

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'SMC-B', HYDERABAD**

SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

ITA No. 1753/Hyd/2018
Assessment Year: 2009-10

Bhagatram,
Hyderabad.

PAN – ACEPB2866M

vs. Asst. Commissioner of
Income-tax,
Circle – 5(1),
Hyderabad.

Appellant

Respondent

Assessee by: Shri K.C. Devdas
Revenue by: Shri Sunil Kumar Pandey

Date of hearing: 02/03/2020
Date of pronouncement: 28/07/2020

ORDER

This appeal filed by the assessee aggrieved by the order of the Ld. CIT (A)-4, Hyderabad in appeal no.0333/16-17/ACIT, Cir.5(1)/CIT(A)-4/Hyd/18-19, dated 21/6/2018 passed U/s 250(6) r.w.s 147 & 143(3) of the Act for the AY 2009-10.

2. The assessee has raised seven grounds in his appeal however, the crux of the issue is that “the Ld. CIT (A) has erred in enhancing the addition to Rs. 93,04,866/- / as against the addition made by the Ld. AO of Rs. 9,30,487/- which itself is erroneous and ought to be deleted”.

3. The brief facts of the case are that the assessee is an individual engaged in the business of trading in Gold Ornaments in the name and style M/s. Vijay Jewellers, filed his return of

income for the AY 2009-10 on 23/09/2009 declaring total income of Rs. 9,76,501/-. Thereafter, a search and seizure operation U/s 132 of the Act was conducted in the case of Shri Rajendra Jain, Shri Sanjay Chowdhary and Shri Dharmi Chand on 3/10/2013 by the DGIT (Inv.), Mumbai. During the course of survey proceedings, it was revealed that these individuals were providing accommodation entries for the purchase of Gold/Gold jewellery including to the assessee's proprietary concern M/s. Vijay Jewellers. It was further revealed that the assessee had obtained accommodation entries for the purchase of Gold / Gold Jewellery from Mr. Karnawat (PAN: AADCK1927A) Rs. 40,44,318/-, Mr. Kriya (PAN: AADCK1926B) Rs. 30,05,430/- and Mr. Moulimani (PAN: AADCM1913C) Rs. 22,55,118/- aggregating to Rs. 93,04,866/-. Further the assessee could not prove the creditworthiness of the persons who had sold the Gold / Gold jewellery to the assessee. The assessee could only furnish the bank statements to substantiate his claim that the payments were made by cheque. The assessee also did not take any serious steps to prove the genuineness of the suppliers. Therefore, the Ld. AO relied on the various decisions of the Tribunal as well as the decision rendered by the Hon'ble Apex Court in the case of M/s. Kachwala Gems vs. JCIT reported in 288 ITR 10 and held that the purchases made by the assessee from those individuals are bogus transactions. Thereafter the Ld. AO estimated 10% of the bogus purchase as the undisclosed income of the assessee which works out to Rs. 9,30,487/- (10% of Rs. 93,04,866/-). On appeal, the Ld. CIT (A) opined that the

entire bogus purchase of Rs. 93,04,866/- has to be added to the income of the assessee and accordingly enhanced the addition.

4. Before me, the Ld. AR vehemently argued by stating that the entire payment for the purchase was made through bank and evidenced by proper bills and vouchers. It was therefore pleaded that the addition cannot be simply made on the basis of presumptions by treating the transactions to be bogus. The Ld. AR further relied on the decision of the Hon'ble High Court in the case Pr. CIT vs. Tejua Rohit Kumar Kapadia in Tax Appeal No. 691 of 2017, dated 18/09/2017, and the order of the Hyderabad Bench of the Tribunal in the case of Musaddilals Jewellers India Pvt Ltd and pleaded that when the assessee has produced proper bills and vouchers for the purchases and when the payments for the same were made through the banking channel, then the purchases made by the assessee cannot be treated as bogus transactions and the addition made by the Ld. AO which was further enhanced by the Ld. CIT (A) is not warranted and is erroneous. It was therefore pleaded that the addition made by the Id. Revenue Authorities may be deleted.

5. I have heard the rival submissions and carefully perused the materials on record and also the paper book submitted by the assessee running to 1 to 303 pages. On perusing the same I find that they are not certified for having been produced before the Id. Revenue Authorities. I have also gone through the elaborate written submissions made by the assessee running to 5 pages. However, from the facts of the case I find that the assessee had not submitted any material other than the bills and

vouchers and the bank statement to establish the genuineness of the transaction. It is also apparent that the revenue has come across various incriminating materials during the course of search and seizure operation U/s. 132 of the Act with respect to the persons who had purported to have sold Gold / Gold Jewellery to the assessee. It is also a known fact that Gold / Gold Jewellery are often purchased in the gray market in order to avoid taxes / custom duty etc., by the traders. In this situation, the onus is on the assessee to establish the genuineness of the suppliers. Though the payment made by the assessee towards the purchases are through banking channels, it is also revealed that the suppliers were issuing bogus bills and vouchers to various parties. In this situation, producing the bills and vouchers and evidencing the payment made through cheque alone will not establish that the transactions are genuine. Therefore, the Ld. AO was right in relying on the decision of the Hon'ble Apex Court in the case of M/s. Kachwala Gems vs. JCIT and other various decisions of the Tribunal cited in his order and estimating the additional income of 10% on the bogus purchases made from the grey market which works out to Rs. 9,30,487/-. However I am of the view that the order of the Ld. CIT (A) to enhance the addition by treating the entire bogus purchases as the income of the assessee is not appropriate because it is evident that the assessee had made purchases apparently from his accounted money as the payments have made through banking channels. Further it is also a fact that the Gold/Jewellery purchased are either sold by the assessee or remains with the assessee as his closing stock, since there are no other contrary

findings by the Revenue. Therefore, I hereby set aside the order of the Ld. CIT (A) and confirm the order of the Ld. AO.

6. Before parting, it is worthwhile to mention that this order is pronounced after 90 days of hearing the appeal, which is though against the usual norms, I find it appropriate, taking into consideration of the extraordinary situation in the light of the lock-down due to Covid-19 pandemic. While doing so, I have relied on the decision of Mumbai Bench of the Tribunal in the case of DCIT vs. JSW Ltd. In ITA No.6264/M/2018 and 6103/M/2018 for AY 2013-14 order dated 14th May 2020.

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

Pronounced in the open court on the 28th July, 2020.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, dated 28th July, 2020.
okk

Copy forwarded to:

1. *Shri Bhagatram, C/o Sekhar & co., CAs., 133/4, RP Road, Secunderabad – 500 003*
2. *ACIT, Circle – 5(1), Hyderabad.*
3. *CIT(A) - 4, Hyderabad*
4. *Pr. CIT - 4, Hyderabad*
5. *The DR, ITAT, Hyderabad*
6. *Guard File*