

IN THE INCOME TAX APPELLATE TRIBUNAL
JAIPUR BENCH "SMC", JAIPUR
**BEFORE Dr. S. SEETHALAKSHMI, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**
ITA No. 1249/JPR/2024 (A.Y. 2012-13)

Finesse Jewels Private Limited,

A-467 Jaipur, Vidhyut Nagar,

Jaipur, Ajmer Road- 302 021.

PAN No.: AABCF 4438R

..... Appellant

Vs.

DCIT, Circle-1,

Jaipur – 302 021.

..... Respondent

Appellant by : Mr. Mukesh Kumar Sharma, Adv., Ld. AR

Respondent by : Mr. Gautam Singh Choudhary, JCIT, DR

Date of hearing : 09/12/2024

Date of pronouncement : 11/12/2024

ORDER

PER GAGAN GOYAL, A.M.:

This appeal by assessee is directed against the order of NFAC, Delhi dated 26.09.2024 passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2012-13. The assessee has raised the following grounds of appeal:-

1. In the facts and circumstances of the case and in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in imposing penalty u/s. 271(1)(c) of the Income Tax Act, 1961 is void ab-initio deserves to be quashed as no satisfaction was recorded with reference to concealment of income.

2. In the facts and circumstances of the case and in law, the Learned CIT(A) has erred in sustaining the penalty of Rs. 3,80,074/- @ 100 percent out of Rs.

7,60,148/- imposed by Learned Assessing Officer @200% u/s. 271(1)(c) of the Income Tax Act, 1961.

3. The assessee craves your indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing."

2. The brief facts of the case are that the assessee is a Pvt. Ltd. Company and is engaged in the business of manufacturing and trading of Gold Jewellery plain as well as studded with diamonds, precious and semi-precious stones. Return was filed on 27.09.2012 declaring total income at Rs. 25, 43,360/-, case of the assessee was assessed in scrutiny u/s. 143(3)/147 at a figure of Rs. 39, 19,880/- by making an addition of Rs. 12,20,250/-. This addition was made on account of disallowance @ 25% on alleged bogus purchase of Rs. 48,81,000/- and commission paid on the same @ 2% amounting to Rs. 9,762/-.

3. The assessee being aggrieved party, preferred an appeal before the Ld. CIT (A) against the assessment order, who in turn reduced the amount of addition to Rs. 4, 55,926/- Plus Rs. 9,762/- as commission paid. Albeit, the AO still considered the figure of Rs. 12,20,250/- for the purposes of imposing penalty and imposed penalty @ 200% on the same amounting to Rs. 7,60,148/-. The assessee again approached the Ld. CIT(A) against this order of penalty imposed by the AO, who in turn reduced the quantum of penalty to 100% of tax sought to be evaded, i.e. 3,80,074/-. Now the assessee being aggrieved with the order of Ld. CIT (A) (passed with reference to penalty) preferred the present appeal before us.

4. We have gone through the order of the AO, order of the Ld. CIT (A) and submissions of the assessee alongwith grounds taken before us. It is observed that amount of alleged bogus purchase is not under challenge neither by the assessee nor by the revenue. Other point to be considered is that the entry

provider already accepted the amount of commission charged on the transaction of bogus purchase amounting to Rs. 9,762/- being 0.2% on the bogus purchase of Rs. 48,81,000/-. There is no further appeal by the assessee against the quantum appeal decided by the Ld. CIT (A). In view of this the only questions for our consideration are:

A). whether penalty is to be imposed on original disallowance of Rs. 12, 20,250/- or the revised figure of Rs. 4, 55,926/- (Accepted by Revenue and assessee both) and

B). whether on the given set of facts penalty is to be levied or not.

5. Addressing the questions mentioned (supra), we need to examine the basic assessment order to adjudicate the present appeal. Thus, the only question in this matter is whether the entirety of the bogus purchases of the Assessee should be disallowed or whether the disallowances should be restricted to a specific percentage only. This question has already been settled. In light of the facts of the case, we observe that firstly, the Assessee has failed to show that the alleged bogus purchases made by it are genuine. The onus to prove the genuineness of the purchases is on the assessee the same has been held by the Hon'ble Rajasthan High Court in ***CIT v. Bright Future Gems, (2017) 392 ITR 580: 2016 SCC Online Raj 10766*** and ***Indian Woolen Carpet Factory v. Income-Tax Appellate Tribunal, (2003) 260 ITR 658: 2002 SCC Online Raj 801: (2002) 178 CTR 420*** the relevant paragraphs of the judgments are produced herein below:-

In ***CIT v. Bright Future Gems, (2017) 392 ITR 580: 2016 SCC Online Raj 10766*** the Hon'ble Rajasthan High Court held:-

4. ..." It is for the assessee to prove the identity of the creditors, their creditworthiness and the genuineness of the transactions. In our view, on the facts of this case, the Tribunal did not take into account all these ingredients which have to be satisfied by the assessee. Mere furnishing of the particulars is not enough. The enquiry of the Income-tax Officer revealed that either the assessee was not traceable or there was no such file and, accordingly, the first ingredient as to the identity of the creditors had not been established. **If the identity of the creditors had not been established, consequently the question of establishment of the genuineness of the transactions or the creditworthiness of the creditors did not and could not arise.** The Tribunal did not apply its mind to the facts of this particular case and proceeded on the footing that since the transactions were through the bank account, accordingly, it is to be presumed that the transactions were genuine. It was not for the Income-tax Officer to find out by making investigation from the bank accounts unless the assessee proves the identity of the creditors and their creditworthiness. Mere payment by account payee cheque is not sacrosanct nor can it make a non-genuine transaction genuine. In that view of the matter, the question before us is answered in the negative and in favour of the Revenue."

In **Indian Woolen Carpet Factory v. Income-Tax Appellate Tribunal, (2003) 260 ITR 658: 2002 SCC Online Raj. 801: (2002) 178 CTR 420** the Hon'ble Rajasthan High Court held:-

6. In appeal before the Tribunal, the Tribunal found that many opportunities were given to the assessee, twice the assessment order was set aside, thereafter, assessments were made one after the other, but in spite of that the assessee failed to prove the genuineness of the transactions or the credits. Therefore, the Tribunal confirmed the addition invoking the provisions of section 68 holding that once the credit entry has been made in the books of account in the names of various parties and if the genuineness of these cash credits could not be proved, the Assessing Officer was justified in making the addition of Rs. 1, 12,500/-.

10. The Tribunal has taken the view when the payment has not been made to those parties and for that amount credit entry has been made in favour of those parties that is cash credit as commonly known in the income-tax, when credit entry has been made in favour of the persons, there is nothing wrong in it. Even otherwise **the assessee had failed to discharge the onus to prove the**

genuineness of the transactions. Mere mentioning of section 68 does not affect the addition made when the transaction is found bogus. In our view on these facts it cannot be said that the finding of the Tribunal is perverse and when the finding of the Tribunal is not perverse, we cannot interfere in the finding of the Tribunal.

6. Secondly it is abundantly clear by the evidence placed on record which includes the statement of entry operators that the transactions under consideration were not a genuine one and were carried out against the commission @0.2%. To adjudicate such a scenario reference is made to the decision of the Hon'ble Gujarat High Court in ***N. K. Industries Ltd. v. CIT, (2017) 8 ITR-OL 336: 2016 SCC Online Guj.10209: (2017) 292 CTR 354*** wherein the following was held-:

6. The Tribunal in the case of Vijay Proteins Ltd. v. CIT has observed that it would be just and proper to direct the Assessing Officer to restrict the addition in respect of the undisclosed income relating to the purchases to 25 per cent of the total purchases. The said decision was confirmed by this court as well. On consideration of the matter, we find that the facts of the present case are identical to those of Indian Woolen Carpet Factory (supra) or Vijay Proteins Ltd. In the present case the Tribunal has categorically observed that the assessee had shown bogus purchases amounting to Rs. 2, 92, 93,288/- and taxing only 25 per cent of these bogus claim goes against the principles of sections 68 and 69C of the Income-tax Act. The entire purchases shown on the basis of fictitious invoices have been debited in the trading account since the transaction has been found to be bogus. The Tribunal having once come to a categorical finding that the amount of Rs. 2, 92, 93,288/- represented alleged purchases from bogus suppliers it was not incumbent on it to restrict the disallowance to only Rs. 73, 23,322/-.

7. The principles laid down in ***N. K. Industries Ltd. v. CIT, (2017) 8 ITR-OL 336: 2016 SCC Online Guj. 10209 : (2017) 292 CTR 354*** have been upheld by the Hon'ble Rajasthan High court has on the issue of bogus purchases in the case of ***Commissioner of Income Tax, Jaipur-II, Jaipur. Vs. M/s. Aditya Gems, Jaipur (Income Tax Appeal No .234/2008)*** wherein the following was held-:

“3. Considering the law declared by the Supreme Court in the case of Vijay Proteins Ltd. Vs. Commissioner of Income Tax, Special Leave to Appeal (C) No.8956/2015 decided on 06.04.2015 whereby the Supreme Court has dismissed the SLP and confirmed the order dated 09.12.2014 passed by the Gujarat High Court and other decisions of the High Court of Gujarat in the case of Sanjay Oilcake Industries Vs. Commissioner of Income Tax (2009) 316 ITR 274 (Guj) and N.K. Industries Ltd. Vs. Dy. C.I.T., Tax Appeal No.240/2003 decided on 20.06.2016, the parties are bound by the principle of law pronounced in the aforesaid three judgments.

4. We remit back the case to the Assessing Officer for deciding afresh on the factual matrix. The authority will accept the law but the transaction whether it is genuine or not will be verified by the Assessing Officer on the basis of the aforesaid three judgments. The issues are answered accordingly. The appeal is accordingly disposed of.”

8. Here quantum is not under challenge by both the sides. Hence despite of above discussion, we are restricting ourselves to the question of penalty to be imposed. Considering the law discussed above, we confirm the order of penalty passed by the Ld. CIT (A), with a modification that the same should be levied on the revised figure of Rs. 4, 55,926/- and not on the original disallowance of Rs. 12, 20,250/-. **In these terms grounds raised by the assessee are partly allowed.**

9. **In the result, the appeal of the assessee is partly allowed.**

Order pronounced in the open court on 11th day of December 2024.

Sd/-
(Dr. S. SEETHALAKSHMI)
JUDICIAL MEMBER

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Jaipur, दिनांक/Dated: 11/12/2024

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.

3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., Sr.DR., ITAT,
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar)
ITAT, Jaipur

	Details	Date	Initials	Designation
1	Draft dictated on PC on	11.12.2024		Sr.PS/PS
2	Draft Placed before author	11.12.2024		Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date of Dispatch of order			