

आयकर अपील यअधिकरण "G" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI

श्री आर. सी. शर्मा, लेखा सदस्य एवं श्री विवेक वर्मा, न्यायिक सदस्य के समक्ष।

BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER
AND SHRI VIVEK VARMA, JUDICIAL MEMBER

ITA No. : 2239/Mum/2012

(Assessment year: 2007-08)

ITA No. : 2240/Mum/2012

(Assessment year: 2008-09)

ACIT - 22(1), 4 th Floor, Tower No. 6, Vashi Railway Station Complex, Vashi, Navi Mumbai -400 705	Vs	M/s G V Sons, Shop No. 7/8, Jalaram Nagar, No. 3, Vallabh Baug Lane, Ghatkopar (East), Mumbai -400 077 स्थयी लेखा सं.:PAN: AAAFG 1309 E
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant by	:	Shri R N D'souza DR
Respondent by	:	Smt Vasanti Patel

ITA No. : 2238/Mum/2012

(Assessment year: 2008-09)

ACIT - 22(1), 4 th Floor, Tower No. 6, Vashi Railway Station Complex, Vashi, Navi Mumbai -400 705	Vs	M/s G V Zaveri Rajpara, Shop No. 5/6, Gayatri Dham, M G Road, Ghatkopar (E), Mumbai -400 077 स्थयी लेखा सं.:PAN: AAAFG 2852 Q
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant by	:	Shri R N D'souza DR
Respondent by	:	Smt Vasanti Patel

सुनवाई की तारीख /Date of Hearing : 13-11-2014

घोषणा की तारीख /Date of Pronouncement : 05-12-2014

आ दे श
ORDER

श्री विवेक वर्मा, न्याय स:

PER VIVEK VARMA, JM:

These appeals have been filed by the department against the order of CIT(A). The three appeals are:

Assessee's name	Asst. year	CIT(A)/Date of Order
G V Sons	2007-08	33, Mumbai/23.01.2012
G V Sons	2008-09	33, Mumbai/23.02.2012
G V Zaveri Rajpara	2008-09	33, Mumbai/23.01.2012

2. Since all the three appeals have identical grounds, we are proceeding to dispose off the said appeals by passing a common and consolidated order for the sake of convenience and brevity.

3. We are taking up ITA No. 2239/Mum/2012 for assessment year 2007-08 as the lead year.

ITA 2239/Mum/2012 : Department's Appeal :

4. The following grounds have been raised by the department:

1. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition in respect of unexplained purchase to the tune of Rs. 16,57,334/-.*
2. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in giving the above relief without appreciating the fact that the assessee was unable to substantiate his stand with any other evidence other than self serving documents that the purchase to the tune of Rs. 16,57,334/- are genuine.*
3. *The Appellant prays that the order of the CIT(A) on the above be reversed and that of the assessing officer be restored.*
4. *The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary".*

5. The facts are that the assessee is a partnership firm, engaged in the business of trading in Gold, Diamond, Silver, Precious Stones etc. since 2006. Assessee's parent firm, M/s G V Zaveri Rajpara has been in this trade since 1949.

6. A survey u/s 133A was conducted on Moxdiam group, wherein, owners of various group entities of Moxdiam group was recorded and they deposed before the survey team that they used to provide accommodation bills to various parties in diamond trade, which included of Combines Diamond Ltd. and Nami Exports.

7. In the investigation proceedings, the partner of the assessee firms was also called to the office for his statement, wherein Mr. Suresh Rajpara stated that they had conducted the following business with Moxdiam Group:

Group Firm Name	2007-08	2008-09	Total
<i>Basant Dia Jewels</i>	16,57,334	45,24,490	61,81,824
<i>Moxdim</i>	-	38,36,645	38,36,645
Total	16,57,334	83,61,135	100,18,469

8. In his statement, Mr. Suresh Rajpara deposed that the assessee or its group entities have not taken any accommodation entries from Moxdiam group, but have actually conducted regular business with the group concerns of Moxdiam Group wherein, the assessee group had taken physical delivery of diamonds. The assessee group also submitted supporting bills with delivery note, bank statement and copy of ledger and stock registers. The AO did not consider the documents to be authentic, because as per the statement of Mr. Basant Jain of Moxdiam Group, who had earlier deposed that he and his group entities were providing accommodation entries. The AO, therefore, made the addition of Rs. 16,57,334/- in the current year.

9. The assessee approached the CIT(A), before whom facts were reiterated. Before the CIT(A), it was also submitted that M/s Basant Dia Jewels had transactions with various parties who were genuine, but out of those parties, only two parties, i.e. Combine Diamond and Nami Exports accepted that they had sought accommodation entries from Moxdiam Group.

10. It was stated that the assessee was also one of the constituents, who had done regular business, on physical delivery basis entries of which was duly recorded in the books of account and stock register, as produced before the AO.

11. With these facts and conduct of the assessee, the addition made by the AO was prayed to be deleted.

12. The CIT(A), after having considered the entire facts observed,

I have gone through the written submissions and the details furnished by the appellant. I have also gone through the assessment folder and the stock details given forming part of audit report and it is noted that opening, purchases, sales and closing stock register figures of the same do not match with the figures given by the appellant in the appellate proceedings. In view of this the appellant was appraised of the gap in figures by letter dated 11.01,2012 which is reproduced as under:

"During the course of appellate proceedings it has been submitted by you that addition made on the basis of retracted statement is not sustainable and hence should be deleted. In view of the fact that the statement was given by Shri Basant Jam, Proprietor of M/s. Basant Dia Jewells and Partner of M/s. Moxdiam during the course of survey action recorded on 09.07.2008 which has been retracted by him vide affidavits dated 18.11.2010 i.e. after the gap of more than two years, you were asked to furnish details of your stock register i.e. opening stock, purchases made from these parties as well as others during the year, sales made and closing stock left at the end i.e. 31.03.2008. I have gone through the details filed by you, which are as under -

Purchase	306.13	
Issue		117.39
Closing stock		188.74
	306.13	306.13

Meanwhile a copy of the audit reported dated 11.08.2007 filed by you for the instant assessment year has been also obtained from the concerned A.O. from where it is seen that the stock statement is showing the details in form of opening stock, purchases, sales and closing stock at the end. After comparing both these details it is noticed that there is a gap in the statement furnished in the audited report and the one given by you during the appellate proceedings, for the sake of clarity they are reproduced as under:

Opening stock	0	
Purchases	1341.660	
Sales		68.270
Closing stock		1273.390
	1341.660	1341.66

3. You will appreciate that if transactions reflecting purchases made from these two parties which were accepted by them as accommodation entry earlier but denied later are purchases the stock position as reflected in the audit report and the one by you as reproduced above should have tallied, which is not the case. Please explain and reconcile the gap.

4. You will also appreciate that if same is not reconcilable then it will not be the case that additions have been made solely based on statement given of Shri Basant Jain in the capacity of proprietor of M/s. Basant Dia Jewells partner of M/s. Moxdiam and hence you are required to explain the difference and reconcile the same. For the same a notice is being issued giving the opportunity on the date mentioned therein.

3.4 In response to the same the appellant has furnished copy of stock details furnished in Form No. 201C, which is annexed as Annexure-A. I have gone through the written submissions and also details of Form No. 210C. It is stated by the appellant that details of form No. 210C. It is

sated by the appellant that details were given only with respect to purchases and sales of only one category i.e. solitaire diamond whereas form no. 201C and audit report reflect stock details of diamond from both the categories; one in studded form in the jewellery and other as solitaire diamond. I have gone through the details. The opening balance as on 01.04.2007 as well as closing balance as on 31.03.2008 though match in toto, the in between figures of incoming and outgoing were not finding place either in the audit report or in the details furnished earlier by the appellant. The appellant has stated that since this Form No. 2010 is for diamonds in loose pieces as well as those studded in jewellery, obviously this is not matching with figures given earlier which were only for diamonds as in loose pieces and not for the ones studded in jewellery, and whose details are furnished now by the appellant. I have gone through all the three details and it is noted that all these details of incoming as well as outgoing when compared with these statements for the diamonds in loose pieces together with the diamonds in studded jewellery matches. Since the opening and the closing stock in form 201C is matching, the figure is found reconciled for the stock reflected by the appellant during the appellate proceedings with the one filed along with the audit report.

3.5 In view of this, that the discrepancies could not be found in the stock, it cannot be inferred that there are unaccounted purchases made by the appellant. I am also of the view that as there are sales corresponding purchases have to be there, I agree with the finding that it can be a case of accommodation entry where appellant is actually making purchases from some other source and getting bills from these two parties who actually have not sold as stated on oath also. This was admitted originally by the party whose statement is the basis of addition. However in view of that statement not supported by any document, evidence and then subsequent retraction made of that very statement coupled with it is not enough to sustain the addition in the hands of the appellant. Merely on the basis of statement made under section 132 (4), in respect of loans addition under section 69 as income from undisclosed source cannot be made when the said statement was retracted and details maintained and filed show the purchases .e Circular of CBDT No F.NO.286/2/2003 IT (Inv) dt 10th March 2003 also supports case of appellant on the issue. As it is a fact that no further enquiry to augment the information received could be done and prima facie the stock maintained and reflected in form 201C also supports appellant's stand only. Accordingly, I am convinced that addition on the basis of retraced statement cannot be made till the same is augmented by any discrepancy pointed out either in the books of accounts or transactions itself. It is noted from the assessment order also in para 14 that the stock register and artisans register were produced before the AG., but same were not accepted as evidence on the belief made by the AG. that they can be prepared and maintained by the appellant. Though it can be possible still for want of any further enquiry to bring the discrepancy, addition made only on the basis of statement which incidentally has been retracted also and then not supported by any other evidence is not sustainable and hence is deleted.”

13. The CIT(A), therefore deleted the addition made by the AO.
14. Against this order of the CIT(A), department is in appeal before the ITAT.

15. Before us, the DR strongly supported the order of the AO that *prima facie*, the basis of addition was the statement of the surveyed parties wherein it was accepted that they were providing accommodation transaction, and therefore the entries recorded were sham. The DR, therefore, submitted that the order of the AO must be restored.

16. The AR on the other hand submitted that there was no survey on the assessee and therefore there was no statement ever recorded of the owners of assessee group. It was only in the post survey proceedings of the surveyed entities, with whom the assessee had business dealings, Mr. Suresh Rajpara was called & his statement was recorded. Later on, when the case was transferred to the AO, the AO, merely on the basis of statement of Mr. Basant D Jain, made the addition. It was also submitted that the assessee produced all the possible documents, which could be produced which were ignored. Despite the evidence on record, the assessee was saddled with the addition, which does not have any factual basis.

17. We have heard the arguments and have pursued the material on record and the order of the revenue authorities. It is not in dispute that the survey action was conducted on a third party. It is also not in dispute that the assessee had business relation with Moxdiam Group, like so many other parties. It is also a fact that there is not even a iota of evidence with the AO, to prove that the assessee did not have straight dealings with the Moxdiam Group. It is also a fact that, that the assessee entered each of its transaction in its primary books, comprising of ledger and stock register. From the order of the AO, the DR could not establish before us that the transaction as recorded in the books was sham. We cannot accept a bald statement made by the AO

that any transaction/business done with a party would be sham, simply because the opposite party besides doing regular business was also indulging in providing accommodation entries. Simply on the basis of statement given by the third party, that they were also providing accommodation entries as well, the conduct of the assessee cannot be doubted and held to be sham.

18. The assessee had conducted business, this is proved by various books of account produced before the AO which were original and primary books and not even the after thought of the assessee, which has been acknowledged by the AO.

19. In such a circumstance, we cannot sustain the addition as made by the AO. We, therefore, sustain the order of the CIT(A), deleting the addition made, consequentially, the grounds as raised by the department are rejected.

20. In the result, the appeal, as filed by the department is dismissed.

ITA 2240/Mum/2012 : Department's Appeal :

21. The following grounds have been raised by the department:

- “1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition in respect of unexplained purchase to the tune of Rs. 83,61,135/-.
2. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in giving the above relief without appreciating the fact that the assessee was unable to substantiate his stand with any other evidence other than self serving documents that the purchase to the tune of Rs. 83,61,135/- are genuine.
3. The Appellant prays that the order of the CIT(A) on the above be reversed and that of the assessing officer be restored.
4. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary”.

22. At the very outset, in the very beginning of this order, at para 2, we have very specifically written, *for the sake of convenience and brevity we are passing a common and*

consolidated order, which squarely covers the impugned issue involved in grounds of appeal raised by the department in its present appeal viz. ITA 2240/Mum/2012. Respectfully following the same, as decided hereinabove of our decision taken, as lead appeal in ITA No. 2239/Mum/2012, which is one of the Group appeals filed by the department, in assessee's case. We follow the ratio and dismiss the impugned appeal following the identical direction *we cannot sustain the addition as made by the AO. We, therefore, sustain the order of the CIT(A), deleting the addition made, consequentially, the grounds as raised by the department are rejected* as per para 19 of our order, accordingly, grounds raised by the department in the impugned appeal stands rejected.

23. In the result, department's appeal stands dismissed.

ITA 2238/Mum/2012 : Department's Appeal :

24. The following grounds have been raised by the department:

- “1. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition in respect of unexplained purchase to the tune of Rs. 48,13,153/-.*
2. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in giving the above relief without appreciating the fact that the assessee was unable to substantiate his stand with any other evidence other than self serving documents that the purchase to the tune of Rs. 48,13,153/- are genuine.*
3. *The Appellant prays that the order of the CIT(A) on the above be reversed and that of the assessing officer be restored.*
4. *The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary”.*

25. At the very outset, as facts, grounds and issue involved therein in the impugned appeal is identical, as decided hereinabove of our order in ITA 2239/Mum/2012, as a lead appeal, which we follow while deciding another group appeal filed by the department in ITA 2240/Mum/2012. Respectfully following the same ratio and outcome of those orders, which we

follow here also, we have no hesitation but to dismiss the department's appeal in ITA No. 2238/Mum/2012 as M/s G V Zaveri Rajpara being parent firm. Accordingly, grounds raised & issue involved therein in the department's appeal stands dismissed, as directed at para 19 & 22 of our order.

26. In the result, department's appeal stands dismissed.

Sum-up:

Department's appeals in,

ITA No. 2239/Mum/2012 in M/s G V Sons stands dismissed.

ITA No. 2240/Mum/2012 in M/s G V Sons stands dismissed

ITA No. 2238/Mum/2012 in M/s G V Zaveri Rajpara stands dismissed.

Order pronounced in the open Court on 5th December, 2014.

Sd/-

(आर. सी. शर्मा)

लेखा सदस्य

(R C SHARMA)

ACCOUNTANT MEMBER

Sd/-

(विवेक वर्मा)

न्याईक सदस्य

(VIVEK VARMA)

JUDICIAL MEMBER

Mumbai, Date: 5th December, 2014

प्रति/Copy to:-

- 1) अपीलार्थी /The Appellant.
- 2) प्रत्यर्थी /The Respondent.
- 3) The CIT (A)-33, Mumbai.
- 4) The CIT-22, Mumbai,
- 5) विभागीय प्रतिनिधि "G", आयकर अपीलीय अधिकरण, मुंबई/
The D.R. "G" Bench, Mumbai.
- 6) गार्ड फाईल
Copy to Guard File.

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आदेशानुसार/By Order

उप/सहायक पंजीकार

आयकर अपीलीय अधिकरण, मुंबई

Dy./Asstt. Registrar

I.T.A.T., Mumbai