

**INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER &
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

**ITA Nos. 1870, 1871 & 1880/Del/2025
(Assessment Years: 2010-11 to 2012-13)**

ACIT, Room No. 192A, First Floor, CR Building, ITO Delhi – 110002	Vs.	Vijendra Surendra Exports Pvt. Ltd. L71, LGF, Raj Kumar Associates Chartered Accountant South Part II Delhi - 110049
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No: AAACV0974B		
Appellant	..	Respondent

Appellant by :	Sh. Mayank Patawari, Adv, Sh. Akash Ojha, Adv.
Respondent by :	Sh. Manish Gupta, Sr. DR

Date of Hearing	12.08.2025
Date of Pronouncement	22.08.2025

ORDER

PER MADHUMITA ROY, JM:

All the appeals filed by the Revenue are directed against the common orders dated 23.01.2025 passed by the Ld. CIT(A)-31, Delhi arising out of the common Assessment Order dated 30.12.2017 passed by the Ld. ITO, Ward 26(3) New Delhi, under Section 147 of the Income

Tax Act, 1961 (hereinafter referred to as 'the Act') for Assessment Years 2010-11 to 2012-13.

ITA No.1870/Del/2025 (AY: 2010-11)

3. The assessee firm engaged in the business of goldsmith and trading of precious and semi-precious stones and diamonds under the name and style of M/s Vijendra Surendra Exports Pvt. Ltd. filed its return of income for Assessment Year 2010-11 declaring total income at Rs.28,12,890/-. The case of the assessee was reopened on the basis of information received from Investigation Wing, Mumbai that a search and seizure operation was conducted on Rejendra Jain Group and Sanjay Choudhary Group and Dharmichand Jain group in which Shri Sanjay Choudhary who is the accommodation entry provider admitted on oath that he had provided bogus entries towards various companies. The name of the appellant was mentioned in the list of beneficiaries of accommodation entries of bogus purchase/sales and notice under Section 148 accordingly was issued. Such assessment was culminated in making addition of Rs.62,96,650/- observing that appellant received bogus purchase bills from M/s Mayank Impex of Rs.52,28,710/- and the bills from M/s Nazar Impex Pvt. Ltd. of Rs.10,67,940/- totaling to Rs.62,96,650/- which was in turn deleted by the First Appellate Authority. Hence, the instant appeal before us.

4. Heard the rival submissions made by the Ld. Counsels appearing for the respective parties, perused the materials available

on record. With the following observation the Ld. CIT(A) deleted the addition.

“17. The appellant also submitted that both the parties have filed their copy of account duly confirming the said transactions, their bill mentioning sales tax details, their PAN, address etc., which was placed on record along with the paper book. The payments have been made to all the parties through banking channel and copy of bank statement of the appellant duly highlighting the relevant payment was also placed on record.

18. The appellant also submitted that the books of accounts of the appellant were duly audited by a Chartered Accountant and represents true & fair view and no discrepancy in the books of account or any irregularity in the billing or procurement procedures have been found. It has been argued that the AO has also not pointed out any infirmity in the books of accounts and has duly accepted the corresponding sale of the purchases. However, he rejected the purchases as bogus. On its part, the appellant has placed various precedents to substantiate that the purchases are genuine.

19. In light of the above facts and circumstances, it is observed that the AO has concluded the assessment and made the findings that purchases made from M/s Mayank Impex Pvt. Ltd. and M/s Nazar Impex Private Limited are bogus by only relying on the statement made by Shri Rajendra Jain and Shri Surendra Jain whereas no infirmity was found in the invoices, confirmations, audited financials, bank statements, ledgers etc.

20. The reassessment proceedings were initiated based on the statement of Shri Surendra Jain and Shri Rajendra Jain, and the additions in all the years under appeal were made by relying on the same. The appellant has placed the affidavit of Shri Sanjay Chaudhary on record wherein he has stated that the statement was given under duress.

21. The appellant has placed on record various case laws on identical facts and circumstances wherein various benches of the Hon'ble ITAT have treated such transactions as genuine. Hon'ble ITAT Surat in the case of **ACIT vs. M/s. Rushabh International in ITA no 347/349/350SRT/2018**, has given the categorical findings as under: -

“5.0 We have heard the rival submissions and have also perused the material available on record. It is not in dispute that the statement of Shri Dharmichand Jain on which the department has relied while making the impugned additions has been retracted by Shri Dharmichand Jain. This fact has been duly noted by the Assessing Officer but the same has not been given credence by the Assessing Officer. It is also seen that the assessee had filed the following documents before the lower authorities to substantiate the genuineness of the purchases:- purchase invoices from the two parties, confirmation of accounts, affidavit of retraction of statement by Shri Dharmichand Jain, stock statement, cost

sheet for the manufactured diamonds lotwise, challans for transfer of the diamonds to the manufacturing department, lot-wise labour charges paid, monthly report of TDS and challans, bank statements reflecting payments made to suppliers, form CD showing quantitative details, entries in the purchase book along with daily stock register etc. Apart from this, there is also an affidavit of Shri Dharmichand Jain confirming the transactions along with confirmation of accounts by the two parties and copy of bank statements of the two parties to substantiate the receipt of payment against the purchases.

The retraction of statement by Shri Dharmichand Jain regarding the statement made after search and filed before the DCIT, Surat and the affidavit of Shri Dharmichand Jain regarding the retraction of the statement has been completely ignored by the Assessing Officer without assigning any reason. It is also noteworthy that the sales, as declared by the assessee, were accepted as genuine by the department and it is only the purchases which have been doubted by the department.

However, no cogent reason has been given by the department for treating the purchases as not being genuine but accepting the sales made against the said bogus purchases as genuine.

Therefore, on an overall view of the facts, it is our considered opinion that the Ld. CIT(A) was not justified in sustaining the disallowance to the tune of 2% of the alleged bogus purchases when the very basis on which the bogus purchases being alleged to have been made does not stand in view of the retraction of statement by Shri Dharmichand Jain as well as the voluminous documentary evidences which were filed by the assessee before the lower authorities and which substantiate the genuineness of the purchase from M/s Dharam Impex and M/s Maniprabha Impex Pvt. Ltd. The department's reliance on the case of Vijay Proteins Ltd. vs. CIT (supra) does not come to the aid of the department as in this case, the Tribunal had reached a conclusion that the purchases were bogus and, therefore, a disallowance of 25% of the purchase price was held to be justified. However, in the present case, it is our considered opinion that the purchases are not bogus because they are duly supported by the voluminous evidences in this regard which cannot be brushed aside simply for the reason that a search had taken place in the premises of Shri Rajendra Jain/Dharmichand Jain group of cases. Also the statement of Shri Dharmichand Jain on which the department had relied initially for the making of the impugned addition has also been retracted. Similarly, the department's reliance in the case of N.K Industries (supra) would not help the case of the department because in that case also, the Tribunal had reached a finding that the purchases were from bogus suppliers. However, in the present case, in view of the reasons narrated in the foregoing paragraphs, the purchases are held to be genuine. We find the assessee's case identical to a case decided by ITAT Delhi Bench in the case of Haryana Jewelers P. Ltd. vs. ITO (supra) wherein in the same search relating to the same group i.e. Rajendra Jain/Dharmichand Jain group, the purchases made by M/s Haryana Jewellers were held to

be genuine and the sustenance of disallowance @ 25% by the Ld. CIT (A) was directed to be deleted. In this case also, the coordinate Bench of the Tribunal has given credence to the retraction of statement by Shri Rajendra Jain as well as the confirmation of the transactions by Shri Rajendra Jain in response to notice u/s 133 (6) of the Act. In the present case, it is undisputed that no notices were issued u/s 133(6) to the two parties from whom the alleged bogus purchases were made and, thus, the Assessing Officer failed to take the enquiry further. Once, the purchases are held to be genuine, no additions can be made. We note that the Ld. CIT (A) has not given any cogent reason for sustaining the disallowance to the tune of 2% except for an observation that it was a possible situation that the assessee could have purchased rough diamonds from a third party in the grey market and had ended up getting bills for purchase from M/s Dharam Impex and M/s Maniprabha Impex Pvt. Ltd. Thus, this sustenance of 2% is based only on assumptions and surmises by the Ld. CIT (A) and there is nothing on record to establish the said observation of the Ld. CIT (A). Therefore, in view of the facts of the case, we are unable to concur with the findings of the lower authorities and we deem it fit to set aside the order of the Ld. CIT (A) and direct the deletion of the sustenance of 2% of the alleged bogus purchases. Therefore, for the reasons as mentioned in the foregoing paragraphs, we allow the ground in assessee's cross objections in all the three years and direct the Assessing Officer to delete the additions as sustained by the Ld. CIT (A).”

22. In the light of the findings of Rushabh International (supra) it may be seen that the AO has not drawn any negative inference either on the evidence produced by the appellant or on the contentions of the appellant that the appellant has made the purchases from M/s Mayank Impex Pvt. Ltd. and M/s Nazar Impex Private Limited.

23. In relation to purchases made from M/s Mayank Impex Pvt. Ltd. and M/s Nazar Impex Private Limited, the division bench of Hon'ble jurisdictional ITAT in the case of Asst. CIT, Central Circle-29, Vs. M/s K. K. Exports in ITA no. 6605/DEL/2016 on 30.09.2020 has dismissed the appeal of revenue and held as under:-

“5.0 We have heard the rival submissions and have also perused the relevant material on record. At the outset, we note that the Ld. Sr. DR was not able to controvert with concrete evidence to the contrary, the findings recorded by the Ld. CIT (A) while deleting the addition made by the AO of an amount of Rs.3,12,42,835/- and we note that the relief granted by learned CIT (A) is based on positive documentary evidences, which were brought on record by assessee. The same are discussed below:

(1) The sole basis of the AO to have made the impugned addition was the statement of one Shri Sanjay Choudhary wherein he has accepted providing accommodation entries through his various concerns. We have gone through the assessment order, wherein, we note that the said

person was produced before the AO on 26.02.2016 and the said person retracted from his earlier statement given before the DGIT (Inv).

The said retraction was also backed by an affidavit of Shri Sanjay Choudhary. This retraction remains uncontroverted till date. Thus, in our considered view, the whole basis of the Revenue Authorities to have made the impugned addition based on the statement recorded before DGIT (Inv) does not survive and, therefore, the learned CIT (A) has rightly deleted the addition by placing reliance on the said retraction.

(ii) We also note that the learned CIT (A), while giving relief, has relied on the order under section 147/143(3) for AY 2007-08 dated 25.6.2014 in the case of a group concern namely M/s Khanna Jewellers Pvt. Ltd, wherein, on similar allegations, the case was reopened and that too on the basis of statement of Shri Sanjay Chaudhary.

However, the department in the said case accepted the said retraction by Shri Sanjay Chaudhary while passing the order under section 147/143(3) and no adverse inference was drawn against M/s Khanna Jewellers Pvt. Ltd. The said fact has also been duly noted by learned CIT (A) at page 14 Para 4.6, while giving relief in the instant case. Thus, once Revenue has accepted the transaction with Sh. Sanjay Chaudhary to be genuine in group case of the assessee, the same cannot be agitated or doubted in the assessee's case and, therefore, it is our considered opinion that the learned CIT (A) has rightly deleted the addition by placing reliance on the assessment order in the case of group concern namely M/s Khanna Jewellers Pvt.

(iii) That further, on going through the order of lower authorities, an important fact that emerges is that a similar allegation was also made in the case of the assessee, among other allegations, in the earlier assessment years when it had made purchase from M/s Nazar Impex (P) Ltd. (a concern said to have been controlled by Shri Sanjay Chaudhary) and the assessee had approached ITSC for settlement of its case and the ITSC has held the said transactions to be genuine. The finding of the ITSC in assessee's case vide an order dated 27.5.2014 for AY 2005-06 to 2012-13 is reproduced as under:

"On the issue of purchase diamonds from bogus concerns, we agree with the submission of Ld. AR that the applicant cannot be asked to discharge the burden of proof of existence or genuineness of the alleged sellers as long as purchases are recorded in the books and payments have been made through account payee cheques. The applicants have furnished copies of purchase bills, bank statements, copies of return filed and copies of ledger accounts and sale tax registration which are shown at pages 146-579 of the paper book."

5.1 In view of the aforesaid facts and material available on record, we have no hesitation in upholding the order of learned CIT (A). While

upholding the order passed by the learned CIT (A), we rely on the judgment of the Hon'ble Jurisdictional High Court in the case of CIT vs. M/s Surendra Buildtech Pvt. Ltd. in ITA No. 141/2012 wherein the Hon'ble Court held that where the Revenue failed to rebut the findings recorded by the learned CIT (A) by bringing any contrary material on record, the finding recorded by the lower authority based on documentary evidences needs to be upheld.”

24. It is seen from the record that the purchase parties in the present case being M/s. Mayank Impex Pvt. Ltd. and M/s. Nazar Impex Pvt. Ltd. were managed and controlled by Shri Sanjay Choudhary who retracted his statement through retraction letter with an affidavit which was placed on record of the AO by the appellant regarding which AO has not made any observation in the assessment order. It is also seen that no cogent reason has been given by the AO for treating the purchases as bogus and at the same time accepting the sales made against the said purchases as genuine. Upon careful consideration of the matter, I find that the case in hand is *pari materia* with the case of K. K. Exports (supra) insofar as the purchases from M/s. Mayank Impex and M/s. Nazar Impex Pvt. Ltd. and the relevance of retracted the statement are concerned:

25. Hence, in the above facts and circumstances, and findings of K. K. Exports (supra), it is clear that the Hon'ble ITAT, being the last fact finding authority, has found M/s Nazar Impe private Limited as a genuine party and I am of the considered view that M/s. Mayank Impex Pvt. Ltd. also stands on the same footing. Apart from the same, appellant has also placed all the relevant material/evidence to corroborate that the purchases made from both the parties are genuine and the AO has also not drawn any negative inference either on the sales made during the year or on the evidences placed on record by the appellant in respect of such purchases. Since the sales have not be disputed by the AO, both the purchase parties are found to be genuine through the documentary evidences and the findings of Hon'ble ITAT, and statement on the basis of which the purchases in question was treated as bogus has been retracted, I have no hesitation in holding that AO is not justified in treating the said purchases as bogus and thereby making the said addition to the income of the appellant. Thus, in view of the aforesaid, am of the considered view that the disallowance of Rs. 62,96,650/- is not sustainable on facts as well as in law and therefore is liable to be deleted. I hold accordingly. Hence, the said addition made by the AO is hereby deleted.”

5. As it appears from the records and also submitted by the Ld. AR that identical issue of purchase made from M/s Nazar Impex Pvt. Ltd. has been assailed before the Tribunal and the Coordinate Bench has passed an order in the case of ACIT, CC-23 Vs. K.K. Exports in ITA No.6605/Del/2016 on 30.09.2020 dismissing the appeal preferred by the

Revenue with the following observation appearing at paragraph 23 of the Ld. CIT(A) order as already reproduced hereinabove.

6. Though it is the fact that M/s Mayank Impex and M/s Nazar Impex Pvt. Ltd. were managed and controlled by Shri Sanjay Choudhary as is on record but Shri Sanjay Choudhary retracted his statement through a letter along with an affidavit though placed on record before the Ld. AO no deliberation has been made by the Ld. AO rather treated the purchases as bogus, however, accepted the sales made against those purchase were genuine. In terms of the order passed by the Ld. Coordinate Bench when finding M/s Nazar Impex Pvt. Ltd. as a genuine party and M/s Mayank Impex being on the same footing, the genuineness of the transaction cannot be said to be bogus. Moreso, sales has not been disputed by the Ld. AO. As the sales not been disputed and one of the parties are found to be genuine by the order passed by the Coordinate Bench and the statement on the basis of which the purchases in question was treated as bogus has already retracted by the said Shri Sanjay Choudhary, the Ld. CIT(A) in our considered opinion, rightly held the order passed by the Ld. AO not justifying in treating the said purchases as bogus and deleted the addition made therein. Thus, we do not find any reason to interfere with the same. The appeal preferred by the Revenue is found to be devoid of any merit and thus, dismissed.

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7. The observations made hereinabove is also identical to that of the issue involved in the other two appeals and therefore, the finding and

decision is also applied mutatis mutandis in the other two appeals preferred by the Revenue.

8. All the appeals preferred by the Revenue are, thus, dismissed

Order pronounced in the open court on 22.08.2025

Sd/-
(Naveen Chandra)
ACCOUNTANT MEMBER

Sd/-
(Madhumita Roy)
JUDICIAL MEMBER

Dated 22.08.2025
Rohit, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI