

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
MS PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No.3616/Mum/2024 & 3617/Mum/2024
(Assessment Year :2012-13)**

Income Tax Officer- 19(3)(1) Mumbai 405, 4 th Floor Piramal Chambers Lalbaug Maharashtra-400 012	Vs.	Spark Gems 81, Kamal 69, Walkeshwar Road Maharashtra-400 006
PAN/GIR No.AAAFS5688J		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Shri Bhangapatil Pushkaraj Ramesh
Date of Hearing	10/12/2024
Date of Pronouncement	13/12/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeals have been filed by the Revenue against order dated 16/05/2024 passed by NFAC, Delhi for the quantum of assessment passed u/s.147 r.w.s. 144 for the A.Y.2012-13 and order dated 16/05/2024 in relation to the penalty proceedings u/s.271(1)(c) for the A.Y.2012-13.

2. In the quantum of appeal, the Revenue has challenged the order of the Id. CIT(A) reducing the addition to Rs.24,72,470 as against addition of Rs.7,83,88,794/- made by the AO on account of alleged bogus purchases.

3. None appeared on behalf of the respondent assessee despite service of notices sent on the registered e-mail ID and RPAD. Accordingly, the appeal of the assessee is decided on merits.

4. The brief facts are that the assessee is engaged in the business of trading in cut and polished diamonds. The return of income was filed on 20/12/2012 declaring total income of Rs.93,062/-. The assessee's case was reopened u/s.147 on the basis of some information received from DGIT (INV) Mumbai that the search has been conducted in the case of Shri Bhawarlal Jain and Group wherein it was alleged that entities control by Bhawarlal Jain had provided accommodation entries and assessee firm was one of the beneficiaries. Since after A.Y.2018-19, no business was carried out, assessee was not filing the return of income as the firm has become completely dormant. Neither the notice u/s. 148 sent through ITBA portal nor the exparte assessment order was served to the assessee. Ld. AO has made the addition of Rs. 7,83,88,794/- purely relying on the information received that assessee has made alleged bogus purchases from Shri Bhawarlal Jain controlled entities without even verifying whether assessee has actually made any such purchases for that amount or not . Since assessee received the assessment order dated 14/12/2019 on 17/10/2022 while

checking the status of some appeal with the ld. CIT (A) for A.Y.2013-14 on the ITBA portal, it is then assessee got the information that exparte assessment order has been passed for A.Y. 2012-13. Accordingly, appeal was filed belatedly on 08/12/2022 and the delay has been condoned by the ld. CIT(A). Though the ld. CIT(A) has dismissed the ground challenging the validity of reopening u/s.148, however on merits, he noted that the total turnover of the assessee itself was Rs.34,43,269/- and on the purchase side assessee had disclosed import of rough diamonds of Rs.46,23,327/- and local purchase of polished diamond of Rs.24,72,470/- only. Thus, there was no such bogus purchases of Rs.7,83,88,794/- made by the assessee in the books and it has been denied also by the assessee that he never made any such purchases. The ld. CIT (A) has noted the following facts:-

“a) During the appellate stage, the assessee submitted its copies of final account for FY 2011-12, from where it is seen that total turnover shown by the assessee was only for Rs. 34,43,269/-. In the purchase side, it disclosed import of rough diamonds for Rs. 46,23,327/- and local purchase of polished diamonds for Rs 24,72,470/- only. Therefore, the amount which was subjected as bogus purchase of Rs. 7,83,88,794/- was denied by the assessee to be ever purchased by it.

(b) However, in the disclosed accounts, it agreed that the local purchase of polished diamonds for Rs. 24,72,470/- was purchased from one, M/s Impex Gems. whose proprietor was one, Mr. Mahavir Jain The address of such proprietorship concern was at, 11, Shakti Chambers, Raghunathpura Main Road, Surat-395003. The said supplier had another address at 9, Navyug Sagar, Teen Batti, Walkeshwar Road, Mumbai-400 006. In the report of the Investigation Wing, the name of the Proprietorship Concern of Shri Mahavir Jain, named Impex Gems is appearing

although the address of the Concern is not appearing. However, the Investigation Wing, through the admission made during the Search of Shri Bhawarlal Jain, came to the conclusion that all the 70 entities bogus entities were controlled from two back offices of the Jains, at 16, Mohan Building, USS Road, Girgaum, Mumbai-04 and Plot No. 233, Ground Floor, Navkar House, Vitthal Bhai Patel Road, Girgaum (Near Prarthana Samaj, VP Road) Mumbai-04. The accounts and other related papers regarding business of M/s Impex Gems were also discovered from these addresses Surprisingly, from the data retrieved from such spots it was seen that the documents relating to sale of diamonds for a sum of diamonds for a Rs 24,72,470/- by Impex by Impex Gems of the assessee firm was also there in the list prepared for the total sum of Rs of bogus purchase 7,83,88794/-

(c) The assessee by s of the tax invoices of the purchase made by it from Impex Gems on 06/10/2011, the copy of the ledger in their accounts with Impex Gems, copy of final account of Impex Gems and copy of the Tax Audit Report of Impex Gems, tried to convince that the purchase was genuine It is seen that the principal quantum of consideration of 86.45 Ct. of diamond for Rs 24,72,470/- was also increased by VAT @ 1 per cent, making the total amount of purchase for Rs. 24,97,195/-. The payment against such purchase was stated to be on 21/03/2012, through RTGS and the said Impex Gems gave a confirmation of receipt of such RTGS amount.

(d) By submission of these papers, the assessee tried to convince that the purchase was genuine. However, no material evidence of actual delivery of the said diamond has been produced for examination. It is the beauty of planning of arrangement of bogus entries that the transactions on paper and movement of fund through bank transfer are always maintained impeccably. Therefore, I do not find to give much credence to the submitted documents to override the clear admission by the Jains before the Investigation Wing, backed by the seized material from their places, to conclude that, the entries were nothing but accommodation entry.

(e) Under the above stated facts, it is concluded that as rightly pointed out by the AO, the purchase of Rs. 24,72,470/-, worth of diamond is nothing but a bogus accommodation entry

(f) Having said so, there is no evidence of purchase of balance amount of Rs. 7,59,16,324/-, from 7 other suppliers as ever made by the assessee. Therefore, the disallowance should be restricted to the extent shown in the final accounts of the assessee firm, which is Rs. 24,72,470/- and the assessee gets relief for the balance sum of Rs. 7,59,16,324/-

5. After hearing the ld. DR and on perusal of the order of ld. CIT(A) and assessment order, it is seen that, firstly the information received by the ld. AO to reopen the case u/s.148 itself was vague that assessee has made bogus purchase of Rs. 7,59,16,324/-, from 7 other suppliers, when fact of the matter is that assessee has made purchases only from M/s Impex Gems and the payment against such purchase was stated to be on 21/03/2012, through RTGS and the said Impex Gems gave a confirmation of receipt of such RTGS amount. Thus while recording the reasons ld. AO did not even verify the return income of the assessee and the trading account. If the assessee only made local purchase of Rs.24,72,470/-, then what was the information and material that assessee has made bogus purchases of Rs.7.84 Crores. The only purchase as noted by the ld. CIT(A) was from M/s Impex Gems of Rs.22,26,470/- and there were no other purchases from any such 7 other companies controlled by Shri Bhawarlal Jain. The whole premise and basis to acquire jurisdiction was vague and wrong assumption of facts. Since assessee had not filed any cross appeal or cross objection against the order of Ld. CIT (A) and we also tried to enquire from

the Registry, whether assessee has filed any appeal against order dated 16/05/2024 before this Tribunal and it was found that there was no such appeal for A.Y.2012-13 against this order. Though the ld. CIT(A) has confirmed the entire purchases of Rs.24,72,470/- debited in the books of accounts and deleted the balance addition, however, the entire purchases could not have been added, because the source of purchases are from the books, therefore, at the most some GP rate should have been applied. Since assessee has not challenged the order of the ld. CIT (A), accordingly, the order of the ld. CIT(A) confirming the addition of Rs.24,72,470/- is upheld and the balance addition deleted by the ld. CIT(A) is found to correct on facts and material on record. The department has also not brought anything on record to counter the finding of the ld. CIT (A) and has filed the second appeal raising various grounds mechanically and non application of mind whether assessee actually made any such purchases or not. Thus, the grounds raised by the Revenue are dismissed.

6. In the result appeal of the Revenue is dismissed.

7. In so far as the penalty levied u/s.271(1)(c), ld. AO has levied the penalty in his *exparte* order on the entire alleged bogus purchases of Rs.7,83,88,794/- and levied penalty of Rs.2,42,22,135/-. The ld. CIT (A) has reduced the quantum of penalty to the extent of addition confirmed by him in the quantum proceedings of Rs.24,72,470/-. Since no cross appeal has been filed by the assessee, accordingly, the order of the ld. CIT(A) is upheld as once the substantial quantum itself has been

deleted on the ground that no such purchases was ever made by the assessee and accordingly, the grounds raised by the Revenue are dismissed.

8. In the result, both the appeals of the Revenue are dismissed.

Order pronounced on 13th December, 2024.

Sd/-
(PADMAVATHY S)
ACCOUNTANT MEMBER
Mumbai; Dated 13/ 12/2024
KARUNA, *sr.ps*

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

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,

(Asstt. Registrar)
ITAT, Mumbai