

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
आयकर अपील सं./ITA Nos.610 & 626/SRT/2023**

**Assessment Year: (2008-09)
(Hybrid hearing)**

M/s Diam International 202-B, Krishna Apartment, Kansara Sheri, Mahindrapura, Surat-395 003	बनाम/ Vs.	Income Tax Officer, Ward-2(3)(7), Surat, Aayakar Bhawan, Majura Gate, Surat-395 001
Income Tax Officer, Ward-2(3)(7), Surat, Room No.405, 4 th Floor, Anavil Business Centre, Adajan- Hazira Road, Surat-395 009		M/s Diam International 202-B, Krishna Apartment, Kansara Sheri, Mahindrapura, Surat-395 003
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAOFM 4432 A		
(अपीलार्थी/Appellant)		(प्रत्यर्थी /Respondent)

आयकर अपील सं./ITA Nos.611 & 614/SRT/2023

Assessment Year: (2009-10)

M/s Diam International 202-B, Krishna Apartment, Kansara Sheri, Mahindrapura, Surat-395 003	बनाम/ Vs.	Income Tax Officer, Ward-2(3)(7), Surat, Aayakar Bhawan, Majura Gate, Surat-395 001
Income Tax Officer, Ward-2(3)(7), Surat, Room No.405, 4 th Floor, Anavil Business Centre, Adajan- Hazira Road, Surat-395 009		Diam International 202-B, Krishna Apartment, Kansara Sheri, Mahindrapura, Surat-395 003
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAOFM 4432 A		
(अपीलार्थी/Appellant)		(प्रत्यर्थी /Respondent)

निर्धारिती की ओर से /Assessee by	Shri P.M.Jagasheth, CA
राजस्व की ओर से /Respondent by	Shri Ravi Kant Gupta, CIT-DR
सुनवाई की तारीख/Date of Hearing	20/03/2025
उद्घोषणा की तारीख/Date of Pronouncement	28/03/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

These two sets of cross-appeals by the assessee and Revenue emanate from the separate common order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 24.07.2023 and 13.07.2023 by Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi [in short 'Ld. CIT(A)'] for the Assessment Years (AYs) 2008-09 and 2009-10, which in turn arise out of separate assessment orders passed by Assessing Officer u/s 143(3) r.w.s 147 of the Act dated 11.03.2016 and 06.12.2016. Since facts are same, with consent of the parties, the appeals were heard together and a common order is passed for the sake of convenience and brevity. For the appreciation of facts, assessee's appeal in ITA No.610/SRT/2023 for AY 2008-09 as "**lead**" case whereas the Revenue has raised following cross-appeal in ITA No.626/SRT/2023.

2. The grounds of appeal raised by the assessee are as under:

"1 On the facts and circumstances of the case as well as the law on the subject, the learned the Assessing Officer has erred in re-opening the assessment/s 147 of the Act and issuing notice u/s 148 of the Income Tax Act, 1961.

2. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in assumption of jurisdiction by the Le.AO is bad in law as the condition laid down under the Act for initiating re-assessment proceedings have not been fulfilled.

3. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the restricting the addition of Rs.2,26,84,915/- i.e. 12.5% out of Rs.18,14,79,322/- as unexplained expenditure u/s 69C on account of alleged bogus purchase by treating accommodation entry.

4. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in

confirming the action of the Assessing Officer in treating the genuine purchases as non-genuine without appreciating the fact that the payments for purchases has been made through cross account payee cheque.

5. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in making the addition of genuine purchases solely on the basis of the statement of the third party i.e., Mr. Bhanwarlal Jain with whom the appellant had no transaction whatsoever.

6. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in making the addition of purchase solely on the basis of statement of Shri Bhanwarlal Jain given before investigation wing, Mumbai without giving an opportunity of cross-examination of above mentioned parties to the appellant.

7. It is, therefore, prayed that the above addition may please be deleted as learned Members of the Tribunal may deem it proper.

8. Appellant craves to add, alter or delete any ground(s) either before or in the course of the hearing of the appeal.”

3. The grounds of appeal raised by the Revenue are as follows:

“1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition made by the AO of Rs.18,14,79,322/- to 12.5% of the impugned purchases without appreciating the facts that the assessee had failed to prove the genuineness of the transaction made with M/s Navkar Diamond, M/s Liittle Diam, M/s Rare Diamond Pvt. Ltd. and M/s Millennium Stars, completely run by Shri Bhanwarlal Jain.

2. On facts and circumstances of the case and in law, the learned CIT(A), has grossly erred in deleting the addition made of Rs.18,14,79,322/- made u/s 69C of the I.T. Act being the unexplained expenditure incurred on purchase.

3. On facts and circumstances of the case and in law, the learned CIT(A), has grossly erred in partly deleting the addition without considering the facts that either partner/director of M/s Navkar Diamond, M/s Little Diam, M/s Rare Diamond Pvt. Ltd. and M/s Millennium Stars has admitted in their statements u/s 132(4) of the given in the course of search and seizure action that they have engaged in the business of providing accommodation entries in the guise of purchases/sales.

4. On the basis of the facts and circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the Assessing Officer.

5. It is therefore prayed that the order of the Ld. CIT(A) may kindly be set aside and that of the Assessing Officer be restored.

6.The appellant craves leave to add, alter, amend and/or withdraw any grounds of appeal either before or during the course of hearing of the appeal.”

4. Facts of the case in brief are that assessee is a partnership firm engaged in the business of import, export and trading of cut, polished and rough diamond. The appellant filed its return of income for AY 2008-09 on 17.07.2008 declaring total income of Rs.1,05,570/-. Subsequently, return was processed u/s 143(1) of the Act and no assessment order u/s 143(3) was perused. Information was received from the Director of Income-tax (Inv)-II, Mumbai in case of beneficiaries of accommodation entries from Shri Bhanwarlal Jain group. The assessee had carried out transactions with M/s Navkar Diamond, M/s Little Diam, M/s Rare Diamond Pvt. Ltd. & M/s Millennium Stars of Rs.18,14,79,322/-. These concerns are controlled and managed by Shri Bhanwarlal Jain. Since the purchase bill, of diamond by the assessee-firm are bogus in nature, the case was reopened u/s 147 of the Act after obtaining necessary approval from the Competent Authority. Accordingly, notice u/s 148 was issued on 10.03.2015. In response to, assessee filed letter with a request to treat the original return of income filed on 17.07.2008 as the return in response to notice u/s 148 of the Act. Subsequently, assessee was provided with copy of reasons recorded and thereafter various statutory notices were issued and served on the assessee. During assessment proceeds, assessee furnished details which revealed that cut and polished diamond worth Rs.18,14,79,322/- have been purchased from

the four concerns of Shri Bhanwarlal Jain group. The AO has mentioned that during search proceedings in case of Shri Bhanwarlal Jain group, statements of various directors of the groups were recorded. They admitted that seller companies are not engaged in providing accommodation entries. There were statements from other directors of Shri Bhanwarlal Jain group who also admitted that the companies in which they are directors are paper companies and are providing accommodation entries. The AO has discussed *modus operandi* of giving accommodation entries. The reply given by the assessee that the transactions are genuine and were carried out through banking channels was not found to be satisfactory. The AO has stated that principle of preponderance of probability is applicable under the Income-tax Act, as there was no actual transfer of commodity or goods in the form of diamond and it was merely on the paper transaction. The AO rejected the books of account u/s 145(2) of the Act and disallowed Rs.18,14,79,322/- u/s 69C of the Act. He also initiated penalty u/s 271(1)(c) of the Act.

4.1 Aggrieved by the addition made in assessment order, assessee filed appeal before CIT(A). Before CIT(A), assessee raised grounds of appeal regarding validity of reopening as well as merit of addition. The appellant filed written submission which were duly considered by the CIT(A). The CIT(A) decided the issue at para-5.2 to 5.9 of the appellate order and held that there was no force in the plea of assessee that reopening was bad in law. He held that AO had specific credible and tangible material before him on the basis of which, he

formed a reasonable belief that income chargeable to tax had escaped assessment. He also observed that it is settled law that at the stage of reopening, the material available before AO should be such that a *prima facie* view can be formed that income chargeable to tax as escaped assessment. No final or conclusive finding as to escapement of income is necessary at that stage. In view of the circumstances of the case and prevailing position of law, applicable on such facts, he upheld the action of AO regarding reopening assessment u/s 147 of the Act.

4.2 As regards merits of the addition, the Ld.CIT(A) has given the decision at para-8 to 8.4 of the appellate order. He found that though AO has rejected the purchases though he has not rejected the sales affected by the appellant. He has referred to decisions in case of PCIT vs. Surya Impex (2023) 148 taxmann.com 154 (Guj) where the Hon'ble High Court upheld the addition @ 6% of the impugned purchase. He also referred to decision of Hon'ble Bombay High Court in case PCIT vs. S.V.Jiwani (2022) 145 taxmann.com 230 (Bom) where it was held that only the profit element embedded in the purchase could be treated as income of the assessee. In view of precedents, he disallowed @ 12.5% of the total purchase made from the concerns of Shri Bhanwarlal Jain and directed AO to restrict the addition on this count to 12.5% of Rs.18,14,79,322/-.

5. Aggrieved by the order of CIT(A) both assessee and Revenue have filed their respective appeals before the Tribunal. The appellant has challenged

both reopening as well as merit of addition @ 12.5% of the bogus purchase of Rs.18,14,79,322/- as upheld by CIT(A). The Ld. AR of the assessee relied on the case law (i) PCIT vs. Surya Impex (2023) 148 taxmann.com 154 (Guj), (ii) Dilkhush Annraj Babel vs. ITO (2024) 169 taxmann.com 472 (Guj), (iii) PCIT vs. Rakesh Kailashchand Jain (2023)156 taxmann.com 82 (Guj), (iv) PCIT vs. Vrajendra Jagjivandas Thakakr (2023) 155 taxmann.com 403 (Guj) and (v) PCIT vs. Mohit Pukhraj Kawdiya (2024) 167 taxmann.com 473 (Guj).

5.1 On contrary, Revenue has raised ground against restricting the addition made by AO to only @ 12.5% of the impugned purchase of Rs.18,14,79,322/-.

6. At the outset of hearing, both parties agreed that this issue is a fairly common and respective issue before the Tribunal and is covered by a number of decisions of the ITAT wherein addition has been restricted @ 6% of the bogus purchase. It was further submitted that such decision of ITAT in restricting the addition to 6% has been confirmed by the Hon'ble jurisdictional High Court in case of Surya Impex (supra). The Ld. CIT-DR also agreed that the issue is also covered by the decisions of ITAT and Hon'ble jurisdictional High Court.

7. We have heard both the parties and perused the materials on record. We also deliberated various case laws relied upon by the parties. We find that the ITAT in case of M/s Surya Impex vs. ITO in ITA Nos. 1165 and 1378/AHD/2017 AY 2009-10 has decided similar issue by relying on the

decision of Hon'ble jurisdictional High Court in cases of Peass Industrial Engineers (P) Ltd. vs. DCIT (2016) 73 taxmann.com 185 (Guj) and Pushpak Bullion (P) Ltd. vs. DCIT (2017) 85 taxmann.com 84 (Guj) and held that the reopening by the AO was justified. Accordingly, ground raised by assessee was dismissed. In the present case, the Ld. AR of the assessee did not argue on the ground of reopening. Therefore, following the decision of this co-ordinate Bench of this Tribunal, in the case of M/s Surya Impex (supra), ground No.1 raised by assessee is dismissed.

7.1 Regarding ground No.2 relating to addition on account of alleged bogus purchase, the Tribunal discussed the issue at para-16 to 20 of its order (supra) and observed that AO added 100% of the bogus purchases which was restricted @ 12.15% by the CIT(A). The ITAT found that the disallowance made by the AO was on the higher side and since the profit margin in the industry is 5% to 7%, disallowance of purchase was restricted to 6% of disputed bogus purchases. Aggrieved by the order of the Tribunal, the Revenue filed appeal before Hon'ble jurisdictional High Court and Hon'ble High Court held that where AO received report from Investigation Wing that assessee-firm received accommodation entries in the form of bogus purchases from a group and made 100% addition with respect to said bogus purchases, however, while dealing with the case of the said group and other parties involved in providing such accommodation entries, AO chose to make addition @3 to 5%, Tribunal was justified in limiting the addition in the hands of assessee @ 6% of the

impugned purchases. Facts of the case are similar to the facts discussed above by the Tribunal and confirmed by the Hon'ble jurisdictional High Court. Both parties have also agreed that it is a covered case. Therefore, we direct the AO to restrict the addition @ 6% of the alleged bogus purchase of Rs.18,14,79,322/-. Hence, ground No.2 of assessee's appeal is partly allowed.

8. In the result, appeal of assessee is partly allowed whereas Revenue's appeal is dismissed.

ITA Nos.611/SRT/2023 and ITA No.614/SRT/2023 (AY 2009-10)

9. The facts of the case and grounds raised in these appeals are similar to those appeals in ITA No.610 & 626/SRT/2023, *wherein* we have dismissed the appeal of assessee in respect of reopening u/s 147 of the Act by following decision of ITAT in case of M/s Surya Impex vs. ITO in ITA Nos. 1165 and 1378/AHD/2017 AY 2009-10 (*supra*) and the Hon'ble jurisdictional High Court in case of Peass Industrial Engineers (P) Ltd. (*supra*) and Pushpak Bullion (P) Ltd. (*supra*). Accordingly, ground raised by assessee was dismissed. In the present case, the Ld. AR of the assessee did not argue on the ground of reopening. Therefore, following the decision of this co-ordinate Bench of this Tribunal, in the case of M/s Surya Impex (*supra*) the ground No.1 raised by assessee is dismissed.

9.2 On merit, we have restricted the disallowance of bogus purchases to the extent of 6%; therefore, addition made by AO is restricted to 6% of the

impugned purchases and the grounds of appeal raised by assessee are partly allowed and grounds of appeal raised by Revenue have become infructuous.

10. In the result, appeal of assessee is partly allowed whereas Revenue's appeal is dismissed.

Order pronounced under provision to Rule 34 of ITAT Rules, 1963 on 28/03/2025 in the open court.

Sd/-
(SANJAY GARG)
न्यायिक सदस्य/JUDICIAL MEMBER
सूरत /Surat
दिनांक/ Date: 28/03/2025
Dkp Outsourcing Sr.P.S*

Sd/-
(BIJAYANANDA PRUSETH)
लेखा सदस्य/ ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त (अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

// True Copy //

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत