

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

**ITA No.2976/Del/2018
(ASSESSMENT YEAR 2013-14)**

Kapur Gems Pvt. Ltd., B-45/47, Connaught Place, New Delhi. PAN:AACCK8256B	Vs.	Income Tax Officer, Ward-14(2) New Delhi
(Appellant)		(Respondent)

**ITA No.3202/Del/2018
(ASSESSMENT YEAR 2013-14)**

Income Tax Officer, Ward-14(2) New Delhi	Vs.	Kapur Gems Pvt. Ltd., B-45/47, Connaught Place, New Delhi. PAN:AACCK8256B
(Appellant)		(Respondent)

Assessee by	Shri M. P. Rastogi, Adv. and Shri Deepak Malik, Adv. and Shri Shivam Malik, Adv.
Department by	Shri Dayainder Singh Sidhu, CIT- DR

Date of Hearing	03/12/2024
Date of Pronouncement	20/12/2024

ORDER**PER MAHAVIR SINGH, VP:**

These Cross Appeals are arising out of order of Ld. Commissioner of Income Tax (Appeals)-18, New Delhi (hereinafter referred as 'the CIT(A), in Appeal No.18/10049/2017-18 vide order dated 22/02/2018. The assessment was framed by ITO, Ward-14(2), New Delhi u/s 143(3) of the Income Tax Act, 1961 (hereinafter as 'the Act') vide order dated 27/12/2016 for Asst. Year 2013-14.

2. The only issue in this appeal of assessee in ITA No.2976/Del/2018 for Asst. Year 2013-14 is as regards to the orders of the Ld. CIT(A) in estimating profit @ 0.25%. For this assessee has raised the following ground of appeal:

"That in view of facts and circumstances of the case and in law the CIT(A) erred in estimating profit @ Rs. 36,39,375/-i.e. @0.25% on cash sales alleging that the appellant might have been compensated by paying some amount in the form of commission over and above the value of transaction" on presumption and without any corroborative evidence, therefore the same is arbitrary, unjust, bad in law and deserves to be deleted."

3. In the Cross Appeal in ITA No.3202/Del/2018 for AY 2013-14, the Revenue has raised the issue of deletion of addition by Ld. CIT(A) and made by AO being unverifiable purchases u/s 69C of the Act. For this Revenues has raised following ground No.1:

"Whether the Ld. CIT(A) was correct, on facts and in law, in deleting the addition made by the AO u/s 69C of the IT Act in respect of the unverifiable purchases made by the assessee?"

4. The above two issues are interconnected and are arising out of the same set of facts, hence, we will consolidated these two issues and will decided these issues by this common order.

5. The brief facts are that the assessee is engaged in business of import and trading of diamonds. During the year under consideration the AO noted that the assessee has shown the cost of material consumed at Rs.142.59 Cr. (which includes purchases of Rs.45.81 Cr.) and sales to the tune of Rs.152.54 Cr. The AO called for the details of purchases and sales including the cash sales. The assessee was asked to produce cash book, ledger, sale register, stock register and purchase voucher etc. but till date the assessee has not produced any of these documents. The AO accordingly comparing the cash sales with that of the purchases noted that the purchases are unverifiable and he added the same u/s 69C of the Act amounting to Rs.1,45,57,49,974/-. Similarly, the Assessing Officer also added to same u/s 68 of the Act also. Aggrieved, assessee preferred the appeal before Ld. CIT(A).

6. The Ld. CIT(A) deleted the addition u/s 69C of the Act as well as section 68 of the Act by observing para 4.3.1 as under:

“4.3.1 On perusal of the complete facts of the case and the documents obtained during the course of appellate proceedings, it is observed that the AO has taken adverse view of the large amount of cash sales of diamonds made by the appellant at Surat with the deployment of limited number of employees and also the deposit of sale proceeds in cash in the bank account at Delhi. At the same time, it is also noticed that the appellant is regularly engaged in the sale and purchase of diamonds including large amount of cash sales of diamonds. The AR has submitted that the appellant had made cash sales of Rs. 317.11 crores, 710.74 crores, Rs. 123.71 crores, Rs. 154.08 crores during the AYs 2009-10 to 2012-13 respectively and the AO has accepted these cash sales without taking any adverse view. The AO has analyzed from the number of transactions of cash sales made per day that it is not possible for the appellant to make the number of transactions of cash sales shown by the appellant with the limited number of staff available at its disposal at Surat office. But it is also to be noted that there is no evidence to doubt the veracity of cash sales itself. There is force in the contentions of the AR regarding the purchases duly recorded in the books of account and the non-rejection of the books of account by the AO. It is also noted that there is no variation in the manner of conducting business by the appellant during this year and similar transactions in earlier years have

been accepted by the AO. The purchases have been duly recorded in the books of account and day to day stock register has been maintained. The Purchases have not been doubted by the AO and the books of account have been accepted not only for this year but in earlier years also when similar transactions were done by the appellant. Moreover, it is not correct on the part of AO to accept one part of the books of account and reject the other part i.e. rejection of sales but acceptance of purchases and other entries in the books of account is not a prudent decision. The source of cash deposit in the bank accounts of the appellant is duly recorded and is supported by valid documents. In view of these facts, I am of the opinion that there is no reason to treat the source of cash deposits in the bank accounts as unexplained or to treat the source of purchases as unexplained. However, from the issues raised by the AO, it appears to me that the appellant has split large value cash sale transactions into a number of small value transactions (with each transaction restricted to below Rs. 2 lakhs) in order to avoid mandatory requirement of obtaining PAN and other identity details of its customers. This must have been done by the appellant in collusion with its customers for which the appellant might have been compensated by the customers by paying some amount in the form of commission over and above the value of the transaction. In the absence of any details, I am inclined to estimate the additional income earned by the appellant @ 0.25% of the total cash sales of Rs. 145,57,49,974/-, which comes to Rs. 36,39,37,5/-. Accordingly, the addition made by the AO is restricted to Rs. 36,39,375/- and the balance addition made by the AO u/s 69C/68 of the Act is deleted. The grounds of appeal are thus, partly allowed.”

The Ld. CIT(A) sustained the addition of additional income as commission over and above the value of transaction on purchase and sale at Rs.36,39,375/- being 0.25% of total cash sales but addition on account of cash sales of Rs.145,57,49,974/- was deleted. Aggrieved, both the assessee as well as Revenue came in appeal.

7. We have heard the rival contention and gone through the facts and circumstances of the case, we noted that this issue has already been dealt by us in ITA No.3200/Del/2018, 2886/Del/2018, 3201/Del/2018 and 2966/Del/2018, order dated 18.12.2024, which is sister concern of the assessee wherein it is held as under:

“13. We have heard the rival contentions and gone through facts and circumstances on this issue. We noted that first of all the assessee has produced

complete books of accounts before the AO during the assessment proceedings including the sale register, stock register and cash register from where he noted various facts including purchases made/sales made and sale of rough diamonds. Admittedly, the assessee has explained the source of purchases of all the purchases are recorded in the books of accounts and has produced all the bills and vouchers, import bills, bill of entry, airline bills and custom documents etc. All purchases have been made through account payee cheque/RTGS. The assessee has recorded complete sales in the books of account and AO could not point out any defect in the books of account or even there is no finding in the Assessment Order about any deficiency in the books of account. The AO has not at all invoked the provision of section 145 for rejection of books of account of the assessee.

14. In view of the above facts, we are of the view that addition made by the AO is just based on assumptions and has ignored the facts of the case. Interesting point is that once the purchases are accepted as genuine and its sales cannot be taken as bogus until and unless books of account are rejected or found to be defective. One interesting fact is that even enforcement directorate has enquired into the issue and find no adverse circumstances or facts in this case against the assessee.

15. Hence, we find no infirmity in the order of the CIT(A) the deleting of cash sales made by the AO u/s. 69C of the Act.

16. As regards to the issue of assessee's appeal estimating the profit / commission on alleged cash sales @ 0.25%, the CIT(A) has simply tried to balance the view expressed by him but there is no basis for such estimation because the assessee has already disclosed profit, which is part of the accounts of the assessee on cash sales recorded in the books of account. Hence, we delete this addition and allow assessee's appeal on this issue. As regards to the

assessee's appeal, this issue of assessee's appeal is allowed and revenue's appeal is dismissed."

Since the facts and circumstances are exactly identical, we confirm the order of Ld. CIT(A) deleting the addition and, accordingly, the issue of Revenue's appeal is dismissed.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 20th December, 2024.

Sd/-

**(NAVEEN CHANDRA)
ACCOUNTANT MEMBER**

Sd/-

**(MAHAVIR SINGH)
VICE PRESIDENT**

Dated: 20/12/2024

Pk/sps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI