

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "SMC" BENCH : MUMBAI

BEFORE JUSTICE (RETD.) SHRI C.V. BHADANG, PRESIDENT
AND
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

ITA No. 5938/Mum/2025
Assessment Year : 2009-10

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| S R Jewels, 33, B J Industrial Estate, Moti Udyog Bhavan, Kanchpada, Malad West, Mumbai-400064. PAN : AAYFS8159E | vs. | Income Tax Officer, Ward-34(3)(5), 126, Kautilya Bhavan, Bandra Kurla Complex, Bandra East, Mumbai-400051. |
| (Appellant) | | (Respondent) |

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| For Assessee : | Shri R.C. Modi / Ms. Ketki Rajeshirke |
| For Revenue : | Ms. Nidhi Agarwal, Sr.DR <i>(Virtually present)</i> |

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| Date of Hearing : | 04-12-2025 |
| Date of Pronouncement : | 12-01-2026 |

ORDER

PER VIKRAM SINGH YADAV, A.M :

This is an appeal filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [‘Ld.CIT(A)’], dated 22-07-2025, pertaining to Assessment Year (AY) 2009-10, wherein the assessee has taken the following grounds of appeal:

"1. Bogus Purchases u/s 69C of Rs. 49,21,400/-

On the facts and circumstances of the case and in law, the Hon'ble National Faceless Appeal Centre, Delhi has upheld the addition of Rs 49.21,400/- made by the assessing officer of the alleged bogus purchases as unexplained expenditure u/s 69 C of The Income Tax Act, 1961 and added the same to the Total Income.

The Appellant submits that the addition of purchases of Rs. 49,21,400/-made u/s 69C be deleted.

Without prejudice to the above,

On the facts and circumstances of the case and in law the NFAC erred in not restricting the addition of the alleged bogus purchases to 3% of Rs49,21,400/-, being the profit element embedded in the alleged bogus purchases considering the BAP Scheme in diamond industry as per the direction given by Hon. Commissioner of Income Tax (Appeals), Mumbai vide Appellate Order dated 14.06.2017 bearing appeal No. CIT (A): 37/IT-478/ITO 25 (3)(4)/2015-16.

The Appellant submits that the addition in respect of Rs. 49,21,400/- be restricted to 3% of the alleged bogus purchases of Rs. 49,21,400/-

2. The Appellant craves leave to add, to alter, amend, and or delete any or all of the above grounds of appeal."

2. At the outset, it is noted that this is the second round of appellate proceedings before this Tribunal.

3. Briefly, the facts of the case are that the assessee had filed its return of income declaring total income of Rs. 60,050/-. Basis incriminating material found during the course of search and seizure operation conducted u/s. 132 of the Act in case of Bhanwarlal Jain Group, it was found that the assessee was one of the beneficiaries of accommodation entries provided by Bhanwarlal Jain Group concern M/s. Impex Gems. On the basis of such information, the case of the assessee was reopened u/s. 147 of the Act. During the course of assessment proceedings, on the basis of the information available on record, the AO found that the assessee has obtained accommodation loan entry from M/s. Impex Gems amounting to Rs. 49,21,400/-, which was a benami concern of Bhanwarlal Jain Group, which were used for giving bogus accommodation loan entry

to the assessee and the amount of Rs. 49,21,400/-, was brought to tax in the hands of the assessee. The assessee carried the matter in appeal before the Ld.CIT(A), who after considering the submissions of the assessee that the amount in question represents value of polished diamonds purchased by the assessee, proceeded to treat it as bogus purchases instead of bogus loan entry. However, the ld CIT(A) was of the view that only the profit element embedded in such purchases has to be brought to tax. Referring to Benign Assessment Procedure (BAP) scheme, the Ld.CIT(A) restricted the addition to 3% of the alleged bogus purchases. The Revenue thereafter carried the matter in appeal before the Tribunal and the Co-ordinate Bench of the Tribunal vide its order dt. 25-05-2018 in ITA No. 5405/Mum/2017, noted that the AO on the basis of information available on record has recorded a finding that the assessee has availed accommodation entry by way of loan from M/s. Impex Gems, amounting to Rs. 41,29,400/-, whereas the Ld.CIT(A) on the basis of the submissions made before him has held that the aforesaid amount represent bogus purchases of un-polished diamonds. It was noted by the Co-ordinate Bench of the Tribunal that no material was furnished before it to throw light on the contrary findings of the Departmental authorities and even the assessee has not appeared before it to clarify the factual position as to whether the disputed amount represents accommodation entry of loan or purchase of unpolished diamond. In view of the same, the matter was restored to the file of the AO for *de novo* adjudication after due opportunity of being heard to the assessee.

4. In light of the directions of the Co-ordinate Bench of the Tribunal for *de novo* adjudication, notice u/s. 142(1) of the Act was issued to the assessee and the assessee was asked to produce supporting evidences such as copy of the purchase order, purchase bill, delivery challans,

payment details and reconciliation statement of purchases of corresponding sales along with the sales bills. In response, the assessee provided details of purchases and sales made during the year and copy of bills were submitted and it was pleaded that that the purchases made were genuine and should be accepted. Further, notice u/s. 133(6) of the Act was issued to M/s. Impex Gems and in response, a copy of the ledger account, bank statement, acknowledgment of return of income filed, copy of Profit & Loss Account of M/s. Impex Gems was submitted, however, copy of the purchase order, delivery challans substantiating supply of material claimed to be sold to the assessee was not furnished in response to the said notice u/s. 133(6) of the Act. Thereafter, a show cause dt. 19-12-2018 was issued to the assessee and referring to the statement of Shri Rajendra Jain recorded u/s. 132(4) of the Act as well as the statement of other persons, which were recorded during the course of search and seizure proceedings, the AO recorded his findings holding the purchases amounting to Rs. 49,21,400/- made from M/s. Impex Gems as non-genuine purchases and same were brought to tax in the hands of the assessee.

5. The assessee thereafter carried the matter in appeal before the Ld.CIT(A), who has since sustained the said findings of the AO. Against the said order and the findings of the Ld.CIT(A), the assessee is in appeal before us.

6. During the course of hearing, the Ld. AR submitted that the purchases amounting to Rs. 49,21,400/- made by the assessee from M/s. Impex Gems were genuine purchase transactions, supported by documentary evidence. It was submitted that all the relevant documents viz., purchase invoice, ledger statements and bank statements reflecting

the transactions were duly furnished during the course of assessment proceedings and the corresponding sales have been duly recorded and accepted by the AO. It was submitted that even the transaction have been confirmed by the supplier entity in response to notice u/s 133(6) of the Act.

7. Further, our reference was drawn to the findings of the AO, wherein the AO has held that the assessee has demonstrated corresponding sales against the purchases made from Shri Rajendra Jain and one can conclude the purchases were made by the assessee from grey market and bills were obtained from Rajendra Jain group, in such cases, though the genuineness of the purchase party can be doubted, but the genuineness of purchases on a whole cannot be doubted. It was submitted that in spite of such findings, the AO has gone ahead and treated the entire amount of purchases as bogus, without assigning proper decision. It was submitted that the AO himself has stated that in such cases, the Courts have taken a view that only the profit margin embedded in such a transaction could be taxed and in this regard, our reference was drawn to the earlier order of the Ld.CIT(A) in the first round of appellate proceedings, wherein disallowance was restricted to 3% of the alleged bogus purchases and it was submitted that the disallowance should thus be restricted to 3% of alleged bogus purchases. In support, reliance was placed on following decisions of the Co-ordinate Benches of the Tribunal wherein similar proposition has been laid down:

- i. Arham Star vs. ITO [2025] 180 taxmann.com 44 (Mumbai-Trib.);
- ii. M/s. Trustar Diamond vs. ACIT (ITA Nos. 748 & 1278/Mum/2023 dt. 23-10-2023);
- iii. Heena Gems vs. ACIT [2024] 166 taxmann.com 160 (Mumbai-Trib.)

8. In her submissions, the Ld. DR relied on the findings of the AO as well as that of the Ld.CIT(A) submitted that the assessee has failed to establish the genuineness of the expenditure and there is no evidence of actual receipt or consumption of goods and the supplier was a proven paper entity and no satisfactory explanation was furnished as to why no transportation/ delivery and linkage to sales existed. It was submitted that pursuant to directions of the Coordinate Bench for denovo adjudication, the findings of the ld CIT(A) in the first round no more hold good. It was accordingly submitted that there is no infirmity in the findings of the AO as well as that of the Ld.CIT(A) and the appeal so filed by the assessee deserves to be dismissed.

9. We have heard the rival contentions and perused the material available on record. We refer to the relevant findings of the AO which are contained at paras 7 & 8 of the assessment order and we deem it appropriate to reproduce the same in verbatim as under:

“7. The submission / details furnished by the assessed as also the materials available on record have been carefully perused and considered. From the above discussions, the followings facts emerge-

(i) The Income tax Department has conducted search & seizure action in the case of the Group concerns of Shri Rajendra Jain & Gautam Jain, conclusively proved that these parties are engaged in the business of providing accommodation entries only as can be seen from the discussions in the preceding paragraphs. The parties are issuing bills without delivering any goods and services.

(ii) Evidently, the assessee had adopted a modus operandi to reduce its true profits by inflating its expenses including purchase expenses by taking accommodation entries from such parties.

(iii) Thus, in the books of accounts of the assessee, the purchases to the extent made from the above said parties remained unverifiable and hence I arrive at a conclusion that the purchases shown by the assessee in the books of

accounts are inflated and bogus purchases are debited to trading account to suppress the true profits to be disclosed to the department.

(iv) The onus was upon the assessee to establish the genuineness of purchases made by the assessee.

(v) Mere filing of evidences in support of purchases and payments made through account payee cheques cannot be conclusive in a case where genuineness of transaction is in doubt.

8. From the above discussion, one can safely conclude that the assessee had obtained only the bills from M/s. Impex Gems without actually getting the material. Thus, the bills issued by these parties are nothing but accommodation entries.

However, it is also a matter of fact that the material so debited against purchases from these concerns have been entered into the stock register and the assessee has shown corresponding sales against the said purchases debited. This could only mean that the diamonds were bought by the assessee from grey market (which is very common practice prevalent in Surat and Mumbai), without bill, and to adjust this transaction into the books of accounts, the assessee must have obtained bills from Rajendra Jain Group and Gautam Jain Group concerns. As the assessee has demonstrated corresponding sale against the purchases made from Rajendra Jain group and Gautam Jain concerns, one can only conclude that the purchases were made by the assessee from grey market and bills were obtained from Rajendra Jain group and Gautam Jain concerns. In such scenario, where, on one hand the genuineness of the purchase party is doubted but the genuineness of purchase on a whole cannot be doubted. The courts have taken a view that only the profit margin embedded in such a transaction could be taxed. This is a fairly accepted principle and the same would also apply in this case. However, what would be the fair margins in such transactions is the moot question. Here "such transaction" means those transactions where the assessee procures the material from the grey market by paying cash and as the bills are not available for such transactions, obtains the bill from a third party, who after receipt of cheque from the assessee, makes him available the cash after deducting its commission. The whole process starts when a diamond dealer procures the diamonds from grey market, to meet his sales obligation (mostly export sales). Now, the entities operating in the grey market deal in cash and don't issue receipts. The diamond dealer, who procures diamond in such a fashion, then sells the diamond and receives the sale proceeds through proper banking channel. Now to complete the chain of transaction (ie. to book the purchases against the sale proceeds received), the diamond dealer, obtains the bills from entry providers, such as Rajendra Jain group and Gautam Jain entities, issues them cheques and receives back cash from them. It is for this reason that in most of such transactions, the cheques are issued to Rajendra Jain and Gautam Jain group entities, once the sale proceeds are received by the diamond dealer. In such cases, the diamond dealer has no other option but

to take a bill from the entry providers as he needs to complete the trading activity in respect of the diamonds sold in his books of accounts.

Further, a dealer operating in the market is always aware of the GP which he earns in any transaction. In this particular modus operandi adopted, the dealer had already purchased the material in cash and had further sold it. As the cost of cash purchase is lower from the normal purchase cost (its reason is explained in coming Paras), its GP, in such transactions remain higher than his average GP. The dealer then tries to bring it down to the level of its normal G.P by taking the bills from third parties, such as those of Rajendra Jam and Gautam Jain group concerns, wherein they "adjust the price in the bill so as to suit the sale price of diamonds sold.

Taking into consideration all these aspects, once again, the issue arises, as to what would be the margin, one can expect while buying the material from grey market instead of normal course. Two aspects need to be taken into consideration in such circumstances First is these diamonds in the grey market are always cheaper than the diamonds sourced from the genuine dealer. This is because, the genuine dealer would charge his incidental cost including the whole administrative cost while selling the diamond in the market, whereas the petty dealers in the grey market do not care such incidental charges on such sales, wherein they are only looking for a quick profit. Secondly, there is always an element of discount in the case of instant cash purchase. This is a common practice followed in the diamond market, and the entities operating in the market would always look for reaping such benefits."

10. As can be seen from the aforesaid findings wherein the AO has stated that since the assessee has demonstrated corresponding sales against the purchases made from Rajendra Jain group, it can be concluded that the purchases were made by the assessee from grey market and paper bills were obtained from Rajendra Jain group and in such scenario, where, on one hand the genuineness of the purchase party is doubted but the genuineness of purchase on a whole cannot be doubted and the Courts have taken a view that only the profit margin embedded in such a transaction could be taxed and the same is a fairly accepted principle and the same would also apply in this case. Having recorded such a finding, we find that the AO, without determining what the fair profit margins in such

transactions would be, has gone ahead and brought to tax whole of the purchase amount to tax.

11. The Ld.CIT(A) has also referred to the findings of the AO in terms of lack of supporting documentary evidence, inadequacy of third party confirmation, absence of nexus between purchases and sales, modus operandi of the supplier being exposed and has held that banking channels do not ipso facto prove genuineness, confirmation by entry provider is self-serving and the assessee has failed to discharge the burden of proof to establish the genuineness of the expenditure and various grounds of appeal raised by the assessee were dismissed. We again find that the Ld.CIT(A) has failed to address the matter relating to appropriate profit margins which can be brought to tax.

12. In this regard, we refer to the decision of the Hon'ble Bombay High Court in case of PCIT vs Mohammad Haji Adam and Company [2019] 103 taxmann.com 459, as referred to and relied upon by the Coordinate Bench in case of Arham Star vs ITO (*supra*). In the said decision, the Hon'ble Bombay High Court has held that in such cases, the disallowance ought to be restricted to the positive difference, if any between the gross profit element on the undisputed purchases and that on the disputed purchases. We, therefore, find merit in the contention of the ld AR that the whole of the purchase amount cannot be brought to tax and only the differential profit margin can be brought to tax in the hands of the assessee. Unlike the case of Arham Star where the differential profit margin working was available on record, as far as the present matter is concerned, the said working is not available on record. Following the decision of the Hon'ble Bombay High Court, we therefore, deem it appropriate to set-aside the matter to the file of the AO for the limited purposes of examination and

verification of the differential profit margins which can be brought to tax in the hands of the assessee.

13. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 12-01-2026

Sd/-

(JUSTICE (RETD.) C.V. BHADANG)
PRESIDENT

Sd/-

(VIKRAM SINGH YADAV)
ACCOUNTANT MEMBER

Mumbai,
Dated: 12-01-2026

TNMM

Copy to :

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

By Order

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