

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, HON'BLE JUDICIAL MEMBER

I.T.A. No. 3199/Mum/2024
Assessment Year: 2012-13

Mahir Diamonds 329, Parekh Market 39, Kennedy Bridge Opera House Mumbai - 400004 [PAN: AALFM2726J]	Vs	Income Tax Officer, 19(2)(3), Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Rahul Sardar, A/R
Revenue by :	Shri R.R. Makwana, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 26/08/2024
घोषणा की तारीख/Date of Pronouncement : 28/08/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM :

This appeal by the assessee is preferred against the order dated 07/06/2024 by NFAC, Delhi [in short 'ld. CIT(A)], pertaining to AY 2012-13.

2. The sum and substance of the grievance of the assessee is that ld. CIT(A) erred in confirming the addition of Rs. 25,20,244/- being alleged bogus purchases. The assessee claims that the addition, if any, should be restricted to the margin of profit imbibed in the alleged purchases.

3. Briefly stated the facts of the case are that the assessee filed its return of income declaring income at Rs.1,62,630/-. Subsequently, the AO received information from the DGIT (Inv.), Mumbai, that, a search action was carried out in the case of Shri Rajendra Jain, Shri Sanjay Choudhary, Shri Dharmichand Jain and their group concerns on

03/10/2013. During the search action, it was revealed that these persons were merely providing accommodation entries through various *benami* concerns operated and managed by them. The AO came to know that the assessee was one of the beneficiaries of the bogus purchase bills. The assessee was asked to explain the purchases of Rs.25,50,244/- alleged to be bogus purchases. The assessee produced books of accounts, sale purchase register along with sale and purchase invoices to show that the purchases are genuine. The reply of the assessee did not find any favour with the AO who proceeded by making addition of Rs.25,20,244/-. The assessee carried the matter before the Id. CIT(A) but without any success.

4. Before us the Id. Counsel for the assessee contended that even if the purchases of Rs.25,20,244/- are treated as bogus then also only the profit element should be added and not the entire amount.

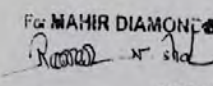
Per contra, the Id. D/R strongly supported the findings of the AO/Id. CIT(A) and read the operative part.

5. We have carefully considered the orders of the authorities below. There is no dispute that the assessee has furnished the entire trading details before the revenue authorities. It is also not in dispute that the sales have been accepted as such and only one purchase has been doubted. The total purchases during the year under consideration was to the tune of Rs.1.55 Crores and only purchase of Rs.25.50 Lakhs is disputed whereas sales of Rs.1.65 Crores have been accepted as such. The entire trading result can be understood from the following chart:-

MAHIR DIAMONDS											
FINANCIAL YEAR: 2011 - 2012											
POLISH DIAMOND STOCK											
Purchase / Inward						Sale / Outward					
Date	Party Name	Item	Cts.	Rate	Amount	Date	Inv. No.	LL	Cts.	Rate	Amount
01.04.2011	OPENING STOCK	CUT & POLISH DIAMONDS	18.60	7,500.00	1,39,500.00						
09.05.2011	KUSHAL EXPORTS	CUT & POLISH DIAMONDS	95.43	31,468.00	30,02,991.00	11.05.2011	MD/EXP1/2011-12	NIVESH INVEST PTE LTD	105.67	39,769.18	42,02,409.65
09.05.2011	DIASHINE	CUT & POLISH DIAMONDS	8.73	87,897.00	7,67,341.00	06.08.2011	MD/LS/P1/2011-2012	ANSHI DIAMOND	6.99	47,500.00	3,32,025.00
09.05.2011	DIASHINE	CUT & POLISH DIAMONDS	1.51	75,340.00	1,13,763.00	15.10.2011	MD/LS/P2/2011-2012	ANSHI DIAMOND	37.99	49,500.00	18,80,505.00
12.05.2011	PRIYANKA GEMS	CUT & POLISH DIAMONDS	15.13	31,327.00	4,73,978.00	30.11.2011	MD/LS/P3/2011-2012	GURJAR GEMS PVT LTD	9.51	42,000.00	3,99,420.00
12.05.2011	PRIYANKA GEMS	CUT & POLISH DIAMONDS	20.19	29,014.00	5,85,792.00	07.12.2011	MD/LS/P4/2011-2012	SANDHYA SHETTY	5.57	28,000.00	1,55,960.00
14.05.2011	AAKASH OVERSEAS	CUT & POLISH DIAMONDS	300.33	21,151.00	63,52,279.00	07.12.2011	MD/LS/P5/2011-2012	VEEKAY DIAMANTS	42.59	56,000.00	23,85,040.00
02.06.2011	KUSHAL EXPORTS	CUT & POLISH DIAMONDS	198.76	3,150.00	6,26,094.00	10.12.2011	MD/LS/P6/2011-2012	GURJAR GEMS PVT LTD	8.79	44,000.00	3,86,700.00
28.01.2012	PRIMA JEWELS	CUT & POLISH DIAMONDS	20.58	42,700.00	8,68,476.00	10.12.2011	MD/LS/P6/2011-2012	GURJAR GEMS PVT LTD	3.25	42,500.00	1,38,125.00
01.02.2012	KALASH ENTERPRISES	CUT & POLISH DIAMONDS	31.66	80,551.00	25,50,744.00	27.12.2011	MD/LS/P7/2011-2012	ANSHI DIAMOND	6.25	33,000.00	2,06,250.00
26.03.2012	HARESH CORPORATION	CUT & POLISH DIAMONDS	6.24	11,881.25	74,139.00	30.12.2011	MD/LS/P8/2011-2012	VEEKAY DIAMANTS	27.14	60,000.00	16,28,400.00
						01.02.2012	MD/EXP2/2011-2012	XIANG YANG GLOBLE UMITEC	31.66	86,772.99	27,47,233.00
						17.02.2012	MD/LS/P9/2011-12	NIMIT SHAH - HUF	269.33	5,400.00	14,54,382.00
						15.03.2012	MD/LS/P10/2011-2012	PARUL DIAMONDS PVT LTD	156.18	3,745.00	5,84,894.00
Total			717.16	21,689.16	1,55,54,597.00				710.92	23,211.34	1,65,01,403.65

Closing Stock			
Item	Cts	Rate	Amount
C & P DIA	6.24	11,881	74,139

Rough Stock	989.6	115	113804
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For MAHIR DIAMONDS

 PARTNER

6. The gross profit rate as show by the assessee in its audit report Form 3CD is 6.19%. The Hon'ble High Court of Bombay, in the case of *PCIT vs. Mohommad Haji Adam & Co.* reported in [2019] 103 taxmann.com 459 (Bombay), under identical situation, held as under:-

"8. In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of *N.K. Industries Ltd.* (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under –

" So far as the question regarding addition of Rs. 3,70,78,125/- as gross profit on sales of Rs. 37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly

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been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6% gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66%. Therefore, considering 5.66% of Rs. 3,70,78,125/- which comes to Rs. 20,98,621.88 we think it fit to direct the revenue to add Rs. 20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said question is answered partially in favour of the assessee and partially in favour of the revenue."

9. *In these circumstances, no question of law, therefore, arises. All Income Tax Appeals are dismissed, accordingly. No order as to costs."*

7. Considering the gross profit rate in the light of the decision of the Hon'ble Bombay High Court, we direct the AO to restrict the addition to 6.19% of Rs.25,50,244/- i.e., addition to the extent of Rs. 1,57,860/- is confirmed. Assessee gets part relief.

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

Order pronounced in the Court on 28th August, 2024 at Mumbai.

Sd/-

(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-

(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 28/08/2024

SC S.P.

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai