

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD**

**BEFORE DR. B.R.R. KUMAR, VICE-PRESIDENT &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.119/Ahd/2024
(Assessment Year: 2012-13)

Assistant Commissioner of Income-tax, Vejalpur, Ahmedabad	Vs.	Krishnaavtar J. Kabra (HUF), 3, Rajesh Apartment, B/h Navgujarat College, Income Tax, Ashram Road, Ahmedabad, Gujarat PAN : AADHK 0462 R
(Appellant)	..	(Respondent)

Appellant by :	Shri B.P. Srivastava, Sr DR
Respondent by:	Shri Sakar Sharma, AR

Date of Hearing	11.11.2024
Date of Pronouncement	19.11.2024

ORDER

PER DR. B.R.R. KUMAR, VICE-PRESIDENT :

This appeal has been filed by the Revenue against the order passed by the Ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre [NFAC], Delhi (hereinafter referred to as "CIT(A)" for short), dated 24.11.2023 passed under Section 250 of the Income-tax Act, 1961 [hereinafter referred to as "the Act" for short], for Assessment Year (AY) 2012-13.

2. The Revenue has raised following grounds in its appeal:-

"1. Whether the CIT(A) has justified in law and on facts in deleting the addition of Rs. 3,51,71,221/- made on account of disallowance of bogus purchases without adequately appreciating the fact that the transactions was pre-arranged as well as sham and was carried out through paper company.

2. Whether the CIT(A) has justified in law and on facts in deleting the addition of Rs .3,51,71,221/- made on account of bogus purchases despite the fact that in an investigation conducted by the department, the director of M/s Delight Diam Pvt Ltd categorically admitted in his sworn statement that his entity did not carry any real business and inter-alia, the transactions carried out through bank channel by his entity was merely transfer entries undertaken against commission.

3. The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary.

4. It is therefore prayed that the order of Ld. CIT(A) may be set aside and that of the Assessing Officer be restored.”

3. The assessee is engaged in sarafi business and trading of metals. The case of the assessee has been reopened u/s 147 of the Act based on the information received from DDIT (Inv.), Unit-2, Surat. The information reveals that the company named M/s. Delight Diam Pvt. Ltd. is involved in providing accommodation entries related to diamond trading as confessed by the Director of the company Shri Deepak K. Babel during the course of statement recorded u/s 131 of the Act on 05.03.2018. As per the information available with the Revenue Authorities, the assessee is one of the parties who has shown purchases of diamond from the said company M/s. Delight Diam Pvt. Ltd. to the tune of Rs.3,51,71,221/- during the Financial Year 2011-12, relevant to Assessment Year 2012-13. Before the Revenue Authorities, the Director of the company of M/s. Delight Diam Pvt. Ltd., Shri Deepak Babel affirmed that the company is engaged in providing accommodation entries and the transactions made by the assessee cannot be considered as genuine. The details of purchase of diamonds on various dates from M/s. Delight Diam Pvt. Ltd. are as under:-

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Sr. no	Date	Bill no.	Amount
1.	05/01/2012	DDS/J/17	4658637.50
2.	06/01/2012	DDS/J/25	3936007.65
3.	09/01/2012	DDS/J/37	4988566.50
4.	06/02/2012	DDS/F/08	4623342.06
5.	07/02/2012	DDS/F/09	4946665.60
6.	08/02/2012	DDS/F/10	4163037.00
7.	01/03/2012	DDS/M/01	4833771.90
8.	02/03/2012	DDS/M/02	3021192.90
		Total	3,51,71,221.11

4. All the above purchases were made by the assessee from 05.01.2012 to 02.03.2012 and the payments have been made through RTGS during the period from 15.03.2012 to 29.03.2012 as per the assessee's account in the books of M/s. Delight Diam Pvt. Ltd. It is pertinent that Shri Dipak Kailash Babel, Director of M/s. Delight Diam Pvt. Ltd., has categorically stated that all activities of purchase and sale of diamond were enacted only on paper and whole transactions were given a guise of genuineness. The AO analysed the financial statements i.e. balance sheet of M/s. Delight Diam Pvt. Ltd to conclude that the company does not have any assets to conduct its business at such large turnover. Based on the statement Shri Dipak Kailash Babel, Director of M/s. Delight Diam Pvt. Ltd. who specifically stated that the company is mainly in providing accommodation entries that neither the diamonds were purchased nor sold, the AO made addition of the amount of Rs. 3,51,71,221.11 to the total income of the Assessee.

5. Aggrieved by the order of the Assessing Officer, the assessee filed appeal before the Id. CIT(A) who has deleted the addition holding as under:-

“7.4. The submissions of the assessee have been carefully examined with details and evidences submitted during the present appellate proceedings. On careful examination I am of the view that the AO has

failed to undertake any enquiry to establish that the said purchases are bogus considering the assessee has brought on record documentary evidences to establish the genuineness of the purchase transactions. Further the payments for the said purchases were done through proper banking channels and there is no evidence brought on record by the AO to establish that the said payments were routed back to the assessee. Furthermore, the sales have not been doubted by the AO as the assessee has furnished documentary evidences of sales too.”

6. Aggrieved, the Revenue is in appeal before us.

7. During the hearing, the ld. DR argued elaborately taking cue from the Assessment order. He argued that the reassessment has been initiated based on the sworn statement given by Shri Deepak Kailash Babel. Since the statement has been given on oath, it cannot be considered as retracted unless the assessee brings any other relevant material on record. He further argued that the balance-sheet of the company namely M/s. Delight Diam Pvt. Ltd. backed by the statement given by the Director Shri Deepak K. Babel clearly proves that there is hardly any item or volume with reference to the assets of the company through which the company could achieve any figure of turnover which has been mentioned in the Audit Report. Apart from this, it is a fact on record that the Director Shri Deepak Babel has specifically admitted that there was hardly any real business transaction of the company or its concerns. The ld. DR referred to question Nos. 7, 8, 9, 11 and 12, wherein Shri Deepak Babel has categorically submitted that the company was involved in giving accommodation entry to various people on account of purchase and sales of diamonds by charging commission of 0.02% to 0.03%. The ld. DR further argued that the assessee has shown purchases of diamond worth Rs.3.51 crores and since the director of M/s. Delight Diam Pvt. Ltd., Shri Deepak Babel himself has submitted that these are accommodation entry operations, hence the entire

purchases proved to be bogus and liable to be taxed as per the Income-tax Act. The Id. DR also argued that the Assessing Officer was also given opportunity to the assessee to cross-examine Shri Deepak Babel, but the assessee himself has not turned up on the designated day on which the cross-examination has been provided to the assessee. Thus, the assessee has also failed to cross-examine the entry operator, and hence there was no reason to dispute the facts stated by the entry operator which can only raise to the conclusion that the assessee is involved in the bogus purchase of diamonds.

8. On the other hand, Id. Counsel for the assessee argued that the statement given by Shri Deepak Babel stands retracted and the same has been duly mentioned in the order of the Tribunal in the case of Grishma Hemanshu Mody Vs. CIT(A) in ITA No. 895/Mum/2023, wherein at paragraph No.6, the ITAT categorically mentioned that Shri Deepak Babel has retracted his statement on 28.03.2018, which was given before the Revenue Authorities on 05.03.2018. The Tribunal also mentioned that the assessee had filed a copy of the retracted statement, and the assessment order was also silent about the retraction. The Id. AR argued that the said diamonds were duly sold to two entities namely M/s. Isabelle Tours N Travels and M/s. Shreeji Overseas (I) Pvt. Ltd. The AR argued that the assessee has earned a profit margin of 0.79% on the said transactions. It was also argued that there has been an opening balance of 99.07 Cts, the assessee has purchased 2198 Cts during the year and sold a total of 2297 Cts keeping closing stock as Nil. The Id. AR argued that the assessee could not have sold diamonds to M/s. Isabelle Tours N Travels and M/s. Shreeji Overseas (I) Pvt. Ltd. unless he had purchased diamonds from M/s. Delight

Diam Pvt. Ltd. It was argued that M/s. Shreeji Overseas (I) Pvt. Ltd. and M/s. Isabelle Tours N Travels would not have paid an amount of Rs.3.56 crores unless they have received diamonds and it proves that the assessee had purchased diamonds worth Rs.3.53 crores. It was also argued that the allegation of the Revenue that the diamond purchases are bogus is countered by the fact that the diamonds have been sold and the assessee has received the money equivalent to the diamond sold.

9. Rebutting the arguments of the Id. Counsel for the assessee, the Id. DR argued that the statement of Shri Deepak Babel clearly proves that he has never sold any diamond to the assessee, and if at all the assessee has sold the diamonds, it is out of the unaccounted purchase of the diamonds which could have been sold to M/s. Isabelle Tours N Travels and M/s. Shreeji Overseas (I) Pvt. Ltd.; and even on that count also the unaccounted purchases needs to be treated as unaccounted investment in the hands of the assessee.

10. We have heard the arguments of both the parties and perused the records. The undisputable facts emanate from the records before us are that Shri Deepak Babel has given a statement on 05.08.2018 about the nature of accommodation entries provided and retracted the same on 28.03.2018 before the Revenue Authorities. This fact has not been considered by the Assessing Officer or mentioned anywhere in the proceedings taken up by the Revenue Authorities. Further, it is an undisputable fact that the assessee has received amounts from two entities, namely M/s. Isabelle Tours N Travels and M/s. Shreeji Overseas (I) Pvt. Ltd., against the diamonds sold. It cannot be expected that these two entities

have paid amounts to the assessee without receiving any goods - whether it be diamonds or otherwise. Hence, such diamonds have been duly purchased from M/s. Delight Diam Pvt. Ltd. Even if the argument is considered, there were certain goods which were purchased by the assessee for Rs.3.53 crores which in turn have been sold to two entities at Rs.3.56 crores, then this leads to a situation where the Revenue has accepted the sales and, as a natural corollary, there have been purchases - whether from M/s. Delight Diam Pvt. Ltd. or any other parties. If there were no purchases, then there would be no corresponding sales; then the income of the assessee will be reduced as there is some margin towards the sales and purchase difference and the same has to be taken as profit. But, in a situation where the corresponding sales have been accepted, it cannot be said that there were no purchases.

11. In the instant case, the issue of cross-examination does not arise as the assessee has also not attended the office of the Revenue Authorities, though Shri Deepak Babel has also not attended on the said date. In case both the purchase and sales have been treated as bogus, then the difference amount of Rs.2,81,914/- is to be treated as the amount earned by the assessee after receiving the money from two parties namely M/s. Isabelle Tours N Travels and M/s. Shreeji Overseas (I) Pvt. Ltd., and sending it to a third party namely M/s. Delight Diam Pvt. Ltd. In that way, the assessee is acted as a conduit for transferring money through his account. The Revenue has failed to undertake any inquiry to prove that the assessee is operating as a conduit for transfer of money to various persons. The Revenue has also not disputed that the sales parties were bogus to buttress the arguments that the assessee is acting as a conduit for transfer of money.

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The Assessing Officer has held that the assessee has inflated the purchases by taking accommodation entries to reduce the legitimate tax liability (para 4.5 of the AO). If that is the case, the contention of the Assessing Officer cannot be accepted that, in order to sell goods worth Rs.3.56 crores the assessee has inflated the purchases by Rs. 3.51 crores. Further, we find that there was a total of 10 transactions entered by the assessee with regard to the sale and purchase of goods. All the 10 transactions involved selling of goods/diamonds which has been purchased and the details are as under:-

Deptt Paper Book No.	Name of Supplier	Date of Purchase	Purchase Bill No.	Qty in Crts	Purchase Amount	Deptt Paper Book No.	Name of Buyer	Date of Sale	Sale Bill No.	Qty in Crts	Sales Amount	Profit Margin	% margin
37,47	Opening Stock	Opening Stock	Opening Stock	9.85	209523.00								
85-86	Delight Diam P Ltd	05-01-2012	DDS/PD/JAN/17/2011-12	219.23	4658637.50								
				229.08	4868160.50	72	Isabelle Tours N Travels	05-01-2012	KC/11-12/01	229.08	4879404.00		
85, 87	Delight Diam P Ltd	06-01-2012	DDS/PD/JAN/25/2011-12	195.87	3936007.65	73	Isabelle Tours N Travels	06-01-2012	KC/11-12/02	195.87	4123063.50		
85,88	Delight Diam P Ltd	09-01-2012	DDS/PD/JAN/37/2011-12	226.65	4988566.50	74	Isabelle Tours N Travels	09-01-2012	KC/11-12/03	226.65	4997632.50		
85,89	Delight Diam P Ltd	06-02-2012	DDS/PD/FEB/08/2011-12	212.46	4623342.06	75	Shreeji Overseas(I) P Ltd	06-02-2012	KC/11-12/04	212.46	4631628.00		
85,90	Delight Diam P Ltd	07-02-2012	DDS/PD/FEB/09/2011-12	242.96	4946665.60	76	Shreeji Overseas(I) P Ltd	07-02-2012	KC/11-12/05	242.96	4956384.00		
85,91	Delight Diam P Ltd	08-02-2012	DDS/PD/FEB/10/2011-12	189.66	4163037.00	77	Shreeji Overseas(I) P Ltd	08-02-2012	KC/11-12/06	189.66	4172520.00		
85,92	Delight Diam P Ltd	01-03-2012	DDS/PD/MAR/01/2011-12	231.78	4833771.90	78	Shreeji Overseas(I) P Ltd	01-03-2012	KC/11-12/07	231.78	4867380.00		
85,93	Delight Diam P Ltd	02-03-2012	DDS/PD/MAR/02/2011-12	149.49	3021192.90	80	Shreeji Overseas(I) P Ltd	02-03-2012	KC/11-12/08	149.49	3034647.00		
	Total -A			1677.95	35380744.11					1677.95	35662659.00	281914.89	0.79
37,47	Opening Stock	Opening Stock	Opening Stock	89.22	1897832.00								
85,94	Johri Sons Jewellers (P) Ltd	15-03-2012	0260	229.25	4825712.50								
				318.47	6723544.50	81	Shreeji Overseas(I) P Ltd	15-03-2012	KC/11-12/09	318.47	6719717.00		
85,95	Johri Sons Jewellers (P) Ltd	15-03-2012	0267	300.88	6348568.00	79	Shreeji Overseas(I) P Ltd	15-03-2012	KC/11-12/10	300.88	6348568.00		
	Total-B			619.35	13072112.50					619.35	13068285.00	-3827.50	-0.03
	Grand Total			2297.30	48452856.61					2297.30	48730944.00	278087.39	

12. Hence, keeping in view the facts before us and the order of the Co-ordinate Bench of the Tribunal in the case of Grishma Hemanshu Mody Vs. CIT(A) in ITA No. 895/Mum/2023 (supra), and in the case of ITO Vs.

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Siddheshwar Impex Pvt. Ltd. in ITA No. 153/Mum/2024 wherein the issue of bogus purchases pertaining to M/s. Delight Diam Pvt. Ltd. involving Shri Deepak Babel have been adjudicated, we decline to interfere with the order of the Ld. CIT(A).

13. In the result, the appeal of the Revenue is dismissed.

The order is pronounced in the open Court on 19.11.2024

Sd/-

Sd/-

(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

(DR. B.R.R. KUMAR)
VICE-PRESIDENT

Ahmedabad; Dated 19/11/2024

btk

आदेश की प्रतिलिपि □ ग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

True Copy

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad