

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT),
"D" BENCH, MUMBAI**

BEFORE SHRI M.BALAGANESH, ACCOUNTANT MEMBER

&

SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA Nos. 3519 & 3520/Mum/2018

(Assessment Years :2011-12 & 2014-15)

M/s. Diagold Designs Ltd. R-1, Cama Industrial Estate Walbhat Road Goregaon (East) Mumbai-400063	Vs.	DCIT, CC- 1(2) Aaykar Bhawan M.K.Road Mumbai-400 020
PAN/GIR No.AABCD3716A		
(Appellant)	..	(Respondent)

Assessee by	Shri Percy Pardiwala, Senior Advocate
Revenue by	Shri Avaneesh Tiwari, DR
Date of Hearing	22/09/2020
Date of Pronouncement	11/11/2020

आदेश / O R D E R

PER M. BALAGANESH (A.M.):

These two appeals filed by assessee in ITA No's.35149 & 3520/Mum/2018 for Assessment Years (AY) 2011-12 & 2014-15 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-47, Mumbai in appeals No.CIT(A)-47/12848/2016-17 & CIT(A)-47/12856/2016-17, dated 02/03/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s 147 of the Income Tax Act, 1961 (hereinafter referred to as Act), dated 29/12/2016 by the Id. Deputy Commissioner of Income Tax, Central Circle-1(2), Mumbai (hereinafter referred to as Id. AO).

2. Since, the identical issues are involved, hence, both the appeals are taken up together and disposed off by this common order for the sake of convenience. With the consent of both the parties, the appeal of the assessee for the AY 2011-12 was taken up as the lead case and the decision rendered thereon would apply with equal force for AY 2014-15 , except with variance in figures.

3. The ground No. (i) raised by the assessee challenging the validity of reassessment was stated to be not pressed by the Ld. AR at time of hearing. Accordingly, the same is reckoned as a statement made from the Bar and is hereby dismissed as not pressed.

4. Though, the assessee has raised several sub grounds in main ground (ii), we find the effective issue involved herein is as to whether the Ld. CIT(A) was justified in confirming the addition of Rs. 79,60,882/- made on account of alleged bogus purchases in the facts and circumstances of the instant case.

5. We have heard the rival submissions and perused the materials available on record. We find that the assessee is a company engaged in the business of manufacturing and export of diamond studded, gold and platinum jewellery. The original return of income was filed by the assessee for AY 2011-12 on 15/09/2011 declaring total income of Rs. 38,38,470/-, which was duly processed u/s 143(1) of the Act. The assessment u/s 143(3) of the Act was completed by the Ld. AO on 05/03/2014 determining total income at Rs. 38,44,660/-. Later, the assessment was sought to be reopened by issuance of notice u/s 148 of the Act dated 29/03/2016 after duly recording the reasons for reopening the assessment. In response to the said notice, the

assessee filed a letter dated 21/04/2016 stating that the return filed on 13/04/2016 may be treated as a return in response to notice issued u/s 148 of the Act.

6. We find that the Ld. AO observed that assessee had made purchases from the following five parties:-

Mayur Exports-	Rs.1,19,314/-
Nice Diamonds-	Rs. 7,36,806/-
Mukti Exports –	Rs. 37,74,200/-
Nvkar India-	Rs. 26,47,747
Millennium Stars-	Rs. 6,82, 815/-
Total-	Rs.79,60,882/-

7. The Ld. AO directed the assessee to prove the genuineness of purchases made from the aforesaid suppliers in view of the fact that the aforesaid suppliers belong to various benami concerns operated by Shri Bhanwarlal Jain Group, which emanated out of search and seizure action u/s 132 of the Act carried out in the case of Bhanwarlal Jain on 03/10/2014. It is not in dispute that during the course of assessment proceedings, the assessee had submitted details such as affidavits from the concerned suppliers, confirmations from the concerned suppliers, ledger account of the parties in the books of the assessee, purchase invoices, bank statement and stock register etc. We find that the Ld.AO had duly acknowledged the receipt of the aforesaid documents, but despite the same, he proceeded to observe that since there is a specific finding of the investigation wing that the said parties were found to be indulged in fraudulent transaction of issuing accommodation

entries, the authenticity of the transaction becomes questionable and cannot be decided merely on the basis of supporting documents. Accordingly, we find that the Ld. AO concluded that the purchases made from the aforesaid five parties are to be treated as non genuine and added the sum of Rs. 79,60,882/- in the assessment. We find that the Ld. CIT(A) had narrated the entire modus operandi adopted by Bhanwarlal Jain group together with certain documents found during the course of search and seizure action carried out in the case of Bhanwarlal Jain Group. These observations were made by the Ld. CIT(A) in his order from pages 55 to 101 thereon. In none of those places, we find that the assessee company was linked with any of the concerns of Bhanwarlal Jain group. Hence, it can be safely concluded that in the entire order of the Ld. CIT(A), nothing was pointed out qua the assessee in the modus operandi adopted by Bhanwarlal Jain Group through his various concerns. We find that before the Ld. CIT(A), the assessee had also filed additional evidences comprising of purchase bills, confirmation of accounts, bank statements, financial statements etc., of the various concerns run and managed by shri Bhanwarlal Jain, which has been recorded in para 10.61, page 101 of the order of the Ld. CIT(A). But we find that the Ld. CIT(A) had simply disregarded these additional evidences by stating that such documents and extracts supplied and confirmed by a certified entry operator has no evidentiary value and hence needs to be rejected on merits. Thereafter, we find that the Ld. CIT(A) ignoring the various primary documents such as purchase bills, bank statements, stock register, affidavits and confirmations from the suppliers etc., proceeded to reject the books of accounts of the assessee u/s 145(3) of the Act and upheld the addition made @100% value of

purchases in the sum of Rs. 79,60,882/-. While upholding the said addition, the Ld. CIT(A) had also mentioned that assessee had failed to produce the stock register. In this regard, we find that the Ld. AO himself in para 4.3 had duly admitted that stock register was indeed filed by the assessee before him. While this is so, we find that the observations made by the Ld. CIT(A) is factually incorrect. We find that the Ld. AR made a primary argument before us that the Ld. CIT(A) having resorted to reject the books of accounts u/s 145(3) of the Act, ought not to have upheld the disallowance of purchases @100% and instead should have resorted to estimation of profits in a reasonable manner based on the comparative cases prevailing in the market. He also drew our attention to page 31 of the order of Ld CIT(A), wherein specifically the assessee had brought to the knowledge of Ld. CIT(A) that the issue in dispute is already decided by the Ld. CIT(A) in assessee's own case for AY 2012-13 vide Appeal No.CIT(A)-20/ACIT-12(2)(1)/IT-153/2015-16, dated 17/06/2016. We find that the Ld. CIT(A) had not given any finding regarding this factual aspect that the issue is already covered by the order of this predecessor for AY 2012-13 in assessee's own case.

8. In any case, we find that this Tribunal in assessee's own case for the AY 2012-13 in ITA No. 5621/Mum/2016 (revenue appeal) has adjudicated this very same issue in favour of the assessee. The relevant operative portion of the said order is reproduced hereunder:-

9. We have heard the rival submissions and also perused the material on record including the cases relied upon by the authorities below. The only grievance of the revenue is that the Ld. CIT(A) has wrongly deleted the additions made by the AO. We notice that the Ld. CIT(A) has deleted the addition by relying on the various decisions of the Tribunal and the

judgment of Hon'ble Bombay High Court. The relevant portion of the order reads as under:

"5.3 I have gone through the assessment order and submissions made by the appellant in this regard. It is noted that there is some merit in the contention of the appellant. The AO made an addition of this amount of Rs.1,35,15,546/- and treated these purchases as non genuine since assessee could not produce these parties for verification. The AO had also noted that information from investigation wing that these parties belonging to Sh. Bhanwarlal Jain group used to give bogus bills. The AO appears to have received information in this case from the investigating wing. It is clear that this information was about the bogus sales made and accommodation entry given by one Sh. Bhanwar Lal Jain. The A.O. seems to have received this information in general and not specifically in the context of the appellant. He had confronted the appellant by means of show-cause notice and asked for production of the concerned parties to establish genuineness of these purchases. As the appellant was unable to produce them, the A.O. simply went ahead and made the addition.

5.4 It is clear that the AO had insisted on production of these parties. The A.O. had however relied upon the information received from investigation wing and the statement of Sh. Bhanwarlal Jain. As such, he was bound to provide an opportunity to the appellant to cross examine this party. While the assessment order is silent on this matter, the appellant has forcefully brought this point out during its submission. In other words, the non-production of this party would not just be an issue against the appellant. It would actually strengthen the claim of the appellant as well.

5.5 It is noted that the principles of natural justice demand that the assessee should be provided with an opportunity to examine and counter the documents relied upon by the AO to decide an issue against the assessee. In the instant case, the assessing officer has also supported his view by placing reliance on the report given by the investigation wing and the statement of Sh. Bhanwarlal Jain. It is a matter of fact that the AO has not carried out any independent examination of Sh. Bhanwarlal Jain who has claimed to have given statement before the investigation wing. It is also not established that Sh. Bhanwarlal Jain and these five parties have implicated the transactions entered with the assessee before the investigation wing. In the instant case it is noticed that the assessee was able to link the consumption of materials and closing stock with the relevant purchase bills. It is noted that when the entire purchases made from these five parties was either consumed in the manufacturing process or were available as stock as at the year end, then the disallowance of purchases should result in corresponding reduction of the closing stock, the result of which would have NIL effect on profit and hence there was no requirement of making any addition. However, this proposition should be applied only if the purchases were held to be non-genuine. It is noted that the assessee has produced following documents

to establish that the purchases made by it from these five parties were genuine:-

A) The affidavits include the date when and by what Invoice No. goods were sold, amount of sale and the mode of receipt of amount towards such sale only through Bank.

B) Purchase bills from five parties confirming quantity of Cut & Polished Diamonds sold and delivered to assessee.

C) Confirmation of Ledger Accounts of five parties as per the books of the assessee confirming all the transactions with assessee. D) Copy of assessee's Bank Book for transactions recorded when payments were made to five parties.

E) Copy of Bank Statement highlighting payments made to five parties on various dates.

F) Confirmation of Ledger Account from the books of five parties, confirming the transactions with assessee and also contains its PAN Number.

G) Copy of Bank Statements of five parties highlighting payment received in their bank account from assessee's bank account. H) Copy of Return of Income filed by five parties for the assessment year 2012-13, confirming that they are tax payers.

I) Copy of Audited Balance Sheet, Profit And Loss with Schedules thereto, of five parties showing transactions with assessee and amount recoverable from assessee for assessment year 2012-13. J) Customs certified invoices. confirming exports of Cut & Polished Diamonds studded Jewellery to various parties outside India. K) Customs partywise stock statement/register of cut and polished diamonds studded Jewellery, which was exported. L) Retraction statement of Shri Bhanwarlal Jain along with claim that F statement recorded during search and seizure action, loses its evidentiary value.

These evidences clearly establish that the assessee had made genuine purchases for which payments were made through banking channels and exports proceeds of part these diamonds during the year were also received through banking channels and the remaining were reflected in the closing stock summary. These evidences strongly support the case of assessee that there were genuine purchases made by assessee, which could not be negated by the general statement of Sh. Bhanwarlal Jain which has since been retracted. In view of the foregoing discussions, there appears to be no reason to suspect the claim of purchases of goods from these five parties viz. M/s. Nice Diamonds, M/s Pankaj Exports, M/s. Malhar Exports, M/s Minakshi Exports and M/s. Daksh Diamonds, particularly when the books of accounts of the assessee had not been rejected by the AO and the sales made during the year have been

accepted. On similar facts in the case of ACIT Circle-9(3), Mumbai vs M/s Say India Jewellers Pvt. Ltd., the Hon'ble ITAT, Mumbai I.T.A. No.6735/Mum/2010 vide order dated 8th August. 2014 has held as under;-

"We have carefully perused the orders of the authorities below and the relevant material evidences brought on record before us. The undisputed facts are that the purchases were supported by bills, the payments were made by account payee cheque and the payments were duly reflected in the bank statement of the assessee. A perusal of the statement of the diamond traded during the year under consideration shows that the assessee purchases 1358.54 carats from M/s ZalakImpex on 1.8.2005, the same was exported on 5.8.2005 and 871.57 carats were purchased on 2.8.2005 from M/s ZalakImpex and were exported on 12.8.2005. No adverse inferences have been drawn by the AO in so far as exports of diamonds are concerned. Without purchases there cannot be any sales. The entire additions made by the AO are based on assumptions and presumptions. We, therefore, decline to interfere with the findings of the Ld. CIT (A). It is also noted that in the matter of Nikunj Exim Enterprises Pvt. Ltd. (Income Tax Appeal No. 5640 of 2010), (2014) 107 DTR 69 (Bom), the Hon'ble Bombay High court has specifically held that in a case where sales are considered genuine and books of accounts have not been rejected, no addition, on account of bogus purchases can be made. In view of the above discussion and on the facts of the case the addition made by the A.O. on account of alleged bogus purchase cannot be sustained in appeal and is directed to be deleted. Accordingly this ground of appeal is allowed."

10. In our considered opinion the order passed by the Ld. CIT(A) is based on the evidence on record and the established principles of law. The Documentary evidence produced before the authorities below establish the genuineness of the transaction. The findings of the AO are based on mere uncorroborated statement of the third party. Moreover, the person whose statement was relied upon by the assessee has retracted from his statement made during the survey action. The documentary evidence on record fully substantiates the contention of the assessee. Hence, there is merit in the contention of the Ld. counsel. On the other hand the AO has not pointed out any cogent evidence to falsify the contention of the assessee. The Hon'ble Bombay High Court in CIT Vs. Nikunj Eximp Enterprises Pvt. Ltd. 372 ITR 619 (Bom) has held that merely because the suppliers had not appeared before the Assessing Officer or the CIT (A) one could not conclude that the purchases were not made by the respondent/assessee. In the Light of the facts of the present case and the evidence on record, we are of the considered view that the findings of the Ld. CIT(A) are based on the principles of law laid down by the Hon'ble Bombay High Court and in accordance with the various decisions of the Tribunals relied upon by the Ld. CIT(A), therefore do not suffer from any infirmity either factual or legal to interfere with. Thus the Ld. CIT(A) has rightly deleted the addition in question. Hence, we uphold the findings of the Ld. CIT(A) and dismiss the sole ground of appeal of the revenue.

9. We also find that the reliance placed by the Ld. DR on the decision of Hon'ble Gujarat High Court in the case of N.K. Proteins reported in 292 CTR 354 is factually distinguishable inasmuch as in that case, proper enquiries were made by the Ld. AO to come to a conclusion that purchases made by that assessee was bogus, whereas in the instant case, no enquiry, in any manner whatsoever, was sought to be made by the Ld. AO with the concerned suppliers despite the fact of providing all the relevant primary documents before the AO by the assessee. Hence the reliance placed by the Ld. DR on the said decision does not come to the rescue of the revenue.

10. In the instant case, for the year under consideration also, the sales made by the assessee are not disputed. Hence, it could be safely concluded that without the purchases, there cannot be any sales. We find that the Ld. AR had also placed reliance on the decision of Hon'ble Supreme court in the case of CIT vs Odeon Builders Pvt.Ltd. in Civil Appeal Nos. 9604-9605 of 2018 dated 21/08/2019 and also the decision of Hon'ble Jurisdictional High court in the case of Vaman International Pvt.Ltd. in ITA No. 1940/2017 dated 29/01/2020. We have gone through the decision of Hon'ble Supreme court referred to supra, wherein in para 2 of the said order, it had been categorically stated that the Ld. AO had not conducted any independent investigation, which is similar to the facts prevailing before us. With regard to the decision of Hon'ble Bombay High Court in the case of Vaman Internaitonal Pvt.Ltd. referred to supra, the question raised before the Hon'ble Bombay High Court are as under:-

"(A) Whether on the facts and in the circumstances of the case and in law, Tribunal was justified in holding that provisions of section 69C of the Income Tax Act, 1961 are not applicable in case of bogus purchases or sales where the genuineness of the transaction is not explained or explanation offered by the assessee is not satisfactory and the same is to be treated as income of the assessee ?

(B) Whether on the facts and in the circumstances of the case and in law, Tribunal was justified in holding that in order to prove genuineness of the said purchase transaction even though assessee did not provide any lorry receipts or delivery challans for the delivery of goods and that the same fact is established by the Assessing Officer, then is it mandatory for the Assessing Officer to limit himself to the mere submission and other documents provided by the assessee even though the purchases are non-genuine ?

(C) Whether on the facts and in the circumstances of the case and in law, Tribunal was justified in holding that while applying the provisions of Section 69C of the Income Tax Act, 1961, the Assessing Officer was required to cause further enquiries in the matter to ascertain the genuineness or otherwise of the sham transaction?"

In the said case, both the Id CITA as well as the Tribunal had concurrently held that all the primary documents were duly placed on record including the quantitative details of purchases and corresponding sales together with stock register, confirmations from suppliers etc and hence no addition could be merely made u/s 69C of the Act by placing reliance on the statements made by some suppliers and parties before the Sales tax department.

We find that the Hon'ble Jurisdictional High Court had agreed with the views expressed by both the CITA as well as the Tribunal in the aforesaid case. We find that the facts before us in the impugned appeal squarely falls into the factual matrix of the aforesaid case before the Hon'ble Bombay High Court.

11. In view of our aforesaid observations on facts and also by following the aforesaid judicial precedents, we direct the Ld. AO to

delete the disallowances made on account of non genuine purchases in the sum of Rs. 79,60,882/- in the peculiar facts and circumstances of the instant case.

12. As stated earlier, the facts of AY 2011-12 are exactly identical with the AY 2014-15 except with variance in figures and the name of the suppliers from whom assessee had made purchases. Hence, the decision rendered herein above for AY 2011-12 shall apply *mutatis mutandis* to AY 2014-15 also except with variance in figures.

13. In the result, appeals filed by the assessee for AY 2011-12 is partly allowed and for AY 2014-15 are allowed.

Order pronounced in the open court on this 11/11/2020

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 11/11/2020
Thirumalesh, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai

