

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.975/SRT/2024

Assessment Year: (2014-15)

(Physical Hearing)

The ITO, Ward -2(1)(3), Surat	Vs.	Sweety Gems Pvt. Ltd., 101, Nishit Diamond Complex, Gujjar Falia, Haripura, Surat - 395003
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AANCS4270N		
(Appellant)		(Respondent)

Cross Objection No.29/SRT/2024

(Arising in ITA No.975/SRT/2024)

Assessment Year: (2014-15)

Sweety Gems Pvt. Ltd., 101, Nishit Diamond Complex, Gujjar Falia, Haripura, Surat - 395003	Vs.	The ITO, Ward -2(1)(3), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AANCS4270N		
(Appellant)		(Respondent)

Appellant by	Shri Ritesh Mishra, CIT-DR
Respondent by	Shri Rasesh Shah, CA
Date of Hearing	10/03/2025
Date of Pronouncement	13/05/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

These two cross appeals by the revenue and assessee emanate from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 29.07.2024 by learned Commissioner of Income-tax (Appeal), National Faceless Appeal Centre, Delhi [in short, 'CIT(A)'], for the Assessment Year (AY) 2014-15.

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

"(i) On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition from Rs.10,94,05,000/- made on account of section 69A of the Act as the assessee neither in the assessment proceedings nor in the appeal proceedings produced any cogent evidences to prove that the amount credited in the bank account pertains to its business receipts.

(ii) On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating that during the assessment proceeding and during the inquiry of the STR as well during the assessment proceedings of the assessee it is clearly established that the entity Sheetal Exports is not into genuine business

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

(iv) It is therefore prayed that the order of the Id. CIT(A) may kindly be set aside and that of the Assessing Office be restored.

(v) 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."

3. Brief facts of the case are that assessee filed its return of income on 22.09.2014, declaring total income of Rs.4,71,040/-. The return was taken up for scrutiny and assessment order u/s 153A r.w.s. 143(3) of the Act was passed on 31.03.2016, determining total income of Rs.10,07,848/-. After the assessment order, information was received through the Insite portal that assessee had received huge fund of Rs.10,94,05,000/- from M/s Sheetal Exports (Prop. Upendra Bajrang Lal Goyal). Notice u/s 148 of the Act was issued on 04.06.2021. Subsequently, notice u/s 148A(b) of the Act was issued on 25.03.2022 by treating the said notice dated 04.06.2021 as notice u/s 148A(b) of the Act. The assessee challenged the action of AO as time barred vide reply dated 03.06.2022. The Assessing Officer (in short, 'AO') rejected

contention of the assessee. He passed order u/s 148A(d) of the Act on 30.07.2022.

3.1 The assessee also filed various details and evidences regarding its transaction of Rs.10,94,05,000/- with M/s Sheetal Exports vide letters dated 21.02.2023, 19.04.2023 and 21.04.2023. He submitted that total transactions with M/s Sheetal Exports were of Rs.11,44,45,048/-. It received the said amount out of sale of polished diamond worth Rs.3,08,18,637/- and other transactions were on current account with the said concern. The AO observed that transactions with Sheetal Exports are only sham transactions to accommodate funds in the name of running business activities of cut and polished diamonds. He issued show cause as to why the same amount should not be taxed u/s 69A r.w.s. 115BBE of the Act. The assessee filed reply on 18.05.2023 which was not found satisfactory by the AO. He got field verification conducted through the Verification Unit and found that M/s Sheetal Exports was not carrying out any business from the address given by the assessee. Accordingly, he added Rs.10,94,05,000/- u/s 69A of the Act to the total income.

4. Aggrieved by the order of AO, the assessee filed appeal before CIT(A). During appellate proceedings, appellant submitted books of account, ledger account showing trading of diamonds with M/s Sheetal Export, invoices, audit reports and assessment orders of the appellant and M/s Sheetal Exports for AY.2014-15. It was submitted that the quantum of profit cannot be decisive of

the genuineness of the transaction. The CIT(A) found that the ledger account of M/s Sheetal Exports in the books of the assessee shows regular business transactions and sales. The appellant had also submitted copy of assessment order u/s 143(3) dated 31.03.2016 by the ACIT, Central Circle, Mumbai in case of M/s Sheetal Exports for AY.2014-15. It was evident therefrom that M/s Sheetal Export was covered in a search action u/s 132 of the Act in the year 2013-14 and books of account were seized from its premises. The entire addition made in the search assessment was deleted by the CIT(A), resulting in the assessment of the said party at its returned income. The CIT(A) also noted that the case of M/s Sheetal Exports was reopened u/s 147 of the Act by the ACIT, Central Circle on 30.03.2021 based on the same information. However, in the order u/s 143(3) r.w.s. 147 of the Act, the returned income was accepted by the AO. Hence, the CIT(A) concluded that M/s Sheetal Exports was actually engaged in diamond trading during AY.2014-15. As Sheetal Export was actually engaged in business during 2014-15, there was no reason to presume that the bank transfer with the appellant was bogus. The CIT(A) also found that the case of appellant for AY.2014-15 also assessed u/s 143(3) of the Act by the AO of the Central Circle pursuant to a search conducted in the year 2013. After verifying books of account, AO made addition of Rs.9,36,808/-. In the appellate order, the CIT(A) held that there is no incriminating material which would justify addition u/s 153A of the Act. Further, no defects were pointed out by AO in the regular books of account. The bank transactions with M/s Sheetal

Exports were also incorporated in the books of account. Though in the faceless assessment proceedings, transactions with M/s Sheetal Export were added u/s 69A of the Act, but in the parallel proceedings by the Central Circle, the transactions with M/s Sheetal Exports were not found to be accommodation entries. Hence, the CIT(A) held that the impugned transactions were normal business transactions. As a result, the appeal was allowed.

5. Aggrieved by the order of CIT(A), the revenue filed the appeal before the Tribunal. The learned Commissioner of Income-tax – Departmental Representative (Id. CIT-DR) for the revenue supported the order of AO. He submitted that the assessee did not produce any credible evidence to prove that the transaction with M/s Sheetal Exports was genuine. He submitted that Sheetal Exports is not doing any genuine business activity.

6. On the other hand, learned Authorized Representative (Id. AR) of the assessee relied on the order of CIT(A). He submitted that assessee made sales to Sheetal Exports and did not make any purchases either from M/s Sheetal Export or M/s Maniprabha Impex Pvt. Ltd. The assessee has shown revenue from M/s Sheetal Export and has not claimed any expenses in relation to M/s Sheetal Exports. The Id. AR also submitted that similar action u/s 147 of the Act was undertaken in case of Shri Upendra Bajrang Lal Goyal (Prop. M/s Sheetal Exports), who made purchases of Rs.1,17,96,48,994/- from M/s Maniprabha Impex Pvt. Ltd. The AO accepted the returned income of M/s Sheetal Exports and did not make any addition. Hence, addition cannot be made in case of the

assessee. The Id. AR also relied on the decision of Hon'ble Gujarat High Court in case of CIT vs. Vishal Exports Overseas Ltd., TA No.2471 of 2009, dated 03.07.2012.

7. We have heard both the parties and perused the materials available on record. We have also deliberated upon the case laws relied upon by Id. AR. We have also gone through various assessment orders and appellate orders relied upon by Id. AR. The AO made the addition of Rs.10,94,05,000/- u/s 69A of the Act on the ground that no business activities were actually carried out by M/s Sheetal Exports from its premises. During field verification by the Verification Unit in case of M/s Sheetal Exports during the assessment proceedings, it was found that there were no business activities such as export and import of diamonds from its premises. Hence, AO held that transactions with M/s Sheetal Export are only sham transactions to accommodate funds in the name of running business activities of cut and polished diamond. On appeal, the CIT(A) deleted the addition because both the appellant and M/s Sheetal Exports had undergone search action u/s 132 of the Act and were assessed by the same AO in the Central Circle, Mumbai. In both cases, the appeals by the assessee were allowed by CIT(A) and the returned incomes were accepted. We find that similar re-assessment proceedings u/s 147 of the Act were undertaken in case of Shri Upendra Bajrang Lal Goyal (Prop. of M/s Sheetal Exports). A search and seizure action u/s 132 of the Act was carried out in his case and assessment order was consequently passed. Subsequently, the case

was reopened and order u/s 143(3) r.w.s. 147 of the Act was passed on 18.05.2021 wherein no adverse view was taken and the returned income of Rs.2,41,220/- was accepted.

7.1 The CIT(A) has deleted the impugned addition made by the AO as per the findings at para 4 and 4.1 of the appellate order. The findings of CIT(A) have already been discussed at para 5 of this order. He found that the additions made in the search assessment of M/s Sheetal Exports was deleted in the first appeal. He observed that once the creditor is actually engaged in business, the bank transactions with the appellant cannot be treated as bogus. He also found that bank transactions with M/s Sheetal Exports are incorporated in the books of account of the assessee. He also found that in the parallel proceedings by the Central Circle, assessment was completed in case of M/s Sheetal Exports where transactions by the said firm were found not to be accommodation entries. After going through various details including the assessment orders referred to by the CIT(A), we do not find any infirmity in his findings. The finding of CIT(A) that M/s Sheetal Exports was actually engaged in normal business during the year under consideration has not been rebutted by the revenue by producing any details or evidence. Hence, there is no reason to differ with the findings of the CIT(A). We also find that the Hon'ble Gujarat High Court in case of Vishal Exports Overseas Ltd. (supra) has confirmed upholding the deletion of Rs.70,00,000/- u/s 68 of the Act by observing that when the assessee has already offered the sales realization and such income is

accepted by the AO, addition of the same amount once again u/s 68 of the Act would amount to double taxation of the same year. The ratio of the above decision is applicable to the facts of the case because the assessee made sales to M/s Sheetal Exports and did not make any purchases either from M/s Sheetal Exports or M/s Maniprabha Impex Pvt. Ltd. In view of the above facts and the decision cited supra, the grounds of the revenue are dismissed.

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

CO No.29/SRT/2024 (AY.2014-15):

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

"1. On the facts and circumstances of the case as well as law on the subject, the Id. Assessing officer has erred in issuing notice u/s 148A(b) on the basis of misconceived and wrong information.

2. On the facts and circumstances of the case as well as on the subject, the Id. Assessing officer has erred in initiating re-assessment on the basis of change in opinion.

3. On the facts and circumstances of the case as well as law on the subject, the Id. Assessing officer has erred in issuing notice u/s 148A(b) and passing order u/s 148A(d) when he was not having any jurisdiction.

4. On the facts and circumstances of the case as well as law on the subject, the Id. Assessing officer has erred in passing order u/s 148a9d) without obtaining proper approval u/s 151.

5. On the facts and circumstances of the case as well as law on the subject, the Id. Assessing officer has erred in issuing notice u/s 148 on the basis the judgment of Hon'ble Supreme Court in case of UOI vs. Ashish Agarwal, Civil Appeal No.3005/2022, dated 4th May, 2022, when the judgment didn't suggest that income chargeable to tax has escaped assessment in assessee's case.

6. On the facts and circumstances of the case as well as on the subject, the Id. CIT(A) has erred in not adjudicating various issues concerning reassessment raised in the appeal before him.

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

10. Subsequently, the appellant has raised additional ground which is as under:

"On the facts and in circumstances of the case as well as law on the subject, the Id. Assessing Officer has erred in issuing notice u/s 148 on 30.07.2022 in contravention of the time laid down u/s 149 read with judgement of Honourable Supreme Court in case of Union of India vs. Rajeev Bansal and therefore proceeding initiated u/s 147 is time barred."

11. Since the appeal of the revenue has been dismissed on merit, the Cross Objection filed by the assessee becomes academic in nature and does not require adjudication.

12. In the combined result, the appeal filed by the revenue is dismissed, whereas the Cross-objection filed by assessee also dismissed as becomes in fruituous.

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 13/05/2025.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 13/05/2025

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat