

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 748/Mum/2023 (A.Y.2012-13)

M/s Trustar Diamond

EC-3070, G-Block, Bharat
Diamond Bourse, Bandra East,
Mumbai-400 051
PAN: AAFFT7349N

..... Appellant

Vs.

ACIT Circle 19(3)

R. No. 206, 2nd floor
Matru Mandir, Tardeo
Road, Mumbai-400007
Mumbai

..... Respondent

&

ITA No. 1278/Mum/2023 (A.Y.2012-13)

ACIT Circle 19(3)

R. No. 206, 2nd floor
Matru Mandir, Tardeo
Road, Mumbai-400007
Mumbai

..... Appellant

Vs.

M/s Trustar Diamond

EC-3070, G-Block, Bharat
Diamond Bourse, Bandra East,
Mumbai-400 051
PAN: AAFFT7349N

..... Respondent

Appellant by : Shri Devang Divecha /Ms. Varsha Gupta

Respondent by : Shri P. D. Chogule

Date of hearing : 23/08/2023

Date of pronouncement : 23/10/2023

ORDER

PER GAGAN GOYAL, A.M:

These cross appeals by Assessee and Revenue are directed against the order of National Faceless Appeal Centre (NFAC), Delhi dated 24/02/2023 u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2012-13. The assessee has raised the following grounds of appeal:-

1. The Learned Commissioner of Income Tax (Appeals) has erred in law and in facts in confirming addition of 12.5 percent of the alleged bogus purchases from M / s Navkar Diamonds, M/s Milan Co., M / s Mukti Exports, M / s Pankaj Exports, M / s Mouli Gems, M/s Aastha Impex and M / s Naman Exports being 12.5% of Rs. 6, 62 ,48,443/- which comes to Rs. 82 ,81,055/- against 100 percent additions made by the Assessing Officer on such alleged bogus purchases.

02. The Learned Commissioner of Income Tax (Appeals) has failed to appreciate the fact that additions were restricted to the tune of 3% only in assessee's own case for previous assessment years namely A.Y. 2010-11, 2011-12 and 2014-15 on alleged bogus purchases thereby failing to follow the principle of consistency.

3. The Learned Commissioner of Income Tax (Appeals) has erred in law and fact in not, following the decision of Mumbai Tribunal, Bombay High Court and Supreme Court cited by the assessee during the course of Appellate Proceedings. The Learned Commissioner of Income Tax (Appeals) has erred in law and in facts in not following the Supreme Court decision of Tejua Rohitkumar Kapadia[ITA No. 691 of 2017]

4. The Learned Commissioner of Income Tax (Appeals) has erred in law and fact in relying on the decision of Gujarat High Court in the case of Commissioner of Income Tax vs. Simit

P Sheth without considering the fact that the appellant deals in diamond business whereas the decision cited was for steel business. The Learned Commissioner of Income Tax (Appeals) failed to appreciate the fact that the profit margin in diamond industry ranges between 1-3% as per the study of Task Force- Government of India and is much lower than that of steel industry.

5. The Learned Commissioner of Income Tax (Appeals) has erred in law and fact in stating that the appellant could not submit VAT & Excise ledgers without considering the fact that the appellant is purely into Trading of Diamonds and goods were purchased and delivered in Surat, Gujarat where VAT was exempt. Since, VAT/Excise was not leviable the question of submitting their ledgers does not arise.

6. The Learned Commissioner of Income Tax (Appeals) has erred in law and fact in stating that the appellant could not submit supporting for receipt of goods and utilization of such goods purchased without considering the fact that since the appellant deals in high value goods, such goods are hand delivered and acknowledged by the recipient on the purchase invoice itself. The Learned Commissioner of Income Tax (Appeals) also failed to consider the fact that such goods purchased were further exported by the appellant and corresponding export invoices along with their House Airway & Shipping Bills were already submitted in Assessment Proceedings vide Submission dated 23.10.2019. Moreover, the alleged purchases and their corresponding sales have been properly entered in the stock register and there is quantitative tally of stock.

7. the appellant reserves its right to add, amend or alter any of the Grounds of Appeal on or before the date of hearing

2. The revenue has raised the following grounds:-

1. Whether on the facts and circumstances of the case the Ld CIT(A) was correct in restricting the addition made on account of bogus purchases to 12.5% of total bogus purchases ignoring the fact that the Investigation wing Mumbai has unearthed the modus operandi of the Diamond Industry.

2. Whether on the facts and circumstances of the case the Ld. CIT(A) has failed to appreciate that the assessee failed to produce the parties for verification, in spite of opportunity provided by the Assessing Officer.

3. Whether on the facts and circumstances of the case the Ld. CIT(A) was correct in restricting the addition made by the Assessing Officer to 12.5% of the bogus purchase

value without appreciating the judgement in the case of M/s Vijay Proteins Limited (1996) reported in 25ITD 248 (Ahd. Tribunal)

4. Whether on the facts and circumstances of the case the Ld. CIT(A) erred in appreciating the fact that the mere payment through banking channels will not be sacrosanct since the assessee failed to produce the parties for verification.

5. Whether on the facts and circumstances of the case the Ld. CIT (A) erred in treating the bogus purchases with reference to accommodation entries and modus operandi in case of diamond industry, in comparing the same with the bogus purchases not pertaining to accommodation entries and restricting the addition to 12.5%

6. Whether on the facts and circumstances of the case the Ld. CIT(A) is right in restricting the addition to 12.5% merely on the basis of filing Income Tax Returns and payment through banking channels when such cases have been identified as bogus purchases.

7. This appeal is being filed as it is covered under the exception provided in para 10(e) of the CBDT's Circular No. 3 of 2018 dated 11.07.2018 as amended vide F. No. 279/Misc. 142/2007- ITJ(Pt) dated 20.08.2018.

8. the appellant prays that the order of the National Faceless Appeal Centre (NFAC), Delhi on the above grounds be reversed and that of the AO be restored.

9. The appellant craves leave to amend or alter any ground or submit additional ground which may be necessary.

3. The brief facts of the case are that assessee filed its return of income for the year under consideration on 10.09.2012 declaring a total income at Rs. 70, 23,920/-. Assessee is a partnership firm derived income from business and profession and engaged in the business of diamonds. The assessee is also an exporter of diamonds. A search and survey action was conducted in the case of Bhanwarlal Jain on 03.10.2013 by DGIT (Inv.) Mumbai. The Investigation Wing, Mumbai, covered certain name sake/ dummy directors/partners/proprietors of various concerns that were being actually managed, controlled and operated by Bhanwarlal Jain & Family, under section 132 and 131 of the Income Tax Act, 1961.

During the course of search it was found that all name sake/ dummy directors/partners/proprietors of various concerns belong to the native place of Bhanwarlal Jain & Family in Rajasthan and have either known Bhanwarlal Jain personally or through their families. In their respective statements recorded, they have admitted that they were made directors, partners and proprietors of various concerns at the direction of Bhanwarlal Jain & Family which were eventually being managed and controlled by the later. All the name sake/ dummy directors/partners/proprietors of various concerns revealed that they are merely employees of Bhanwarlal Jain & Family and are looking after miscellaneous office work like depositing cheques in banks, handing over parcels to clients, making data entry etc. In case of certain employees, their wives are also shown as directors, partners or proprietors in some of the concerns. However, like their husbands, they are merely name lending directors, partners and proprietors and the real control and management of all these concerns in which they are shown as directors, partners or proprietors lie in the hands of Bhanwarlal Jain & Family.

4. Further, information was received from DGIT (Inv.), Mumbai that the assessee had taken accommodation entries of purchases from the following parties for A.Y. 2012-13.

Sl. No.	Name of the hawala parties(Bhanwarlal Jain group)	Bill amount
1	NAVKAR DIAMOND	1,16,37,795/-
2	MILAN & CO	2,57,81,882/-
3	MUKTI EXPORTS	57,28,350/-
4	PANAJ EXPORTS	38,09,510/-
5	NAVKAR DIAMOND	80,16,938/-
6	MOULI GEMS	23,90,960/-

7	AASTHA IMPEX	36,70,400/-
8	NAMAN EXPORTS	52,12,608/-
	TOTAL	6,62,48,443/-

5. In view of the above facts and circumstances of the case and after duly applying his mind, the case for the A.Y. 2012-13 was reopened u/s. 147 of the Income tax Act, 1961 as the amount of Rs. 6, 62, 48,443/- has escaped assessment due to failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment.

6. Case of the assessee was reopened and a notice u/s. 148 of the Act vide dated 16.03.2019 was issued. In response to the above notice the assessee filed the details called for and the reasons for reopening were provided to the assessee. In its order AO discussed the complete modus operandi of Bhanwarlal Jain Group and personal/business relations of the assessee with Bhanwarlal Jain Group. In its assessment order AO reproduced the copy of statement of Bhanwarlal Jain wherein the list of entities involved in bogus purchases were also confessed and it is found out of that list there were 8 entities with whom assessee dealt with and shown purchases to the tune of Rs. 6,62,48,443/-. AO disallowed the purchases and added to the income of the assessee amounting to Rs. 6, 62, 48,443/-. Assessee being aggrieved with the order of AO preferred an appeal before the Ld.CIT (A) who in turn partly allowed the appeal of the assessee by restricting the addition to the tune of Rs. 82, 81,060/- being 12.5 % of the total bogus purchases. Against this order of Ld.CIT (A) both the assessee as well as revenue is in cross appeal before us.

7. We have gone through the order of AO, order of the Ld.CIT (A) and submissions of the assessee along with grounds of appeal raised by both the sides. It is observed that books of the accounts of the assessee were not disturbed by the AO applying sec. 145 of the act. That means the figure of sales and closing stock were duly accepted by the revenue. The only challenge is the authenticity of amount of purchases debited to the profit and loss account. We haven't found any remarks of the AO on quantity and value of closing stock items. As stated above, assessee is involved in the trading of diamond and doing the exports also of the same.

8. In view of above one thing is certain that assessee made sales in domestic and export market also and without purchase no sales can be made so the only question for our consideration is that how much saving assessee has made while dealing with the entities controlled and managed by the Bhanwarlal Jain Group. We have gone through the submissions of the assessee itself before the Ld.CIT(A) vide page no.6 of the Ld.CIT(A) order, para -5 where assessee confirmed that it's a regular pattern of making bogus purchases since A.Y. 2010-11, 2011-12 and 2014-15 wherein additions on bogus purchase were restricted to 3% of the bogus purchase made. A peculiar point to be noted in this matter is that, a subsequent A.Y. i.e A.Y. 2014-15 Revenue itself in the assessment proceedings disallowed the bogus purchase to the extent of 3% only.

9. In view of the above facts on record and following the principle of consistency we set aside the order of Ld.CIT (A) and directed the AO to made addition restricting upto 3% only, following the assessment orders of A.Y. 2010-

11, 2011-12 and subsequent A.Y. 2014-15. **In view of this ground no. 2 raised by the assessee is allowed** and rest of the grounds became academic and no specific adjudication is required.

10. Appeal filed by the revenue is dismissed in view of our finding in assessee's appeal (supra) vide **ITA No. 748/Mum/2023 (A.Y.2012-13)**.

11. In the Result appeal filed by the assessee is partly allowed and appeal of revenue is dismissed.

Order pronounced in the open court on 23rd day of October, 2023.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 23/10/2023

Dhananjay, Sr. PS

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai