

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 4754/MUM/2024  
Assessment Year: 2008-09**

M/s A.S. Bro's  
B-1, Gautam Nagar, Datta Mandir  
Road Malad (E),  
Mumbai-400097.

**PAN NO. AAGFA 5134 P  
Appellant**

**Vs.**

ITO-30(1)(1)- old ward/Ward 41(3)(1),  
Room No. 732, Kautilya Bhavan, C-41  
to C-43, G Block, Bandra Kurla  
Complex, Bandra (East),  
Mumbai-400051.

**Respondent**

Assessee by : Mr. Ajay R. Singh &  
Ms. Hemali R. Soni  
Revenue by : Mr. Ram Krishn Kedia, Sr. DR

Date of Hearing : 29/10/2024  
Date of pronouncement : 21/11/2024

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the assessee is directed against order dated 30.07.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short 'the Ld. CIT(A)'] for assessment year 2008-09, raising following grounds:



**Reopening of Assessment**

1) The learned Commissioner of Income tax (A) (CIT(A)) erred in confirming the reopening of the assessment u/s. 147 and issuing notice u/s. 148 of the Income Tax Act, 1961 merely based on information received from DDIT(Investigation), without forming independent belief with regard to escapement of income.

2) The learned CIT (A) erred in confirming the reopening of the assessment despite the fact that the supplier in his statement has confirmed genuineness of the transactions of sale.

**Disallowance of bogus purchases**

3) The learned CIT(A) erred in confirming addition of Rs. 80,05,632 being 100% of the purchase cost from the following suppliers treating the same as bogus transaction of purchases on surmises and conjunctures.

Supplier Name	Purchase cost
Hiren Gems	28,65,074
Neelam Gems	51,40,558
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Total	80,05,632

4) The learned CIT(A) erred in confirming addition though the assessee had provide all the primary evidence being bills, ledger account, bank statement confirmation of parties export documents etc., thus merely on general statement addition cannot be sustained

**Violation of principle of natural justice**

5) The learned CIT(A) erred in confirming addition though the learned ITO has not provide the copies of the following documents namely-

- i. the statement/document/information received from DDIT (Inv) and relied upon by him for making addition for rebuttal and
- ii. nor allowed cross examination of the supplier, whose statement, was relied upon for making addition.

2. Briefly stated facts of the case are that the assessee filed its return of income on 14.09.2008 declaring total income at Rs.7,67,990/-. The return of income was processed u/s 143(1) of the Income-tax Act, 1961 (in short 'the Act'). Subsequently, in view of the information received from the Investigation Wing, Surat, the assessment was reopened by way of issue of notice u/s 148 of the



Act dated 22.04.2014. The reassessment was completed on 10.03.2016, where the Assessing Officer disallowed whole amount of non-genuine purchases from bogus parties amounting to Rs.80,05,632/-.

3. On further appeal, the Ld. CIT(A) upheld the disallowance, mainly rejecting the plea of assessee that due to lack of opportunity of cross-examination, the disallowance was not sustainable. The relevant finding of the Ld. CIT(A) is reproduced as under:

*“6.25 Therefore on the basis of facts and circumstances of the case and the case laws referred to above, I come to the conclusion that on the basis of documentary evidences, circumstantial evidences, human conduct and preponderance of probabilities what appears to be apparent in this case is actually not real. I affirm the conclusion reached by the Assessing Officer in this regard that the financial transactions are actually sham and the entire edifice is only a colorable device meant to be a smoke screen to defraud the revenue and evade taxes. The bogus purchases who was used in providing accommodation entry through a designed, preplanned, arranged manner in cahoots with operators, brokers and syndicate members is fit to be disallowed. Therefore, the disallowance of bogus purchases made by the Assessing Officer is legally justified and does not call for any interference. Appellant's grounds No. 5,6,7, & 8 fails.”*

4. Before us, the Ld. counsel for the assessee has filed a Paper Book containing pages 1 to 115 and submitted that in immediately preceding assessment year i.e. AY 2007-08, identical issue of alleged bogus purchases from various parties was involved and the Co-ordinate Bench of the Tribunal in ITA No. 6041/Mum/2016 has



sustained 3% of the bogus purchases for addition u/s 68 of the Act. The relevant finding of the Tribunal(supra) is reproduced as under:

*“2. We have heard rival submissions, perused relevant material on record and applied our mind to judicial decisions cited before us.*

*3.1 The assessee, being resident firm, stated to be engaged in trading of diamonds was assessed for year under consideration u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 on 31/03/2015 wherein the income was determined at Rs.105.11 Lacs after sole addition of alleged bogus purchases for Rs.98.29 Lacs as against returned income of Rs.6.82 Lacs filed by the assessee on 02/10/2007. The original return of income was processed u/s 143(1).*

*3.2 Pursuant to receipt of certain information from investigation arm of the department, it transpired that the assessee made aggregate purchases of Rs.98.29 Lacs from 4 suspicious entities viz. Rutuja Gems, Hiren Gems, Neelam Gems and Gaurang Enterprises. Accordingly, the case was reopened as per due process of law vide issuance of notice u/s 148 on 31/03/2014 followed by statutory notices u/s 143(2) & 142(1) wherein the assessee was directed to substantiate the purchase transactions.*

*3.2 The investigation carried out by the investigation wing brought to light 19 Bank accounts which were reported as suspicious. The amounts were transferred from 6 (level-1) accounts to remaining 9 (level-2) accounts and cash was immediately withdrawn from level-2 accounts. Accordingly, summons was issued to various persons holding these accounts to make further inquiries. Although these persons asserted that they were carrying out trading of diamonds, but failed to fully substantiate the same.*

*3.3 In the above background, Ld. AO formed an opinion that these persons could not produce any verifiable evidence to prove that they have actually conducted any business. The suppliers from the whom the purchases were shown to have been made by the assessee could not identify the brokers through which the trades were carried out and also could not produce evidence for transfer of diamonds to the assessee. Therefore, it was concluded that the purchase of Rs.98.29 Lacs made by the assessee were bogus bills entries in the nature of accommodation entries. No actual business was*



carried out by the assessee and therefore, the purchases were disallowed and added to the income of the assessee.

4. The Learned first appellate authority, inter-alia, relying upon the decisions of Hon'ble Gujarat High Court in *Vijay Proteins Ltd. V/s CIT (58 Taxmann.com 44)* and *CIT V/s Simit P.Sheth (356 ITR 451)* opined that profit embedded in such transactions was to be brought to tax. The estimation was done @30% and the balance additions were deleted. Aggrieved, the assessee is under appeal before us.

5. Upon careful consideration, we are of the considered opinion that there could be no sale without actual purchase of material keeping in view the assessee's nature of business i.e. trading. The assessee was in possession of primary purchase documents and the payments to the suppliers was through banking channels. The ledger confirmation from the stated suppliers have been placed on record by the assessee. The quantitative details of trading items were also produced which is supported by information given in Tax Audit Report.

6. Proceeding further, we find that the assessee has made total purchases of Rs.144.05 Lacs during the year under consideration out of which purchases of Rs.98.29 Lacs has been disallowed by learned AO which result into disallowance of more than 68% of total purchases. As against this, the assessee has reflected sale of Rs.157.09 Lacs which has been accepted by VAT authorities and the said sale could not have been possible without actual purchase of material. If the purchases were held to be bogus then the corresponding sale must also have been treated as bogus and excluded from the financial results, which has not been done. The assessee reflected Gross profit Rate of 9.54% during year under consideration which was well in line with the GP rate reflected in previous as well as in subsequent years. The additions of 30% as sustained by learned first appellate authority would yield Gross Profit Rate of more than 28% which is highly probable in trading business keeping in view the fact that Gross Profit rate reflected in other years is well below 10%.

7. Therefore, on the stated facts and circumstances, in our opinion, the additions which could be sustained, would be to account for profit element embedded in these purchase transactions to factorize for profit earned by assessee against possible purchase of material in the grey market and undue benefit of VAT against such bogus purchases, which



*learned first appellate authority has rightly done. However, we find the estimation of 30% to be on very higher side. Keeping in view the Gross Profit Rate of 9.54% already reflected by the assessee, we estimate the impugned additions @3% of alleged bogus purchases of Rs.98,29,910/- which comes to Rs.2,94,897/-. The balance addition stands deleted. The impugned order stand modified to that extent. The said estimation is in line with estimation approved by coordinate bench of this Tribunal in ITO V/s Dhaval Exim Pvt. Ltd. (ITA No. 6711/Mum/2016 dated 30/11/2018) which has been co- authored by one of us.*

*The other grounds raised in the appeal has not been urged during the hearing of the appeal.”*

4.1 Since, in the year under consideration also assessee has shown to have purchased from the common parties which were held to be as bogus parties in assessment year 2007-08, therefore respectfully following the finding of the Tribunal (supra), we set aside the finding of the Ld. CIT(A) on the merit of addition and direct the Assessing Officer to restrict the disallowance @ 3% of the purchases , which have been treated to be in the nature of bogus accommodation entry. The ground No. 3 of the appeal of the assessee is accordingly allowed partly.

4.2 Before us, the Ld. counsel for the assessee submitted that if the assessee is allowed relief following the order of the Co-ordinate Bench of Tribunal for assessment year 2007-08, then assessee may not press for adjudication of ground Nos. 1 and 2. Since, the ground No. 3 of the appeal has been allowed following the decision of the Co-ordinate Bench of the Tribunal in assessment year 2007-08 in the case of the assessee, therefore, accordingly the ground No.



1 and 2 of the appeal of the assessee are not adjudicated at this stage and left open to be decided at appropriate stage if so required.

5. In the result, the appeal of the assessee is partly allowed.

**Order pronounced in the open Court on 21/11/2024.**

Sd/-  
**(RAHUL CHAUDHARY)**  
**JUDICIAL MEMBER**

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

Mumbai;  
Dated: 21/11/2024  
Dragon Legal/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**