

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI
BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.1192/MUM/2024
Assessment Year: 2010-11

Ramniklal and Sons, 62/64, Zaveri House, Hughes Road, Mumbai- 400007 (PAN: AAAPFR8028B)	Vs.	Income Tax Officer – 19(3)(1), Presented Dy. Commissioner of Income Tax 19(3), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Devang Divecha, CA
Shri Devesh Mehta, CA

Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 02.07.2024

Date of Pronouncement : 27.09.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1059729248(1), dated 15.01.2024, against the assessment order passed by the Income Tax Officer – 19(3)(1), Mumbai, u/s. 143(3) r.w.s. 147 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 30.12.2017 for Assessment Year 2010-11.

2. Grounds taken by the assessee are reproduced as under:

1. Addition of Rs. 60,65,780/- U/s 68 and U/s 69C of the LT.Act 1961

1. The Income Tax Officer 19(3)(1), Mumbai ("the A.O") erred law and on facts in making additions/ disallowance of Rs 60,65,780/- to the income of the Assessee firm u/s 68 and Section 69C of the Income Tax Act, 1961

2. The Hon'ble Commissioner of Income Tax (Appeals) has erred in law and on facts in upholding the addition/disallowance of 100% of the alleged bogus purchases totalling to Rs 60,65,780/-, from party M/s Daksh Diamonds of Rs. 10,27,140/-, M/s Krishna Diam of Rs.43,43,480/-, M/s Rajen Gems of Rs.6,95,160/-, as made by the AO in the Assessment Order dated 30-12-2017 passed u/s 143(3) r.w.s. 147 of the Act.

3. The AO has erred in making disallowance of Rs.60,65,780/- 1.e. 100 percent of purchases as alleged bogus purchases without any basis as to percentage of alleged bogus purchases.

4. The AO has erred in adding entire amount of alleged bogus purchase of Rs.60,65,780/- without appreciating the fact that the gross profit made on the sale of the alleged bogus purchases have already been offered for taxation.

5. The AO has erred in law and on facts in adding 100% of alleged bogus purchase from party Daksh Diamonds amounting to Rs.10,27,140/- without appreciating the fact that the said amount of purchases of Rs. 10,27,140/- have already been disallowed and restricted to the tune of @ 3% of said alleged bogus purchases in the previous reopening of Assessment Order dated 11-03- 2016 passed u/s 143(3) r.w.s.147 of the Act in Assessee's own case for same assessment year i.e. AY-2010-11

6. The AO has erred law and on facts in treating the amount of purchases made by the Assessee of Rs.60,65,780/- as bogus purchases and adding 100 percent of the above mentioned purchases to the total income of the Assessee without appreciating the fact that the addition of alleged bogus purchases cannot be made solely on the basis of information received from the office of DGIT(Inv.), Mumbai without conducting an independent inquiry into facts of the statement made by third party

7. The AO has erred on facts and in law in deriving satisfaction that income has escaped assessment purely on the basis of third party reference, being a report of the DCIT Central Circle, collected behind the back of Assessee and used against it in a totally opaque manner without providing the Assessee any hint of the material that was there against it, and without providing the Assessee any opportunity to rebut the evidence through opportunity of examination or cross-examination of witnesses, if any

8. The AO has erred in relying on information received from the DGIT(Inv), Mumbai relating to statement made by the party Shri. Bhanwarlal Jain Group & Others for the alleged purchases made by Assessee as a bogus purchase and no independent verification conducted by the AO of the veracity of the statement of neither third parties nor giving any opportunity to cross examine the third parties by the Assessee. Thus, the Assessee was denied natural justice under the law of not rebutting the third parties statements.

9. The AO has erred law and on facts in not considering the various judicial pronouncements which are in favour of Assessee and also erred in law in not distinct the facts of the case decision on which it relied upon for making an impugned addition

10. The A.O. failed to appreciate the facts that the profit margin in diamond industry ranges, between 1%-3% as per the study of the Task Force- Government of India.

11. The A.O. has erred in making the addition on the ground that the Assessee firm has failed to satisfy the condition of Section 68 of the Act.

12. The Commissioner (Appeals) erred in disposing of the appeal of the Assessee firm on 15-01-2024 on the ground of no material available on record to warrant interference in the order of the AO as the partner of the Assessee firm was not in knowledge of receipt of such appellate notices as he has a limited access to messages and e-mails due to his bad health associated with old age and therefore, he could never informed his Chartered Accountants about any dates of hearing fixed by the Commissioner (Appeals) so as to appear and represent the case before the it

13. The Order of A.O. passed u/s 143(3) r/wis 147 of the Act computing total income of the assessee firm at Rs.77,65,290/- is bad in law and without jurisdiction.”

3. Brief facts stated from the records are that assessee is a partnership firm engaged in the business of trading and manufacturing in gold and diamonds Jewellery and has dealt in number of items as per the specification by its customers. Assessee filed its return of income on 30.09.2010 reporting total income at Rs.16,99,510/-. Case of the assessee was re-opened for the first time by issuing notice u/s 148 of the Act dated 05.03.2015. The reason for reopening of the assessment was for alleged bogus purchases made by the assessee from a party name called M/s. Daksh Diamonds for Rs.10,27,140/- pertaining to Shri Bhanwarlal Jain Group. The ld. Assessing Officer passed the assessment order dated 11.03.2016, wherein the ld. Assessing Officer made an addition of Rs. 30,814 being 3% of the alleged bogus purchase amount of Rs. 10,27,140/-.

3.1. Subsequently, the case of the assessee was re-opened for the second time by issuing notice u/s 148 of the Act dated 30.03.2017. The

assessee was provided the reason for re-opening of the said assessment. In the said reason for re-opening, the ld. Assessing Officer stated that the Assessing Officer received an information from the O/o the DGIT(Investigation), Mumbai that search and seizure action was conducted in case of Shri Bhanwarlal Jain Group by investigation wing, Mumbai and the ld. Assessing Officer formed a reason to believe that the assessee has availed accommodation entries from the parties namely, M/s. Daksh Diamonds for Rs.10,27,140/-, M/s Krishna Diam Rs.43,43,480/- and M/s Rajan Gems for Rs.6,95,160/-, totalling to Rs.60,65,780/-.

3.2. Ld. Assessing Officer completed the second assessment by passing an order u/s.143(3) r.w.s. 147 of the Act by making an addition of Rs.60,65,780/ to the total income of the assessee, u/s. 68 and 69C of the Act, by holding purchases made from M/s. Daksh Diamonds, Krishna Diam and Rajen Gems as bogus. Aggrieved, assessee went in appeal before the CIT(A).

4. Before the ld. CIT(A), it was submitted that findings arrived at by ld. Assessing Officer are based merely on third party investigation report. According to ld. CIT(A), since the assessee could not substantiate its claim with documentary evidence, the appeal was dismissed. Aggrieved, assessee is in appeal before the Tribunal.

5. We have heard both the parties and perused the material on record. As a matter of fact, it is noted that the addition of Rs.30,814/- being 3% of the alleged bogus purchase of Rs.10,27,140/- from one party M/s. Daksh Diamonds was made by the ld. Assessing Officer in the original assessment has remained uncontested and uncontroverted.

5.1. In the present case, before us, additions are in respect of three parties namely-

a) Daksh Diamonds	-	Rs.10,27,140/-
b) Krishna Diam	-	Rs.43,43,480/-
c) Rajen Gems	-	Rs.6,95,160/-

Total	-	Rs.60,65,780/-

6. Before us, the ld. Counsel for the assessee placed on record a paper book containing 73 pages to demonstrate and justify the genuineness of purchase made by him, which has been held to be bogus. According to the ld. Counsel, ld. CIT(A) has failed to consider these documentary evidences while dismissing the appeal of the assessee. The documents so furnished included copies of purchase bills, ledger account, purchase register and stock register which evidently demonstrates the genuineness of the purchase made by the assessee. He also submitted that books of accounts of the assessee have been duly audited for which tax audit report u/s.44AB was duly furnished on record reporting all the relevant facts in this regard. He also placed reliance on the decisions of Hon'ble Jurisdictional High Court of Bombay in the case of PCIT vs. Mohammed Haji Adam and Co. [2019] 103 taxmann.com 459 (Bom) whereby principle of taxing income on the non-genuine purchases rather than adding the entire purchases was upheld. The Hon'ble court in this respect observed that "*the tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sale in case of trader. The Tribunal*

therefore correctly restricted the additions limited to the extent of bringing the GP rate on purchases at the same rate of other genuine purchase.”

6.1. We have gone through the documentary evidences placed before us in the paper book. We also take note of the judicial precedent of the Hon'ble Jurisdictional High Court of Bombay in the case of PCIT vs Mohammed Haji Adam and Co. (supra) which has a relevance in the present set of facts. It is undisputed fact that out of the three parties, for party at (a), addition has already been made at the rate of 3% as stated above. Accordingly, similar addition in the case of other two parties by adopting rate at 3% is justified. We thus direct the ld. Assessing Officer to recompute the addition accordingly for the remaining two parties. In the result, assessee gets a partial relief.

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

Order pronounced on day of 27 September, 2024 under Rule 34 of
The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-
(Satbeer Singh Godara)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 27 September, 2024

MP, Sr.P.S.

Copy to :

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai