher than the overall gross profit rate of 7.02% reported by the assessee in its audited financial statement including tax audit report. Scanned copy of the statement furnished by the assessee is reproduced below:

Financial Year - 2006-07M/s. Super Diamond ExportsAsst. Year - 2007-08Purchase DetailsExport Sale Details

Date	Name of the Party	Bill No.	Qty (Cts)	Amt.(Rs.)	Date	Name of the Party	Inv.No.	Qty(Cts.)	Amt.(USD)	Amt.(Rs.)
10/4/2006	Kothari & Company	KC/PD/Apr/08/2006-07	200.11	7964378	17/04/2006	Everest Star Inc. USA	02/2006-07	200.11	190,050.85	8447760
2/2/2007	Kothari & Company	KC/PD/feb/03/2006-07	358.08	4941504	12/2/2007	Navkar Exports Hongkong	9/2006-07	358.08	122,170.70	5381619
3/2/2007	Kothari & Company	KC/PD/feb/04/2006-07	273.81	9282159	12/2/2007	Everest Star Inc. USA	8/2006-07	273.81	228,861.40	10081345
3/2/2007	Kothari & Company	KC/PD/feb/05/2006-07	560.45	7117715	14/02/2007	Everest Star Inc. USA	10/2006-07	560.45	175,420.75	7727284
			1392.45	29305756				1392.45	716,503.70	31638008

Total Sales (In Rs.)	31638008
Total Purchase (in Rs.)	29305756
Gross Profit (in Rs.)	2332252
G.P.Ratio	Gross Profit Total Sales x 100
	2332252 31638008 x 100
	7.37%

For supply to S. D. M. ...

3.1. From the chart extracted above, assessee explained that it had purchased 1392.45 carats of cut and polished diamonds at a total

purchase cost of Rs.2,93,05,756/- from M/s. Kothari & Co. giving details of all the invoices along with furnishing copies of the same. Payments were made through proper banking channel for which the relevant bank statements were placed on record. By the way of sale, assessee exported the said cut and polished diamonds weighing 1392.45 carats for which copies of sales invoices along with custom clearing documents were placed on record. Assessee also furnished documents containing copies of airway bill from clearing and forwarding agents. Sales realisation received by the assessee were in its bank account for which also relevant bank statements were placed on record. Thus, assessee provided all the relevant explanation and documentary evidences to demonstrate that purchases made by the assessee are genuine on which gross profit rate at a higher percentage has already been reported in its audited financial statement and the return so filed as compared to the overall gross profit reported by it in its profit and sales account. Assessee thus, claimed that when it has already reported a higher percentage of gross profit @ 7.37%, there is no occasion for the ld. Assessing Officer to make an addition at an estimate rate of 8%. In support of its claim, assessee placed reliance on the decision of Hon'ble Jurisdictional High Court of Bombay in the case of PCIT vs. Mohammed Haji Adam and Co. [2019] 103 taxmann.com 459 (Bom) wherein in para-8, it was held as-

“The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases.”

3.2. Assessee submitted that in its case, sales made are not in dispute, the same have been accepted by the Department while

making the impugned assessment. Accordingly, the case of the assessee is squarely covered by the decision of Hon'ble Jurisdictional High Court of Bombay.

4. Per contra, ld. Sr. DR placed reliance on the order of ld. Assessing Officer and asserted that ld. Assessing Officer is justified in making addition @8% over and above what has already been reported by the assessee, since it is a case of bogus purchase transactions by way of accommodation entry.

5. We have heard both the parties and perused the material on record. We have also perused the paper book containing documentary evidences furnished by the assessee in support of its claim substantiating the genuineness of purchase and sale in respect of alleged bogus transaction from M/s. Kothari & Co. Assessee has mapped the purchase so made with the export sales made by it by corroborative documentary evidence. It has also demonstrated that it has earned gross profit of 7.37% on the said transaction which forms part of its reported income in the return filed. Further, we note that export sales made by the assessee are not in dispute. Ld. Sr. DR has also not brought on record any cogent material to controvert the said facts. We also take note of the fact that in its tax audited report, assessee has reported gross profit ratio of 7.02% and net profit ratio of 5.60%. Ld. Assessing Officer has made an addition by taking an estimated rate of 8% which according to us cannot be justified in the light of findings given by the Hon'ble Jurisdictional High Court of Bombay in the case of Mohammed Haji Adam and Co. (supra), according to which the additions should be limited to the extent of bringing GP rate of the purchases at the same rate of other genuine purchases. In the present case, GP rate on the alleged bogus

purchases reported by the assessee is higher than the GP rate of the other genuine purchases. Thus, in the given set of facts and aforesaid judicial precedents, addition made by the ld. Assessing Officer is deleted. Accordingly, grounds taken by the assessee are allowed.

6. In the result, appeal of the assessee is allowed.

Order is pronounced in the open court on 11 November, 2024

Sd/-
(Kavitha Rajagopal)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 11 November, 2024

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai