

Income-tax Department [for brevity, the “Ld.AO”)], order dated 27/03/2023, passed under section 147 read with section 144B of the Act.

2. The revenue has taken the following grounds: -

*“1. Whether on the facts and circumstances of the case and law, the Ld CITIA) was justified in deleting the additions of Rs 5,31,14,455/- on account of transactions with bogus entity in M/s Destiny Star (India) P Ltd which is an entity controlled and managed by Shri Rakesh Javerimal Shah and established that they are entry providers in the form of loans and purchases and the assessee has failed to prove creditworthiness and genuineness.*

*2. The appellant prays that the order of the CITIA) on the grounds be set aside and confirm the order of the AO.*

*3. The appellant craves leave to add, amend or alter all or any of the grounds of appeal.”*

3. The brief facts of the case are that the assessee is engaged in business of trading in rough, cut and polished diamonds and precious stones. The assessee filed the return under section 139(1) of the Act and declared the total income of Rs.4,39,550/-. The assessee’s case was reopened under section 148 of the Act. In assessment proceeding, the Ld. AO observed that the assessee had received accommodation entry to the extent of Rs.5,34,14,455/- related to purchase from M/s Destiny Star (India) Pvt Ltd, during the impugned financial year. Finally, the Ld.AO added back the entire amount by treating the alleged transaction as bogus transaction. Being aggrieved, assessee filed an appeal before the Ld.CIT(A). The Ld.CIT(A), after considering the submission of the assessee passed an order in favour of the assessee and deleted the addition. Being aggrieved, the revenue filed an appeal before us.

4. The Ld. DR vehemently argued and filed a written submission which is reproduced as below:-

*bills produced by the assessee three months before came, how it was possible?. This is nothing but a bogus bills, Fabricated bills not true, but made to seem true in order to deceive the court which is a crime to produce the false bills before your honour. By taking all these the CIT(A) 's order is not acceptable and the addition made should be sustained on the reasons quoted above.*

*In this regard the Hon'ble ITAT is requested to take the cognizance of this bills and decide the appeal for the A.Y. 2018-19 as well as 2013-14 as there was also bogus purchases introduced but the name of part is different as the name of party is Anjanni Diam Pvt. Ltd. Since the assessee brought the false information without giving any further adjournments, the appeal of the revenue is requested to be upheld and confirmed the addition and set aside the Id CIT(A)'s order as the CIT(A) without observing the facts, the addition was deleted. For ready reference the copies of bills are herewith enclosed for kind perusal.”*

5. The Ld. AR advanced arguments and filed three Paper Books (in short, APB), which have been placed on record. During the course of his submissions, he stated that the assessee is engaged in the business of trading in diamonds and, during the impugned assessment year, had made purchases from the alleged party, namely M/s Destiny Star (India) Pvt. Ltd. In support of the transactions, the assessee submitted before the Ld. AO all relevant documents, including purchase bills, proof of payments made through banking channels, and the identity particulars of the concerned parties. Furthermore, the affidavit of Mr. Vinit Jain, Director of M/s Destiny Star (India) Pvt. Ltd., was also filed, which is placed in the **APB-2 at pages 39 to 45**. In addition, a cross-confirmation issued by the said party, confirming the entire transaction, is also filed and placed at **pages 46 to 47 of APB-2**. The stock

*Card, GST, KYC showing active status as on date, AO details, CIN Master Data, Bank Statements, Quantitative Tally of traded goods (Diamonds), Stock registers, 3CD stocks extract etc. to prove genuineness of the transactions and identity of the purchaser.*

*Since, the appellant had submitted the ITR acknowledgment for A.Y. 2018-19 and Affidavit of Sh. Vineet Jain, Director of M/s Destiny Star (India) Pvt. Ltd. before the Ld. AO, he had discharged the initial onus of proving the transactions as being genuine. Further, the bank statements show the entire transactions are through banking channel. The Ld. AO has not controverted any of the documents hence submitted before him.*

*From the perusal of assessment order as well as the documents submitted during appellate proceedings, the following points seek to establish the identity of the party and genuineness of the transactions:*

- 1. Purchases from M/s Destiny Star (India) Pvt. Ltd. have been made through banking channels.*
- 2. Proper record of purchases, sales etc. have been maintained by the appellant.*
- 3. Stock register has been maintained by the appellant. The accounts have been duly audited by the Auditor.*
- 4. Creditworthiness, genuineness of M/s Destiny Star (India) Pvt. Ltd. cannot be doubted as a sham entity*

*The Ld. AO in the assessment order has stated that no supporting evidence in respect of delivery of diamonds has been produced by the assessee. The Ld. AO has not accepted the submission of the assessee that delivery of diamonds from M/s Destiny Star (India) Pvt. Ltd. were made hand to hand as both the parties were having office address in the same area of Surat. The Ld. AO has not given any reason to reject the submission of the assessee. In this respect the appellant has also produced the conveyance vouchers of various dates to show the expenses on the movement of consignment of diamonds in respect of their transportation and delivery.*

*In respect of facts of the case reliance is placed on the judgment of Hon'ble Supreme Court in the case of Commissioner of Income Tax-7, New Delhi Vs. Odeon Builder Pvt. Limited as reported in (2019) 418 ITR 315 (SC) wherein it has been opined by the Apex Court that:*

*“Where assessee had submitted purchase bills, transportation bills, confirmed copy of accounts and VAT registration of sellers as also their Income Tax Return and payment was made through cheques, impugned purchases could not be disallowed.”*

submitted by the assessee bear GST TIN numbers even for invoices dated prior to 01.07.2017, the date of GST implementation, thus raising suspicion about the genuineness of such documents.

On the other hand, the Ld. AR, has filed detailed documentary evidence including purchase bills, bank statements evidencing payment through banking channels, PAN and KYC documents of the supplier, affidavit of the director of M/s Destiny Star (India) Pvt. Ltd., confirmation of accounts, quantitative tally, stock register, and Form 3CD extracts. The Ld. AR also clarified that under the Gujarat VAT regime, diamonds were exempt from tax, and accordingly, non-levy of tax on invoices is not a conclusive indicator of bogus transactions. The Ld. AR clarified that prior to the enactment of the Goods and Services Tax (GST) Act, the abbreviation "GST" mentioned in the invoice by the alleged party referred to "Gujarat Sales Tax" and not the Goods and Services Tax. The Ld. CIT(A) has taken into account these submissions and documents and recorded a finding that the assessee had discharged the initial onus of proving the identity of the supplier and the genuineness of the transaction.

It is further noted that the Ld. AO has not brought on record any independent inquiry to contradict or invalidate the documents submitted by the assessee. No statement of the directors of M/s Destiny Star (India) Pvt. Ltd. implicating the assessee has been brought on record. The Ld. AO has not rejected the books of accounts nor has he disturbed the sales or the trading results. The addition appears to be solely based on third-party information from the Investigation Wing, without further corroboration in the context of the assessee's transactions.

The judicial precedents relied upon by the Ld. CIT(A) are squarely applicable to the present facts. In particular, the decisions of the Hon'ble Supreme Court in CIT v.

