

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

**BEFORE JUSTICE (RETD.) SHRI C.V. BHADANG, PRESIDENT  
AND  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

<b>ITA No.</b>	<b>A.Y.</b>	<b>Appellant</b>	<b>Respondent</b>
5361/Mum/2024	2012-13	Aashna Diamond, BC 2071/2072, BDB, BKC, Mumbai [PAN: AAFFA5684H]	ACIT, Circle-19(1), Piramal Chambers, 5 <sup>th</sup> Floor, Lalbaugh, Parel, Mumbai
5363/Mum/2024	2011-12	Aashna Diamond, Shreeji Chambers, Tata Road, No. 2, Opera House, Mumbai [PAN: AAFFA5684H]	Income Tax Officer- 19(1)(1), Piramal Chambers, 5 <sup>th</sup> Floor, Lalbaugh, Parel, Mumbai

For Assessee :	Shri Suchek Anchaliya
For Revenue :	Shri Suresh Periasamy, Sr.DR

Date of Hearing :	27-11-2024
Date of Pronouncement :	31-12-2024

**ORDER**

**PER B.R. BASKARAN, A.M :**

Both the appeals filed by the assessee are directed against the orders passed by the Ld.CIT(A), NFAC, Delhi and they relate to the Assessment Years (AYs.) 2011-12 and 2012-13. The assessee is challenging the validity of reopening of assessments in both the years and

also challenging the disallowance of purchases holding them as bogus purchases.

2. The facts relating to the case are discussed in brief. The assessee is a trader, importer and exporter of diamonds. The Revenue carried out search and seizure operations in the hands of Shri Rajendra Jain/Sanjay Choudhary/Dharmi Chand Jain and his group of companies on 03-10-2013. It was noticed that the above said group were providing only accommodation entries, inter alia, in the form of bogus sales bills without actually supplying the goods. In the statement recorded from Shri Rajendra Jain and certain other employees, they admitted that they were providing accommodation bills. It was noticed by the Investigation Wing that the assessee has also been given sales bills by the said group of companies in both the years under consideration as detailed below:-

<b>Name of Supplier</b>	<b>AY 2011-12</b>	<b>AY 2012-13</b>
M/s Dharam	73,51,100	-----
M/s Kangan	2,32,67,220	91,56,000
M/s Maniprabha	1,86,10,550	1,80,00,000
	-----	-----
Total	4,42,28,870	2,71,56,000
	=====	=====

The Investigation Wing forwarded the above said information to the AO. Accordingly, the AO formed the view that the above said purchases are bogus in nature. Accordingly, the AO reopened the assessment of both the years by issuing notice u/s.148 of the Act.

3. Before the AO, the assessee submitted the details of purchases invoices, details of payments, ledger account copies, stock register etc., to prove the purchases. The assessee also submitted that some of the purchases were also exported and accordingly furnished the details of

export sales made after getting customs clearance. Accordingly, it was contended that the purchases were genuine and they should not be doubted with. The AO, however, did not accept the claim of the assessee. In AY.2011-12, the AO issued notices u/s. 133(6) of the Act to the suppliers. All the three suppliers responded to the notices and confirmed the transactions. However, the AO fully placed reliance on the report given by the Investigation Wing. He took the view that the documents may be fabricated and further the assessee might have sourced goods from some other party and obtained bills from the above said companies. Accordingly, he took the view that the assessee has inflated its purchases and accordingly, entire bogus purchases are liable to be disallowed. He also took support of the decision rendered by the Hon'ble Supreme Court in the case of N.K.Proteins (250 taxman 022)(SC) for his decision. The AO also referred to the decision rendered by the Hon'ble Gujarat High Court in the case of N K Industries (ITA No.240 of 2003), wherein 100% of bogus purchases was disallowed. Accordingly, he disallowed the entire amount of purchases mentioned in the table above in the respective assessment years.

4. Before the Ld.CIT(A), the assessee made detailed submissions and submitted that the adverse inference drawn by the AO is not correct. The assessee submitted that the AO did not find fault with the books of accounts and also did not find any deficiency in the documents furnished by the assessee. It was also submitted that the AO did not furnish the materials relied upon by him to the assessee. It was contended that the assessee could not have sold/exported the goods without actually purchasing them. The assessee also submitted that it has furnished confirmations obtained from all the three suppliers mentioned above. With regard to the decision rendered in the case of N K Proteins (supra) relied

upon by the AO, the assessee filed a detailed chart to demonstrate that the facts prevailing in that case are totally different from the facts prevailing in the instant case. Accordingly, it was submitted that the above said decision is not applicable to the facts of the present case. The Ld.CIT(A), however, did not consider any of the above said contentions of the assessee. He also fully placed reliance on the report of the Investigation Wing. With regard to the confirmation given by the above said three parties, the Ld.CIT(A) has simply observed that the assessee has also not furnished the detailed computation in respect of how these transactions were accounted in his books of accounts. Accordingly, he confirmed the disallowance of purchases made by the AO in both the years under consideration and hence the assessee has filed these appeals.

5. We heard the parties and perused the record. We notice that the assessee has contended as under before the Ld.CIT(A):-

*“g. Against each purchase from M.s Mani Prabha Impex and M.s Kangan Jewels there is a corresponding export sale. Export goes through customs and it is done through proper banking channels. So the sales are genuine and cannot be challenged. Without purchase of the goods there cannot be export of the goods.*

*h. The payment for each purchase has been made by account payee cheque and it is properly reflected in the Bank statements and Books of Accounts.*

*i. The purchase and sales are properly recorded in assessee's stock register purchase register and sales register.*

*j. The said party has also confirmed the transaction by way of Affidavit and also ledger confirmation for the same has been provided.*

*k. The books of accounts are also audited under Section 44AB of the Income Tax Act 1961.*

*l. There is a quantitative tally of stock and there are no defects found in maintenance of stock records or stock quantity. Hence the purchases made from M.s Mani Prabha Impex and M.s Kangan Jewels*

*are genuine and no disallowance can be made merely on the presumption and assumption that the purchases are mere accommodation entries.*

*5. Also the assessee has maintained proper books of accounts so there are no discrepancies noticed in the books of accounts and hence in such circumstances no ad hoc disallowance can be made in assessee's case. 6. The assessee is engaged in the business of diamonds i.e. purchase of diamonds and exports of the same. Assessee makes payments to various purchase parties by account payee cheques. Hence all transactions are carried out through proper banking channels. However the addition was made by the AO on the basis of assumption surmise and conjuncture and it is against the law of natural justice and hence the addition is required to be deleted.”*

6. We noticed that the Ld.CIT(A) has simply placed reliance on the report given by the Investigation Wing. While confirming the addition, the Ld.CIT(A) has observed that the assessee has also not furnished the detailed computation in respect of how these transactions were accounted in his books of accounts. We are unable to understand the same. Had the assessee not accounted for the purchases, the question of disallowance would not have arisen. Thus, we notice that the above said observation of the Ld.CIT(A) is out of context and deserves to be rejected. We further notice that the AO did not find any defect or deficiency in the documents furnished by the assessee to prove the purchases. The report given by the Investigation Wing is a generalized report. Hence, it is the duty of the AO to conduct independent enquiry to disprove the claim of the assessee that the purchases were genuine. The onus on the AO further increases, when the supplier confirms the transactions. However, the AO did not conduct any such independent enquiry. He has simply placed reliance on the investigation report given by the Investigation Department. The Ld.AR also submitted that the AO did not furnish any of those materials to the assessee. The Ld.AR also stated that Shri Rajendra Jain has retracted his statement later. He further submitted that it is not shown that the

transactions of the assessee have been identified as bogus by Shri Rajendra Jain in his statement. Thus, we notice that the AO has proceeded to disbelieve the purchases made by the assessee on the basis of general statement given by Shri Rajendra Jain.

7. However, on the contrary, it is seen that all the three suppliers have confirmed the sale of diamonds to the assessee. They have responded to the notices issued by the AO. The Ld.AR submitted that some of the purchases have been exported after clearance from custom authorities. We also notice that the assessee also could match the purchases with sales. The Ld.AR submitted that the rate of gross profit earned on sale of the alleged bogus purchases in AYs.2011-12 and 2012-13 respectively was 9.06% and 8.40%, while the overall rate of gross profit declared by the assessee in those years was 6.71% and 6.68%, respectively. We notice that the Hon'ble Bombay High Court, in the case of *The PCIT vs. M/s Mohammad Haji Adam & Co* (Income tax Appeal No. 1004 of 2016 dated February 11, 2019), has upheld the decision of the Tribunal in restricting the addition limited to the extent of bringing the G.P rate on purchases at the same rate of other genuine purchases.

8. We notice that the Hon'ble Bombay High Court has observed that the decision rendered by the Hon'ble Gujarat High Court in the case of *N.K. Industries* (supra) will not apply, when the sales recorded by the assessee has been accepted. The assessee has also demonstrated before the Ld.CIT(A) that the decision rendered by the Hon'ble Supreme Court in the case of *N K Proteins* (supra) will not apply to the facts of the present case. We notice that the Ld.CIT(A) did not counter the said contentions. On a perusal of the facts prevailing between the present case and the case

of N K Proteins, which have been tabulated and extracted by the Ld.CIT(A), we agree with the contentions of the assessee.

9. In the instant case also, the AO has accepted the sales recorded by the assessee. The assessee could not have affected sales without purchasing the goods. The assessee could match the sale with corresponding purchases. Hence, we are of the view that the disallowance of entire amount of purchases is not justified. In that case, as held by the Hon'ble Bombay High Court, the addition should be limited to the extent of bringing the GP rate on alleged bogus purchases to the same rate of other genuine purchases. In the instant case, the assessee has shown that the GP rate on sale of alleged bogus purchases is more than the GP rate of other purchases. Hence, we are of the view that no addition by way of disallowance of alleged bogus purchases is warranted in the facts of the present case. Accordingly, we set aside the order passed by the Ld.CIT(A) in both the years and direct the AO to delete the addition of alleged bogus purchases made in both the years.

10. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 31-12-2024

Sd/-  
(JUSTICE (RETD.) C.V. BHADANG)  
PRESIDENT

Sd/-  
(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Mumbai,

Date: 31-12-2024

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "A" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar  
I.T.A.T, Mumbai