

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ , चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'B' CHANDIGARH

BEFORE: SMT. DIVA SINGH, JUDICIAL MEMBER &
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA Nos. 1178 & 1179/CHD/2019
Assessment Year : 2010-11 & 2013-14

M/s Talwar Jewellers, SCO 9-10, Sector 22, Chandigarh.	बनाम VS	The ACIT, Central Circle-II, Chandigarh.
स्थायी लेखा सं./PAN /TAN No: AAAFT6570C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Tej Mohan Singh, Advocate
राजस्व की ओर से/ Revenue by : Dr. Ranjeet Kaur, JCIT, Sr. DR

तारीख/Date of Hearing : 11.10.2022
उद्घोषणा की तारीख/Date of Pronouncement : 11.01.2023

आदेश/ORDER

PER VIKRAM SINGH YADAV, AM

These are two appeals filed by the assessee against the order of Id. CIT(A)-3, Gurgaon dated 07.06.2019 and 05.06.2019 pertaining to assessment year 2010-11 and 2013-14 respectively. Since common issues are involved, both these appeals were heard together and are being disposed of by this consolidated order.

2. With the consent of both the parties, the case of the assessee in ITA No.1178/CHD/2019 is taken as lead case wherein the grounds of appeal taken by the assessee read as under:

1. That the Id. Commissioner of Income Tax(Appeals) has erred in law in upholding the reopening the assessment by issuance of notice u/s 148 in as much as there has been no escapement of income and order passed is illegal, arbitrary and unjustified.

2. That the Ld. Commissioner of Income tax(Appeals) has failed to appreciate that the original assessment was framed u/s 153B(l)(b) rws 143(3) and there being no failure on part of the assessee to disclose fully and truly material facts, the fresh assessment has been framed without there being a reason to believe that the income has escaped assessment but only under the realm of suspicion, making of roving and fishing enquiries and change of opinion is not permissible and as such the reassessment upheld is illegal, arbitrary and unjustified.

3. That the Ld. Commissioner of Income (Appeals) has erred in law and facts in as much the assessment has been re-opened on the basis of borrowed information without providing any opportunity to cross examine the persons who have alleged to have been providing bogus bills and as such the order passed is arbitrary and unjustified.

4. Without prejudice to the above, the Ld. Commissioner of Income tax(Appeals) has erred in upholding the addition of Rs. 10,14,600/- made on account of alleged bogus purchases which is arbitrary and unjustified.

5. That the order of the Ld. Commissioner of Income Tax (Appeals) is erroneous, arbitrary, opposed to law and facts of the case and is, thus, untenable.

3. During the course of hearing, the Id. AR submitted that the assessee M/s Talwar Jewellers is into retail sale of jewellery of gold, diamonds and other precious metals like platinum, silver etc. Search & seizure operations were carried out at the business and residential premises of the assessee alongwith its partners and members of the family on 24.07.2009. Thereafter, notices u/s 153A(1)(a) were issued to the assessee for assessment year 2004-05 to assessment year 2010-11 and thereafter, the assessment for the impugned assessment year was completed u/s 153A(1)(b) read with 143(3) vide order dated 20.10.2011. It was submitted that during the course of assessment proceedings, the assessee was asked to submit complete details of purchases and closing stock as on the date of search and its accounts and all documents were subjected to thorough scrutiny. During the courses of search proceedings as well as during the assessment proceedings, the AO while passing the assessment order has made the addition amounting to Rs.2,30,58,074/- which includes addition on account of valuation of stock amounting to Rs.2,28,86,399/-. Subsequently, the assessee challenged the addition before the Id. CIT(A) Gurgaon and the whole of the additions of Rs.2,30,58,074/- was

deleted by the Id CIT(A). Thereafter, on 30.03.2015, the assessee received a notice u/s 148 from the office of DCIT and in the reasons so recorded as supplied to the assessee, it was revealed that search & seizure action was carried out on concerns controlled and managed by Mr. Rajender Sohan Lal Jain, Mr. Sanjay Chaudhary and Mr. Dharam Chand Jain on 3.10.2013 wherein the Investigation Wing found that these concerns/persons were providing accommodation entries and the assessee was one of the beneficiary of such accommodation entry amounting to Rs.10,46,600/- from M/s Kriya Impex Pvt. Ltd. In response to the said notice, the assessee filed its return on 30.06.2015. It was submitted that the assessee raised objections to re-opening of the case merely on the basis of borrowed belief and information received from the Investigation Wing, Mumbai. The assessee submitted copy of bill of M/s Kriya Impex Pvt. Ltd. as well as copy of the bank statement as an evidence of purchase of cut and polished diamonds and payment for such purchases. It was submitted that the bill of M/s Kriya Impex Pvt. Ltd. for Rs.10,14,600/- was dated 06.04.2009 and part payment thereof amounting to Rs.5 lacs was made well before 24.07.2009 i.e. the date of search and all these documents were thoroughly scrutinized during the search and during the course of original assessment proceedings. However, all these facts were ignored and the AO rejected the objections so raised by the assessee and proceeded ahead and issued a Show Cause on 03.09.2015 asking the assessee to explain why the transaction of Rs.10,14,600/- for purchase of jewellery from M/s Kriya Impex Pvt. Ltd. be not treated as bogus purchase.

4. In response to the show-cause, it was submitted that the assessee submitted complete details of the transaction in terms of copy of bill of M/s Kriya Impex Pvt. Ltd. which indicate that the delivery of goods were made at Chandigarh, copy of the bank statement evidencing the payment through banking channel, copy of the Purchase Register for the month of April,2009 as an evidence that the purchases were duly recorded in the books of account,

copy of the Stock Register as an evidence that stock was physically received and recorded in the books of account and confirmed copy of the Ledger Account of M/s Kriya Impex Pvt. Ltd. in the books of the assessee. It was submitted that all these documentation and related submissions so filed by the assessee were summarily ignored by the AO. It was submitted that the AO went on to conclude that the assessee did not substantiate the purchases made vis-à-vis the mode of delivery and the person who made the purchases. It was submitted that the AO ignored copy of the bill submitted during the course of re-assessment proceedings wherein it has been clearly mentioned that the goods were delivered at Chandigarh which were subsequently entered in the Stock Register. It was submitted that no mistake has been found in the books of account. It was submitted that the AO ignored all these facts and has purely gone on the statement of Shri Rajender Jain. It was submitted that the assessee even raised objections that there were infirmities in the statement of Shri Rajender Jain and has also requested for his cross-examination. However, no opportunity for cross-examining Mr. Rajender Jain was provided to the assessee. It was submitted that it is a settled legal proposition as laid down by the Hon'ble Supreme Court in the case of *Andaman Timber Industries Vs CCE (Civil Appeal no 4228 of 2006 dated 02/09/2015)* that where any assessment is made on the basis of statement of Third Party without providing an opportunity to cross examine, then in such cases, the assessment is liable to be quashed. It was further submitted that once the assessee has given explanation during reassessment proceedings and complete evidence of transaction has been given, then it is for the Department to prove that whatever is stated, is not real. It was submitted that there is no such finding in the re-assessment order where the documents and submissions made and the evidence given by the assessee were found to be false. Regarding the finding of the AO that the assessee made the payment after three months to the suppliers whereas diamond trade is a cash trade unless and until the buyer has routine dealings with the seller, it

was submitted that the AO failed to appreciate that the assessee has issued two post-dated cheques bearing No. 098742 and 098743 dated 14.07.2009 and 28.07.2009 for Rs.5,14,600/- and Rs.5 lacs respectively. It was submitted that the assessee commands market confidence and has reputation of making payment on committed dates. It was submitted that it is well settled law that the AO cannot sit in the arm-chair of businessman and suggest him how to do business, whom to give credit and when not to give credit. It was, accordingly, submitted that the AO simply passed the reassessment order on the basis of conjectures and surmises and merely on suspicions and simply relying on the Third Party statement. It was further submitted that where the source of purchase has been fully explained, the purchase cannot be held as bogus. There is no cash transaction involved. The assessee's premises were searched on 24.07.2009 and no document was found to suggest that how the account of alleged bogus purchase was scared off. It was further submitted that even the value of closing stock is not in dispute and no defect has been found in its valuation, then in such cases, when the diamonds so purchased become part of the stock and get reflected in the closing stock, purchases cannot be held as bogus. It was further submitted that the assessee carried the matter in appeal before the Id. CIT(A) and aforesaid submissions and documentation were submitted, however, Id. CIT(A) has sustained the findings and the additions so made by the AO without addressing the various contentions raised by the assessee. It was, accordingly, submitted that the additions so made by the AO and confirmed by the Id. CIT(A) be deleted.

5. It was further submitted similar matter came up for consideration before the Delhi Benches of the Tribunal in the case of Bhatia Diamonds Pvt. Ltd. Vs ITO (ITA no. 2821/Del/2018 dated 5/04/2019) wherein there were similar allegations of making bogus purchases from M/s Kriya Impex Pvt. Ltd. and the additions were made basis the statement made by Shri Rajender Jain wherein the appeal filed by the assessee was allowed and necessary relief was granted by the

Tribunal taking into consideration the fact that the assessee was not granted an opportunity to cross-examine Shri Rajender Jain. It was, accordingly, submitted that the facts and circumstances of the present case are exactly identical and the proposition laid down in the said case squarely applies in the instant case.

6. Per contra, the Id. DR submitted that as regards the original assessment for the impugned assessment year completed u/s 153A(1)(b) read with 143(3) vide order dated 20.10.2011 and the relief granted by the Id CIT(A), the Revenue is in appeal before the Tribunal and the matter has still not attained finality. It was further submitted that the case of the assessee was re-opened based on information that the assessee was one of the beneficiaries of transactions arranged by Shri Rajender Jain who had indulged in providing accommodation entries in form of bogus sale bills. It was submitted that it is not a case where the AO has not considered the entries in the books of account of the assessee, however, the issue is regarding the genuineness of these entries so recorded in the books of account. Thereafter referring to the statement of Shri Rajender Jain and the modus-operandi followed by him and the related entities, it was submitted that the AO has gone ahead and has rightly held that the purchases to the extent of Rs.10,14,600/- were bogus purchases which have resulted in under-statement of profit and accordingly, the same was brought to tax in the hands of the assessee. It was submitted that the name of the assessee was found in the books of M/s Kriya Impex Pvt. Ltd. wherein Shri Rajender Jain was the Director whose only business was that of providing accommodation entries and the assessee was one of the beneficiaries of such accommodation entries. It was submitted that the assessee has contended that the reliance has been placed on the statement of a Third Party, however, the fact remains that this is the very party from whom so called purchases have been made by the assessee. No stock what-so ever was found from the premises of the seller. The seller explained its modus-operandi in detail which was duly informed to the assessee and the statement of Shri Rajender Jain was recorded on oath u/s

132(4) wherein he confessed that he is only the entry provider. It was further submitted that the assessee made the payment after three months to the so called supplier whereas the diamond trade is a cash trade unless and until the buyer has routine dealings with the seller. It was submitted that it was a straight dealing and the seller would not have waited for three months to receive the payment. It was submitted that the assessee did not substantiate the purchases made vis-à-vis the mode of delivery and the person who made the purchases and simply stating that the stock have been shown in the books of account will not serve the purpose. It was, accordingly, submitted that it is a clear case where the AO has held that the purchases so shown by the assessee as bogus in nature which has resulted in under- statement of profit and consequent addition in the hands of the assessee. It was submitted that the Id. CIT(A) has rightly confirmed the findings of the AO and in light of the same, no interference is called for in the findings of the lower authorities and the appeal filed by the assessee be dismissed.

