

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "H": NEW DELHI  
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
AND  
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**ITA No. 5373/Del/2019**  
(Assessment Year: 2010-11)

|                                  |     |   |
|----------------------------------|-----|---|
| ITO,<br>Ward-14(4),<br>New Delhi | Vs. | <b>M/s. Kross Diamond Pvt.<br/>Ltd,</b><br>B-45/47, Basement<br>Connaught Place, New Delhi-<br>110001 |
| (Appellant)                      |     | (Respondent)  |
| <b>PAN:AADCK3002A</b>            |     |   |

|                       |                          |
|-----------------------|--------------------------|
| Assessee by :         | Shri Shivam Malik, Adv   |
| Revenue by:           | Shri Amit Katoch, Sr. DR |
| Date of Hearing       | 09/10/2024               |
| Date of pronouncement | 18/12/2024               |

**ORDER**

**PER M. BALAGANESH, A. M.:**

1. The appeal in ITA No.5373/Del/2019 for AY 2010-11, arises out of the order of the Commissioner of Income Tax (Appeals)-5, New Delhi [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No. Del/CIT(A)-5/0231/2017-18 dated 25.03.2019 against the order of assessment passed u/s 147/143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 22.12.2017 by the Assessing Officer, ITO, Ward-14(4), Delhi (hereinafter referred to as 'ld. AO').

2. The revenue has raised the following grounds before us:-

"1. Ld. CIT(A) was correct in deleting the addition of Rs. 3,38,77,822/- made by the AO while passing the order u/s 147/143(3) of the Income Tax Act 1961 ob 22.12.2017 by applying 0.5% of the total turnover of Rs. 677,55,64,560/-

2. *That the earlier order of the Ld. CIT(A) in AY 2013-14 and 2014-15 wherein the same addition were made by AO at 0.5% of total turnover after rejecting the books of account of the assessee.*

3. *That the appellant craves leave to add, alter, amend or forego any ground (s) of the appeal raised above at the time of hearing."*

3. We have heard the rival submissions and perused the materials available on record. The return of income for the assessment year 2010-11 was filed by the assessee company on 8-2-2011 declaring total income of Rs 5,04,056/-. The said return was duly processed under section 143(1) of the Act. Based on information received on 20-3-2017 from the office of Deputy Director of Income Tax (Inv.) Unit 6(4), Mumbai dated 14-3-2017, the assessment was sought to be reopened for the assessee for assessment year 2010-11. The said information stated that an inquiry was carried out in the case of Shri Anil Kumar Jain and various persons and the entities connected to him after information was received about the suspicious financial transactions entered into by them. The main suspicion was that high-value transactions were credited through RTGS/ clearing / cash / transfer from various accounts, which was immediately withdrawn by cash / multiple transfers were made to other accounts. Money was rotated within a certain group of accounts and the funds were moved out through clearing or foreign outward remittance. An inquiry was conducted by calling for bank statements and recording the statement under section 131 of the Act of various persons including Mr. Anil Kumar Jain and Mr. Praveen Kumar Jain. Statement of Shri Anil Kumar Jain was recorded on 13-2-2013 and that of Shri Praveen Kumar Jain on 18-2-2013. They admitted that they were carrying on the business of giving cheque entries and take cash from the parties to whom cheques were issued and also give the parties RTGS /transfer /high-value pay orders as required by

them. They provided the details of entities operated by them. One such entity was M/s Krithvi Enterprises Limited which was handled by Shri Praveen Kumar Jain and Shri Anil Kumar Jain. The bank statement of M/s Krithvi Enterprises Limited was called for and analyzed. The Learned AO observed that from the said analysis, it transpired that Krithvi Enterprises Limited had purchase and sales transactions with assessee herein. The Learned AO doubted that the transactions of purchases and sales made by the assessee with Krithvi Enterprises Limited are not genuine and proceeded to treat the difference between the amounts received in the sum of Rs 44,11,50,000/- and amounts paid of Rs 75,90,00,000/- amounting to Rs 31,78,50,000/- as inflated purchases made by the assessee by manipulating the books of accounts to reduce the taxable income. Accordingly, the Learned AO proceeded to reject the books of accounts of the assessee and the book results thereon in terms of provisions of section 145(3) of the Act. Accordingly, the Learned AO proceeded to estimate the profit of the assessee for the year under consideration. For this purpose, he found that gross profit declared by the assessee in assessment year 2011-12 is 0.068% and for the year under consideration at 0.076%. The Learned AO estimated the gross profit at the rate of 0.5% on the total turnover of the assessee company and made an addition of Rs. 3,38,77,822/- ( $677,55,64,560 * 0.5\%$ ).

4. The Learned CITA deleted the said addition made by the Learned AO. We find that the assessee had duly furnished the list of parties from whom purchases were made and list of parties from whom sales are made during the year under consideration. These details are enclosed in pages 45 to 46 of the paper book. From the perusal of the said list, it is found that there were absolutely no purchases and sales transactions made by the assessee with Krithvi Enterprises Limited. Hence, the entire allegation

of the Learned AO falls flat as it is based on incorrect assumption of fact. Accordingly, there is absolutely no basis for the Learned AO to reject the books of accounts of the assessee by applying the provisions of section 145(3) of the Act and estimate the profits thereon. Further, the Learned AO before us submitted that Krithvi Enterprises Limited and assessee are in the same line of business. There are certain loan transactions between assessee and Krithvi Enterprises Limited which are reflected in the ledger account. The loans taken by the assessee from Krithvi Enterprises Limited are utilized for business purposes and most of the loans are also squared up during the year under consideration itself. Further, the Learned AO had not mentioned from the statements of Mr. Anil Kumar Jain and Mr. Pravin Kumar Jain, that they had provided bogus or hawala entries to the assessee company. The statements of such persons were also not provided to the assessee for the purpose of rebuttal. Hence, there is absolutely no case for the revenue to use the said statements even if it is found to be adverse against the assessee.

5. In view of the aforesaid observations, we have no hesitation to hold that the books of accounts had been wrongly rejected by the Learned AO in the facts and circumstances of the instant case and consequentially, no profit could be estimated in assessee's case. Further, there were no purchases and sales transactions made by the assessee with Krithvi Enterprises Limited which is evident from pages 45 and 46 of the paper book containing the list of parties from whom purchases were made and parties to whom sales were made by the assessee. Hence, the entire allegations leveled by the Learned AO in the assessment order are purely based on complete incorrect assumption of fact that purchases and sales transactions made by the assessee with Krithvi Enterprises to be treated as bogus. In view of this, we have no hesitation to confirm the

order of the Learned CITA who had deleted the addition made by the Learned AO. Accordingly, the grounds raised by the revenue are dismissed.

6. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 18/12/2024.

-Sd/-  
**(VIMAL KUMAR)**  
**JUDICIAL MEMBER**

-Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated:18/12/2024  
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi