

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER  
ITA Nos. 284, 285&279/SRT/2019 (AYs 2008-09& 2013-14)  
(Hearing in Virtual Court)**

<b>Income Tax Officer, Ward-2(3)(7), Room No. 414, 4<sup>th</sup> Floor, Anavil Business Centre, Adajan, Hajira Road, Adajan, Surat-395009</b>	<b>Vs</b>	<b>Shree Deepak Banwarilal Agarwal, 103, Devsagar Appt. Dalia Street, Mahidharpura, Surat-395 003 PAN : AFPPA 6178 M</b>
<b>Shree Deepak Banwarilal Agarwal, 103, Devsagar Appt. Dalia Street, Mahidharpura, Surat-395 003</b>		<b>Income Tax Officer, Ward-2(3)(7), Room No. 414, 4<sup>th</sup> Floor, Anavil Business Centre, Adajan, Hajira Road, Adajan, Surat-395009</b>
<b>Appellant</b>		<b>Respondent</b>

<b>Assessee by</b>	<b>Sh. Prakash Jhunjunwala, C.A</b>
<b>Revenue by</b>	<b>Shri H.P. Meena, – CIT-DR</b>
<b>Date of hearing</b>	<b>26.11.2021</b>
<b>Date of pronouncement</b>	<b>28.01.2022</b>

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

- 1. This set of three appeals, out of which two cross-appeals for assessment year 2013-14 and one appeal by Revenue for assessment year 2008-09, are directed against the separate orders of Id. Commissioner of Income tax (Appeals)-1, Surat [‘CIT(A)’ for short] all dated 14.03.2019, which in turn arise out of separate assessment orders passed by the Assessing**

**Officer ('AO' for short) under section 143(3) r.w.s 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 21.03.2016&23.03.2016 respectively. In all appeals, the parties have raised certain common grounds of appeals; facts in all appeals are almost common except variation of the addition on account of bogus purchases. Therefore, with the consent of the parties all the appeals are clubbed together, heard and are decided by consolidated order to avoid the conflicting decision. For appreciation of fact, facts in appeal for AY 2008-09 is treated as 'lead' case. The Revenue in its appeal in ITA No.284/SRT/2019 has raised the following grounds of appeal:-**

**“(i) On the facts and circumstances of the case and in Law, the Ld. CIT(A) has erred in restricted the addition made by the AO of Rs.3,40,03,788/- on account of bogus purchases to 5%.**

**(ii) On the facts and circumstances of the case and in Law, the Ld. CIT(A) has failed to appreciate the fact that the entire purchase from alleged concerns were bogus and was only to suppress the profit of the beneficiaries which is substantiated by the statement on oath given by the entry provider.**

**(iii) On the facts and circumstances of the case and in Law, the Ld. CIT(A), Surat ought to have upheld the order of the Assessing Officer. It is, therefore, prayed that the order of the Ld. CIT(A)-1**

Surat may be set-aside and that of the Assessing Officer's order may be restored.”

2. Brief facts of the case are that assessee is a proprietor of M/s Kaushal Exports, engaged in the business of trading in diamonds. The assessee filed his return of income for AY 2008-09 on 29.09.2008 declaring income of Rs.6,10,770/-. Initially the return was processed under section 143(1) without making any variation in the return of income. Subsequently, the case was re-opened on the basis of information received from Director of Income Tax (Investment.) Mumbai, wherein it was informed that investigation wing carried out a search and seizure operation under section 132 of the Act against Praveen Kumar Jain Group Mumbai ('P.K. Jain' in short), who was indulging in providing accommodation entries through its various benami concerns for providing bogus bills of sales and purchases of diamonds without delivery of actual goods. The assessee is one of the beneficiary who has shown transaction with the

following concerns managed by PK Jain;

Sr.No.	Name of the entity of Shri Pravin Jain	Amount (in Rs)
1	M/s Ansh Merchandise Pvt. Ltd.	75,01,935/-

2	M/s Kunal Gems	14,99,890/-
3	M/s Mohit International	2,00,01,910/-
4	M/s Sumukh Commercial Pvt. Ltd.	50,00,053/-
	Total	3,40,03,788/-

3. The assessee has received accommodation entries for showing purchases of total of Rs.3.40 crores. On the basis of such information, the Assessing Officer had a reasons to believe that the purchases bills of four concerns, received by assessee are bogus and the income of the income of assessee to that extent has escaped assessment due to failure on the part of the assessee who has not disclosed fully and truly all the material fact necessary for the purpose of assessment. Notice under section 148 was issued to the assessee on 30.03.2015. The assessee in response to notice under section 148 filed his reply dated 22.07.2015 and stated that original return of income filed on 29.09.2008 may be treated as return in response to notice under section 148 of the Act. The assessee required reasons recorded. The reasons recorded were provided to the assessee. The Assessing Officer thereafter processed for assessment and served notice under section 143(2) r.w.s 142(1) respectively. During re-assessment proceedings, the Assessing Officer issued show cause notice

dated 08.03.2016 as to why the purchase shown to the tune of Rs.3.40 crores from the said parties should not be added to the income of assessee. The assessee filed its reply dated 18.03.2016. In the reply, the assessee stated that the entire sales and purchases of assessee are genuine and can be verified with the documentary evidence in the form of stock register and that payment was made through account payee cheques. The assessee also relied on certain case law. The reply of assessee was not accepted by the Assessing Officer. The Assessing Officer on the basis of report of Investigation Wing about the search & seizure made at the 'PK Jain' group and the statement recorded therein held that there was a clinching evidence collected by Investigation agency that the assessee is beneficiary of the accommodation entry. Thus, the contention of assessee is that they are maintaining all records are not acceptable, the books of account maintains by assessee cannot be regarded as full and complete. The Assessing Officer rejected the books of account of assessee by holding that information received from the investigation wing that all the concerns from whom the assessee has shown

purchases are managed by PK Jain are not genuine. The Assessing Officer made addition of 100% purchases shown from all four parties.

4. Aggrieved by the re-opening as well as addition made on account of bogus purchases the assessee filed appeal before Ld. CIT(A). The Ld. CIT(A) upheld the validity of re-opening by taking view that quashing of re-opening and assessment would mean that the assessee is given undue benefits of mistake of individual officer, which is neither fair nor equitable. However, on addition, on account of bogus purchases Ld. CIT(A) after considering and referring various decisions of Jurisdictional High Court and Tribunal, including the decision of Hon'ble jurisdictional High Court in the case of M/s Mayank Diamond Pvt. Ltd. reported in 2014 (11) TMI 812 (Guj) TA No. 200 of 2003 dated 07.11.2014, in Bholanath Polyfab Pvt.Ltd. in ITA No.137/AHD/2009 dated 26.07.2011, and various decisions of other Benches of Tribunal where the additions on similar transactions were restricted the disallowance to the extent of 5% of purchases. Such disallowance was restricted to the extent profit element of

profit embedded in such type of transactions. While arriving at that conclusion the Ld. CIT(A) also relied on the decisions of Hon'ble jurisdictional High Court in the case of Satyanaraya P Rathi (2013) 351 ITR 150 (Guj), CIT vs. President Industries (2002) 258 ITR 654 (Guj), CIT Vs. Simit P Seth 2013 38 taxmann.com 385 (Guj); Mayank Diamonds Pvt Ltd. Vs. ITO TA No. 200 of 2003 dated 07.11.2011. Aggrieved by the decisions of Ld. CIT(A) Revenue has filed present appeal before the Tribunal.

5. We have heard the submissions of learned Commissioner of Income Tax Departmental-Representative (CIT-DR) for the Revenue and learned Authorized Representative (AR) for the assessee and have gone through the orders of authorities below. The Ld. CIT-DR for the Revenue supported the order of Assessing Officer and submits that the Investigation Wing of Department made full-fledged investigation in case of P.K. Jain, who was engaged in providing accommodation entries of sale and purchases of diamonds without actual delivery of goods. P.K. Jain was not engaged in actual business except providing bogus bills. The assessee is one of the beneficiaries

of such accommodation entries provided by different concerns managed by 'P.K. Jain. The accommodation entry is received by the assessee to inflate the expenses and to reduce the profit. The Assessing Officer rejected the books of account. The claim of assessee that payments were made through account payee cheques is not sufficient to prove the genuineness of the purchases. The Assessing Officer made 100% of disallowance, however, the Ld. CIT(A) restricted it to @5% of the impugned/ bogus purchase shown from P K Jain. The Ld. CIT-DR for the Revenue submits that the entire purchases from P.K. Jain group is bogus and the 100% of such disputed purchases may be upheld. In the alternative submissions the Ld. CIT-DR for the revenue submits that the disallowance restricted by Ld. CIT(A) @ 5% of bogus purchases is on the lower side and it should be restricted to 25% the aggregate of such disputed/ bogus purchases.

6. On the other hand, Ld. AR of the assessee submits that all the purchases shown by the assessee are genuine. The assessee is maintaining complete records of sales and purchases. The assessee furnished complete details of stock

and sale. The Assessing Officer has not given any finding on the evidences furnished by assessee. The assessee furnished the details of evidence consisting of their addresses, PAN, CIN master data, certificate of incorporation, confirmation of account of the suppliers; purchases bills, and their respective income-tax acknowledgments. All such evidences are filed before this bench. No finding on such details evidence was given by Assessing Officer. The sale of the assessee was not disputed by the A.O. the sale in of the Act possible in absence of purchases. The Ld. AR for the assessee submits that the appeal of the revenue is liable to be dismissed.

7. In alternative submission, Ld. AR of the assessee in appeal for A.Y. 2012-13, he submits that the disallowances sustained to the extent of @ 5% is excessive and the disallowance may be restricted to a reasonable profit, the profit in the business of the assessee is very low. The assessee has shown reasonable profit and the profit is on alleged non-genuine purchases could be at most be brought to the tax only to that extent.
8. The Ld. AR of the assessee submits that he has filed report of Task Force for diamond sector for suggesting measure to

increase the diamond trade in India. The Ld. AR by referring various clauses of said reports submits that on making comprehensive study in the diamond business, the task force suggested that net profit in trading activity is 2% and in manufacturing activity is 3%. And considering the difficulty, to segregate between manufacturing and trading from books of account suggested that rate of net profit of 2.5% across the Board would encourage compliance of both manufacturing and trading. On the basis of aforesaid report, the Ld.AR submits that the profit in case of trader is not more than 2%, therefore the profit element embedded in disputed purchases should not exceed the disallowance @ 2%.

9. The assessee has also filed following documents on record with the declaration by way of certificate that all these documents were filed before the lower authorities;

1. Report of task group for diamond sector, prepared by Government of India, Ministry of Commerce and Industry, Department of Commerce, New Delhi, (filed first time before Tribunal)
2. Name, address & PAN of disputed parties
3. Ansh Merchandise Pvt. Ltd.
  - a) PAN Card
  - b) CIN Master Data

- c) Certificate of Incorporation
  - d) Ledger account
  - e) Confirmation of account
  - f) Purchase bills
  - g) Own bank statement
  - h) IT acknowledgement receipt i)  
Bank statement of the supplier
4. Kunal Gems
- a) PAN Card
  - b) Ledger account
  - c) Confirmation of account
  - d) Purchase bills
  - e) Own bank statement
  - f) IT acknowledgement receipt
  - g) Bank statement of the supplier
5. Mohit International
- a) PAN card
  - b) Ledger account
  - c) Confirmation of account
  - d) Purchase bills
  - e) Own bank statement
  - f) IT acknowledgement receipt
  - g) Bank statement of the supplier
6. Sumukh Commercial Pvt. Ltd.
- a) PAN card
  - b) AO details
  - c) CIN Master Data
  - d) Leger account
  - e) Confirmation of account
  - f) Purchase bills
  - g) Own bank statement
  - h) IT acknowledgement receipt
7. Corresponding sale bills

- 8. Purchase register**
  - 9. Sales register**
  - 10. Quantity tally**
  - 11. Stock register**
  - 12. IT acknowledgement receipt and audited balance sheet**
  - 13. Submission filed before Ld. AO**
  - 14. Submission filed before Ld. CIT(A)**
- 10. To support his legal submissions the Id. AR of the assessee relied upon the following decisions:-**
- Pr. CIT Vs Tejua Rohitkumar Kapadia SLP-12670/2018 (SC)**  
**ACIT Vs Choron Diamond (I) Pvt. Ltd. ITA**  
**No.4449/Mum/2016**  
**Sejal Export Vs. DCIT ITA No.3859 & 3858/Mum/2017**  
**Deluxe Diamonds Vs.ITO ITA No.1396/Ahd/2017**
- 11. We have considered the rival submissions of both the parties and have gone through the orders of authorities below. We have also deliberated on the various documentary evidences placed on record by the assessee. We have further deliberated on the various case laws relied by the assessee. We find that during the assessment the AO made addition of 100% of purchases shown by the assessee from four parties which were managed by “PK Jain” and his group. The AO made**

addition on the basis of report of Investigation Wing about the search & seizure made at the 'PKJain' group and the statement recorded therein by taking view that there was clinching evidence collected by Investigation agency that the assessee is beneficiary of the accommodation entry. The AO rejected the contention of assessee is that they are maintaining all records. The AO also held that the books of account maintains by assessee cannot be regarded as full and complete. The Assessing Officer rejected the books of account of assessee by holding that information received from the investigation wing that all the concerns from whom the assessee has shown purchases are managed by PK Jain are not genuine. The Assessing Officer made addition of 100% purchases shown from all four parties. The Id CIT(A) upheld the addition to the extent of 5% of the aggregate of purchases shown from four parties by taking view that profit element of profit embedded in such type of transactions can be added to the income of the assessee. The Id CIT(A) while restricting the addition to the extent of 5% referred various decision of Tribunal and Jurisdictional High Court. Before us, the Id CIT-

**DR for the revenue vehemently argued that the disallowances restricted by Id CIT(A) is very low and it should be at least be restricted to 25% of the disputed purchases. We have examined the facts of the case independently and find that the AO while making 100% disallowances of the disputed purchases solely relied on the report of the investigation wing. No independent investigation was carried out by the AO. No specific findings were given on the documentary evidences filed by the assessee. The sale of the assessee was not disputed by the AO. As recorded above the Id CIT(A) restricted the disallowances to the extent of 5% of the disputed purchase on the basis of theory evolved in various decision that disallowance may be restricted to the extent of profit embedded in such purchases. It is also a matter of fact that such purchases are shown to inflate the expenses and to reduce the profit. The AO made addition of 100% of the disputed/ impugned purchase. In our view, the AO is not justified in disallowing the 100% of purchases in absence of proper investigation of such purchases. No doubt the disallowance made by the Id CIT(A) is also on estimated basis.**

On verification of facts, we find that the assessee has shown total turnover of Rs.186.96 Crore. The assessee while filing return of income has shown income of Rs. 6,10,770/-. The assessee has shown net profit @ 0.0051%, which is extremely on lower side. The submission of Ld. AR of the assessee on the basis of report of task force constituted by Department of Commerce, Ministry of Commerce & Industry, wherein the industries have requested for presume to tax for net profit @ 2% which will encourage traders that BAP introduce by Government would achieve success. We are not convinced the submission of Ld.AR as the dispute before us is about the genuinely of purchases, which has been shown only to inflate the expenses and reduce the profitability. As we have already noted that the assessee had shown extremely low net profit. Therefore, considering overall facts and circumstances of the case, we are of the view that the disallowance restricted by Ld. CIT(A) in on the lower side. Hence, we modify the order of the Id CIT(A) and restrict the addition of the disputed purchases to the extent of 6% and direct the AO to re-compute the

**disallowances accordingly. In the result, the grounds of appeal raised by the revenue are partly allowed.**

**12. In the result, appeal of Revenue is partly allowed. ITA No. 279/SRT/2020 A.Y. 2013-14 by assessee**

**13. The assessee has raised following grounds of appeals**

- (1) The Ld. CIT(A) erred in confirming the additions of suppressed addition of suppressed profit @ 5% of Rs.47,30,940/- on purchased of traded goods (diamonds) made from alleged non-genuine suppliers of Rs.9,46,18,796/-.**
- (2) The Ld. CIT(A). erred in confirming the disallowance of purchases of Rs.47,30,940/- @ 5% of disputed purchases.**
- (3) Without prejudice, a prayer is made to adopt the concept of real income and restrict the addition @ 2% of alleged non-genuine purchase at Rs.18,32,375/- (2% of Rs.9,46,18,796/-) since normal profit corresponding to dispute purchases had been offered to tax.**

**ITA No.285/SRT/2020 A.Y. 2013-14 by Revenue**

**14. The Revenue in its appeal has raised the following grounds of appeal:-**

- (i) On the facts and circumstances of the case and in Law, the Ld. CIT(A) has erred in restricted the addition made by the AO of Rs.3,46,18,796/- on account of bogus purchases to 5%.**
- (ii) On the facts and circumstances of the case and in Law, the Ld. CIT(A) has failed to appreciate the fact that the entire purchase from alleged concerns were bogus and was only to suppress the profit of the beneficiaries which is substantiated by the statement on oath given by the entry provider.**

(iii) On the facts and circumstances of the case and in Law, the Ld. CIT(A), Surat ought to have upheld the order of the Assessing Officer. It is, therefore, prayed that the order of the Ld. CIT(A)-1 Surat may be set-aside and that of the Assessing Officer's order maybe restored."

**15. We find that the grounds of appeal raised by assessee as well as Revenue are inter-connected. The assessee has challenged the action of Ld. CIT(A) in sustaining the addition to the extent of 5% of bogus purchases, on the other hand, the Revenue has challenged the action of Ld. CIT(A) that entire purchases from parties who are entry provider and order of Assessing Officer may be upheld.**

**16. We on perusal of record, we find that the facts of the year under consideration are almost similar except the fact for the year under consideration the assessee has shown the purchases from M/s Kangan Jewels Pvt. Ltd. of Rs.9.64 crores. For the year under consideration, the turn over of the assessee is of Rs.4.73 crores and has shown net profit @ 0.02% and in return of income the assessee has offered income of Rs.11,67,370/-. Therefore, there is no much difference in the facts of the appeal under consideration. Considering the fact that in A.Y. 2008-09 in appeal of Revenue in ITA No.24/SRT/2019, we have modified the order**

of Ld. CIT(A) and upheld the addition to the extent of 6% of the impugned / disputed purchases, therefore, following the principle of consistency, the addition on account of bogus purchases in A.Y. 2013-14 is also restricted to @ 6% of the impugned / disputed purchases. In the result, appeal of the Revenue is partly allowed. Resultantly, the appeal of assessee is dismissed.

17. In the result, appeal of Revenue for both the years are partly allowed and appeal of assessee for A.Y. 2013-14 is dismissed. A copy of the instant common order be placed in the respective case file(s).

Order pronounced in open Court on 28/01/2022 and result was also placed on the notice board.

**Sd/-**  
(Dr ARJUN LAL SAINI)  
ACCOUNTANT MEMBER

Surat, Dated: 28/01/2021

Dkp. Sr.P.S. O.S

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-2, Surat
4. CIT
5. DR
6. Guard File

**Sd/-**  
(PAWAN SINGH)  
JUDICIAL MEMBER

By order

// True Copy //

Assistant Registrar, ITAT, Surat