7. We have heard the rival contentions and perused the material available on record. During the course of reassessment proceedings, the assessee has submitted before the AO that purchases from M/s Kriya Impex Pvt Ltd have been duly recorded in the books of accounts and forming part of its closing inventory and in support, necessary documentation in terms of copy of bill dated 6/04/2009 containing the name and address of Kriya Impex Pvt Ltd at Surat and its GST and PAN has been submitted indicating description of goods as cut and polished diamonds weighing 22.80 CTS valued at Rs 10,14,600/- and on perusal of bill, it is noted that the delivery of diamonds has been made by Mr Rajat Chadha on behalf of M/s Kriya Impex Pvt Ltd at Chandigarh. Further, the assessee has submitted copy of the Purchase Register for the period 1-04.2009 to 30-04.2009 wherein these purchases were duly recorded in the books of account vide voucher number 10031 dated 16.04.2009 and copy of the Stock Register for the period 15.04.2009 to 16.04.2009 showing physical

receipts of diamonds and recording thereof as part of inventory in the books of accounts. Further, copy of the bank statement for the period 1.07.2009 to 31.07.2009 has been submitted evidencing the payment towards these purchases to M/s Kriya Impex through cheques bearing No. 098742 and 098743 dated 14.07.2009 and 28.07.2009 for Rs.5,14,600/- and Rs. 5 lacs respectively. We therefore find that the assessee has duly explained and substantiated the nature and source of purchase of these diamonds as duly recorded in the books of accounts and shown as part of its closing stock as on the close of the financial year and has thus duly discharged the initial onus cast on it.

8. Now, coming to the reasoning adopted by the Assessing officer, as also reiterated by the Id DR during the course of hearing, we find that the Assessing officer has accepted the fact that these documentation have been submitted by the assessee in support of the purchases and forming part of assessee's stock and payments being made towards such purchases through banking channel, and as duly recorded in the books of accounts of the assessee as well as the fact that these transactions have been recorded in the books of M/s Kriya Impex Pvt Ltd but at the same time, has failed to consider the same questioning their genuineness heavily relying upon the statement of Shri Rajender Jain and basis his statement has held that since the assessee was one of the beneficiaries of the accommodation entries provided by him through M/s Kriya Impex Pvt Ltd, the purchases from M/s Kriya Impex Pvt. Ltd were bogus in nature. In this regard, we find that the assessee has submitted before the Assessing officer, as evident from the written submissions dated 17.08.2015 reproduced in the reassessment order, that the search was conducted on Shri Rajendra Jain on 3/10/2013 where as the impugned transaction is dated 6/04/2009. It was submitted that the statement of Shri Rajendra Jain has been recorded at the back of the assessee, is a vague statement without any supporting evidence and the assessee be allowed an opportunity to cross-examine Shri Rajendra Jain whose statement is being relied upon. The Assessing officer has however stated that Shri Rajendra

Jain was the director of M/s Kriya Impex Pvt Ltd in whose books the name of the assessee has been found, the statement of Shri Rajendra Jain has been recorded on oath u/s 132(4) where he confessed that he is an entry provider and such statement has an evidentiary value and no opportunity to cross-examine Shri Rajendra Jain was thus provided to the assessee.

9. There is no dispute on the legal proposition that statement recorded on oath u/s 132(4) do carry an evidentiary value against the person whose statement has been recorded. Where however, such a statement is used against any other party, it is equally a settled legal proposition that before such a statement and contents thereof are relied upon, the assessee be allowed an opportunity to cross-examine such person especially where a request has been made in this regard and we find that no such opportunity of cross examination has been provided to the assessee. Even the Id CIT(A) has summarily upheld the findings of the AO and has not addressed the said contention raised before him. Such an action on part of the AO and Id CIT(A) cannot be sustained in eyes of law. In this regard, useful reference can be drawn to the decision of Hon'ble Supreme Court in case of Andaman Timber Industries (*supra*) and following the same, the decision of the Coordinate Delhi Benches in case of Bhatia Diamonds Pvt Ltd (*supra*) wherein the relevant findings read as under:

"5.1 Keeping in view of the aforesaid discussions, I am of the considered view that assessee has considerable cogency that addition was made on the basis of statement of Sh. Rajendra Jain, but the assessee was not granted the opportunity to cross examine Sh. Rajendra Jain which ground was also raised before the Ld. CIT(A), who did not adjudicate the same, which is against the settled law. I note that exactly on the similar facts and circumstances the ITAT, SMC, Delhi Bench vide its order dated 06.11.2018 passed in ITA No. 3510/Del/2018 (AY 2014-15) in the case of Smt. Jyoti Gupta vs. ITO wherein, the SMC Bench has considered the statement of Vikrant Kayan and has held that since the impugned addition was made on the statement of Sh. Vikrant Kayan without providing any opportunity to the assessee to cross examine the same, which is in violation of principle of natural justice and against the law laid down by the Hon'ble Supreme Court of India in the case of Andaman Timber vs. CIT decided in Civil Appeal No. 4228 of 2006. For the sake of convenience, I am reproducing the relevant portion of the ITAT, SMC, Delhi Bench vide its order dated 06.11.2018 passed in ITA No. 3510/Del/2018 (AY 2014-15) in the case of Smt. Jyoti Gupta vs. ITO as under:-

"13. Merely on the strength of statement of third party i.e. Shri Vikrant Kayan cannot justify the impugned additions. Moreso, when specific request was made by the assessee for allowing cross examination was denied by the Assessing Officer. The first appellate authority also did not consider it fit to allow cross-examination. This is in gross violation of the principles of natural justice and against the ratio laid down by the Hon'ble Supreme Court in the case of Andaman Timber Vs. CIT Civil Appeal No. 4228 OF 2006 wherein it has been held as under:

"According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them. As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal No. 2216 of 2000, order dated 17.03.2005 was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions. In view of the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the Show Cause. We, thus, set aside the impugned order as passed by the Tribunal and allow this appeal."

14. Considering the facts of the case in totality, I do not find any merit in the impugned additions. The findings of the CIT(A) are accordingly set aside. The Assessing Officer is directed to allow the claim of exemption u/s 10(38) of the Act."

6. Keeping in view of the facts and circumstances of the present case and respectfully following the order of the Tribunal, SMC Bench, Delhi in the case of Smt. Jyoti Gupta vs. ITO (Supra) and in view of the law settled by the Hon'ble Supreme

Court o f India in the case of Andaman Timber vs. CIT (Supra) , on identical facts and circumstances, the addition in dispute is deleted and the appeal o f the assessee is allowed."

10. In light of the aforesaid discussions, we are of the considered view that where the assessee has discharged the initial onus cast upon it and has submitted the necessary documentation in support of the purchases so made and such purchases are duly recorded in the books of accounts and forming part of the inventory and such books of accounts and closing inventory being duly accepted and no adverse finding recorded by the AO, mere reliance on statement of Mr Rajender Jain without allowing an opportunity of cross – examination to the assessee, the purchases so made cannot be held as bogus. Further, we are intrigued by the fact that where the said purchases are equally forming part of inventory and closing stock as not disputed by the AO and in absence of any finding that the purchases are made at an inflated value vis-à-vis comparable third party and/or the closing inventory has been shown at a lower value, how the same will lead to understatement of profit as so held by the AO which is not clear from the reassessment order.

11. In light of aforesaid discussion and in the entirety of facts and circumstances, the addition of Rs 10,14,600/- so made by the AO and upheld by the Id CIT(A) is hereby directed to be deleted. Ground of appeal no. 4 of assessee's appeal is thus allowed.

12. Grounds no. 1-3 are regarding challenging the validity of reassessment proceedings. No specific arguments have been taken during the course of hearing before us. Also in light of the fact that we have deleted the additions on merits of the case, these grounds of appeal have become academic in nature and thus, dismissed as infructious.

13. In the result, the appeal of the assessee is allowed.

ITA No. 179/CHD/2019

14. Both the parties fairly submitted that the facts and circumstances of the case are exactly identical except the name of the entity M/s Avi Exports from whom the purchases have been made to the tune of Rs 3,00,000/- and similar contentions raised therein be considered. Following our directions and findings in ITA no. 178/CHD2019, the additions of Rs 3,00,000/- are directed to be deleted. With Ground no. 4 as allowed and rest all grounds dismissed as infructuous, appeal of the assessee is allowed.

15. In the result, both the appeals of the assessee are allowed.

Order pronounced in the Open Court on 11 January, 2023.

Sd/-
(DIVA SINGH)
न्यायिक सदस्य/ Judicial Member
“AG”

Sd/-
(VIKRAM SINGH YADAV)
लेखा सदस्य/ Accountant Member

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar