आयकर अपीलीय अधिकरण "H" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.4133/Mum/2016

(**निर्धारण वर्ष /** Assessment Year: 2012-13)

Samkit Diamonds Exporters 111 Prasad Chambers, Tata Road No.2, Opera House, Mumbai 400004	**बनाम**/ v.	ACIT 19(3) Mumbai
स्थायी लेखा सं./PAN : AAKFS5302F		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

आयकर अपील सं./I.T.A. No. 4383/Mum/2016

(**निर्धारण वर्ष /** Assessment Year: 2012-13)

ACIT 19(3),Matru Mandir, 2nd floor, R.No. 206, Tardeo Road, Mumbai 400007	**बनाम**/ v.	Samkit Diamonds Exporters 111 Prasad Chambers, Tata Road No.2, Opera House, Mumbai 400004
स्थायी लेखा सं./PAN : AAKFS5302F		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by:	Shri. Sanjay K Parikh
Revenue by :	Shri. V. Vidyadhar,Sr DR

सुनवाई की तारीख **/Date of Hearing : 26-10-2017**

घोषणा की तारीख **/Date of Pronouncement : 29.11.2017**

आदेश / O R D E R

PER RAMIT KOCHAR, Accountant Member

These are cross appeals, filed by the assessee and Revenue, being ITA No. 4133/Mum/2016 and 4383/Mum/2016 respectively for assessment year 2012-13, which are directed against the appellate order dated 28.03.2016 passed by learned Commissioner of Income Tax (Appeals)-30,

Mumbai (hereinafter called "the CIT(A)"), for assessment year 2012-13 the appellate proceedings had arisen before learned CIT(A) from the assessment order dated 27.03.2015 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income-tax Act, 1961 (hereinafter called "the Act").

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") in ITA no. 4133/Mum/2016, read as under:-

> *" The Honourable Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs. 53,54,962/- @ 3% of alleged bogus purchases of Rs. 17,84,98,737/- against addition of Rs. 1,42,79,899/- @ 8% of the said alleged bogus purchase made by the AO without considering the facts and merit of the case*
>
> *The Hon'ble CIT (Appeals) has also erred in not considering the explanations, affidavit, confirmations and other relevant documents submitted during assessment and appeal proceedings in support of being genuineness of the alleged bogus purchases without understanding the merits and value of the said documents.*
>
> *The Appellant craves leave to submit at the time of hearing such further facts, information, clarification, documents etc. as may be necessary for the purpose of deciding the issues in the appeal.*
>
> *The appellant craves leave to add, alter, amend or modify the aforesaid grounds of appeal "*

3. The grounds of appeal raised by the Revenue in the memo of appeal filed with the tribunal in ITA No. 4383/Mum/2016 read as under:-

> *"1. On the facts and circumstances of the case and in law, whether Ld CIT(A) was justified in sustaining the addition to the extent of only 3% of the total purchases instead of 8%.*
>
> *2. The appellant prays that the order of the Learned CIT(A) on the above ground be set aside and that of the AO be restored."*

4. The brief facts of the case are that the assessee is in the manufacturing and Trading of polished diamonds . The search and survey action was conducted by the Revenue in the case of Shri. Bhanwarlal Jain and others on 03.10.2013 by DGIT (Inv) Mumbai. The investigation wing Mumbai, unearthed various concerns/entities being managed , controlled and operated by Sh. Bhanwarlal Jain and his family members although these concerns/entities were having name sake/ dummy directors/

partners/ proprietors in these concerns/entities who were acquaintances of Shri. Bhanwarlal Jain and his family members . Sh. Bhanwarlal Jain used to open various benami concerns/entities in the name of his acquaintances which were actually managed and controlled by Sh. Bhanwarlal Jain and his family members. These acquaintances who were dummy partners/ proprietors/ Directors in benami concerns of Sh. Bhanwarlal Jain and his family were merely name lenders and were in fact employees of Sh. Bhanwarlal Jain and family and were looking after miscellaneous work like depositing cheques in banks, handing over parcels to clients, making data entry etc. . It came to notice of Revenue that the assessee has taken accommodation entries of purchases from the following sixteen parties belonging to Sh. Bhawarlal Jain group for A.Y 2012-13 as under:-

Sr. No.	Name of the hawala party	Bill amount
1.	Prime Star	2641957
2.	Meenakshi	13458256
3	Mohit Enterprises	8919122
4	Mayur Exports	2565869
5	Navkar India	19298450
6	Rajan Diamonds	5034664
7	Parvati Exports	9878834
8	Malhar Exports	10427640
9	Navkar Diamonds	4529981
10	Balaii Impex	6874280
11	Aastha Impex	32529911
12	Surya Di m	16728813
13	Mukti Exports	21339084
14	N am an Exports	2892957
15	Pankai Exports	12119790
16	Pushpak Gems	9259129
		178498737

The assessee in response to the notice issued by the AO asking to explain the transactions with these concerns, submitted that the purchases made from these parties were genuine and duly entered in the books of accounts maintained by the assessee. It was explained that payments have been made for purchases from these parties through cheques only. The A.O observed that the assessee has only furnished stock register entry, cheque payments, custom appraisal report in respect to export sale but no other document such as delivery challans were produced by the assessee during the course of assessment proceedings , which led A.O to believe that these purchases

shown by the assessee from these firms are bogus. The A.O concluded that since the assessee has provided stock statement wherein the entries of these purchases were made , the only conclusion as per AO can be drawn is that the assessee has purchased these items from open markets either directly or through brokers from some parties known to the assessee. The AO concluded that the assessee was beneficiary of the accommodation bills issued by these parties. The AO observed that the assessee has claimed sales to be genuine , it is proved that the assessee was actually in possession of the goods as there cannot be sales without purchases. It was concluded by the AO that purchases were actually made by the assessee from grey market without bills at a lower prices and the assessee has been benefited due to margin of the grey market. The A.O concluded that to give it a colour of being genuine purchases, the assessee has obtained bogus bill f om the suppliers and purchase rates as mentioned in the suppliers sale invoices cannot be accepted. The conclusion as recorded by the A.O is as under:-

> *" a. That the physical delivery of the goods were obtained from the parties based in grey market and to give it colour of being a genuine purchase, the bogus bill / accommodation bill was obtained from the supplier.*
>
> *b. Though the purchases alleged as genuine are shown to have been made by making payment thereof by an account payee cheques, the cheques have been deposited in bank accounts ostensibly in the name of the apparent sellers.*
>
> *c. The assessee could not produce any delivery challan to prove that he de ivery of these goods have been actually received by them from these alleged suppliers.*
>
> *d. The Director/ Partner/ proprietor of above parties have no knowledge of diamond business.*
>
> *e. The Director/ Partner/ proprietor of above parties had only receipt of salary, mostly in cash. At times the salary is disbursed to them on need basis, as and when required. It has been observed that the profit of the concerns in which such employees are shown as directors, partners or proprietors are maintained more or less equivalent to their annual salary. In the regular books of the said concern, the profit is shown to be appropriated by the concerned director/partner/proprietor; however the same is actually appropriated by Bhanwarlal Jain & Family. These employees merely get salary for lending their names to various concerns and for doing miscellaneous office work, looking after banking transactions and date entry of the accounts etc. In some cases, wives of these employees are shown to be receiving salary from certain concerned without rendering any services*

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f. The concerns in which these employees are shown as directors/partners/proprietors are operating from the premises which are in the name of Bhanwarlal Jain & Family.

g. The concern is shown to be engaged in import of diamonds. However when the name sake directors/partners/proprietors were specifically asked to explain how they contacted the parties from whom the imports have been made in the respective concerns, he was unable to comment on the same. He admitted of not having any personal contact with any of the importers either through phone or email. He also admitted of not having visited any foreign country for the purpose of business.

h. The assessee was also asked to produce the above suppliers for verification but he failed to produce them before the undersigned. When expenditure (Purchase) is claimed to have been incurred, the initial burden will be on the assessee to prove the genuineness of the purchase. In case the parties have shifted, the asses ee is expected to know their current address as the onus is on the assessee (legal heir) to prove that the purchases were genuine. Reliance is placed on judgment of the Gujarat High Court reported in CIT Vs Chandra Vilas Hotel (1987) 164 ITR 102 (Guj.). This onus has not been discharged by the assessee.

Thus the A.O observed in such situat on when stock has been reconciled , it could be concluded that the assessee has obtained accommodation bills from concerns/entities controlled by Sh. Bhanwarlal Jain Group while actual purchases were made from grey market in cash without bill and to adjust the transactions, bills were obtained from the concerns controlled, operated and managed by Sh. Bhanwarlal Jain Group and the only remedy as per A.O is to bring to tax income which has escaped taxation, will be the profit margin mbedded in such transaction. The A.O discussed the modus operandi followed by the other diamonds merchant to suppress profits and to make quick profit by indulging in such accommodation entries. Thus , the A.O held that the purchases made by the assessee were not genuine as they could not be verified from the books of accounts. The AO rejected books of accounts of the assessee u/s. 145(3) by holding as under:-

" *Thus, from the above analysis of the facts, it is crystal clear that the purchases made by the assessee from the above parties and claimed as expenses in his profit and loss account are not genuine. Since the purchases to that extent remain unverifiable and cannot be accepted, the books of accounts are rejected as provided in Section 145(3) of the IT Act.*

Hence, the endeavour is to impute the additional G.P., which the assessee must have earned by purchasing the diamonds in the grey

*market, than from the regular dealer. This would be the margin which the petty trader in the grey market offers you over the .established genuine trader. Taking all these facts into entirety, one may conclude that such margin would not be more than 8% of the purchase cost debited against Bhawarlal Jain group concerns. This should take care of the margin earned by the assessee to indulge into such transaction. The reason, why this margin looks practical is that most of the traders in the market actually operate at this level of margin in the open market. In fact, this fact was also identified by the Government of India, when in his Budget Speech on 28.2.2007, the then Hon'ble Finance Minister of India had introduced a Benign Assessment Procedure (BAP) for the assessee who are into manufacturing and/or trading of diamonds. BAP was to be applicable for those diamond merchants, who were showing a profit margin of 8% of their turnover. Although, this BAP talks about the net profit margin (NP), for a petty dealer, operating without any establishment, the GP would be almost similar to NP. Hence, it was assumed that the margin in the market, for a petty dealer, would be 8%, which is the same margin that is now being adopted for purchases made in cash from the grey market and for which the bills are procured from the Bhawarlal Jain group concerns. Accordingly, the addition to the total inc me of the assessee is computed to the amount of Rs.14279899/- (Rs. 178498737/- *8%). Penalty proceedings u/s 271(1)(c) are hereby initiated separately for filing inaccurate particulars and concealment of income"*

Thus in nutshell AO made additions to the tune of Rs.1,42,29,899/- at the rate of 8% of the alleged bogus purchases of Rs. 17,84,98,737/- , vide assessment order dated 27-03-2015 passed by the AO u/s 143(3).

5. Aggrieved by the assessment order dated 27-03-2015 passed by the AO u/s 143(3), the assessee filed first appeal before the learned CIT(A), who after considering the submissions of the assessee restricted the addition to 3% of the said total alleged bogus purchases of Rs. 17,84,98,737/- , by holding as under vide appellate orders dated 28-03-2016 passed by learned CIT(A):-

" 5. I have given my careful consideration to the rival submissions, perused the material on record and duly considered the factual matrix of the case as well as the applicable legal position.

6. All the grounds of appeal are in respect of the addition made on account of bogus purchases from the sixteen concerns belonging to Shri Bhanwarlal Group, as listed in the assessment order. In the grounds, it is alleged that while making the addition, AO not considered the affidavits of the suppliers who confirmed the transaction entered with the appellant and all of them are available for production/cross examination. The A.O is not correct in considering the purchases as accommodation entries and estimating the adhoc disallowance @ 8% of the total purchases.

6.1 In making the addition, Ld. A.O. relied on the sworn statements given at the time of search and survey operations on the group concerns of Shri Bhanwarial Jain, 'recorded from the in-charge persons of the dummy concerns and the- post search investigation outcome of the investigation wing. It was noticed by the Ld. AO that all the said persons/ concerns from whom appellant had allegedly made purchases had testified before the Investigation authorities that they are merely employees of Shri Bhanwarlal Jain & family and are shown as directors, partners and proprietors and the management of the concern lies in the hands of Shri Bhanwarlal & his family members. Post search investigation revealed that the appellant taken accommodation entries from these parties. Ld. AO held that in absence of the supply of goods, even though the documentation aspect of the transaction was not being denied, it would lead to the only human probability that the goods mentioned in the paper transaction were purchased by the appellant from undisclosed entities from the grey market. Hence, L . AO assumed that since the sales made by the appellant were confirmed, purchases had definitely taken place though not from the aforementioned suppliers. Therefore, the AO came to the conclusion that there was a definite probability that purchases were made from undisclosed entities from the grey market and got benefited by the additional GP margin earned by purchasing from the grey market which was estimated @ 8% of such total purchases made from those concerns and added to the total income.

6.2 Per contra, Ld. AR has vehemently argued that all the purchases are genuine and required documentary evidences were submitted during the assessment proceedings. Documentary evidence like purchase bills/ invoices which indicates the: place of delivery of goods, ledger confirmations, IT returns, balance sheets and Profit & Loss accounts of the alleged parties bank statements showing the payments made through RTGS mode, affidavits from those parties affirming the transactions were furnished before the AO. It is stated that purchases were recorded in the books of accounts and were included in the stock records and mainly 99% of the sales are export sales. Statement given by a third party cannot be a reason for doubting the genuineness of purchases and the appellant do not know Shri Bhanwarlal Jain. All the parties are available at the given addresses and they have also given affidavits confirming the sale made to the appellant and in view of the same, statement of the third party has no evidentiary value. All the purchases and sales are duly entered in the books of accounts. The AO, when in doubt with regard to the genuineness of the transaction would have called the parties for verification under the powers vested with him u/s 133(6)/ 131 of the Act. All the invoices are clearly stating the place of delivery of the goods hence delivery challans haven not been separately issued and attached to the invoices. Since the appellant deals in diamonds/ which is a very small item the same are personally

delivered in normal course of business. AO rejecting the books of accounts is not justified for the reason that the purchases are genuine & duly accounted in the books of accounts, payments are duly made in the same year or next year, no tangible material with the AO with regard to the alleged bogus purchases except the information received from the investigation wing based on the search/survey action and a statement recorded from an unconnected party. AO himself accepted the purchases/ sales and expenses and question of rejection of books does not arise in such a situation and the AO stating in the assessment order that the books of accounts are rejected, is null and void. Moreover no opportunity was given before rejecting the books and the books are audited u/s 44AB of the Act and therefore rejection of books of accounts is not correct, it is submitted by the appellant relying on certain decision cited in the written submissions. While arguing on the grounds of appeal it is submitted that statement taken from Shri Bhanwarlal Jain & others during survey does not have any evidentiary value, as the same is taken from a third party and also statement taken during the survey is not an evidence in the eyes of law and judiciaries, citing several decisions on this issue in the submissions. It is argued that AO accepted the purchases are genuine however raised doubt about the purchasers and stated that they are purchased from the grey market, even though all the documentary evidence were furnished and without having any tangible material in support except the statement given by the unconnected third party. Ld. AR cited several decisions in the submissions, wherein courts have held that addition cannot be made without independent inquiry in relation to any information received from any agency. All the alleged parties are assessed with different authorities like sales tax, income tax and the accounts are audited 'u/s 44AB which shows that the parties are genuine and without making any inquiry the AO came to the conclu ion that they are non-genuine. Therefore the appellant argued hat the impugned addition is merely based on the AO's imagined doubt that is prejudicial and required to be deleted in the interest of justice. Without prejudice to the above arguments, it is also argued that AO made 'addition' of 8% as the gross profit on the said purchases and since the appellant has already declared gross profit of 7.69% the addition should be restricted to 0.31% being the difference thereof on the said alleged purchases.

6.3 On perusal of the rival contentions and the material on record, I have found that in the appellant's case, Ld. A.O has not made independent verifications nor he has attempted to issue notice u/s: 133(6)/ 131 of the I.T. Act, but the fact remains that there was an overwhelming evidence in the form of sworn statements recorded from the alleged suppliers given before the Investigation Wing, Mumbai that they are only name sake proprietors/ partners / directors of the concerns and the actual management & control is by Shri Bhanwarlal Jain& his family members. Shri Bhanwarlal Jain also admitted that they are only giving accommodation entries to several parties and the appellant is one among them.

6.4 After weighing the evidence pro and con, I am of the opinion that onus is always on the appellant to prove as to how the material purchased was firstly obtained when the suppliers themselves admitted that they never did the business and are merely name lenders for the business concerns of Shri Bhanwarlal Jain, who has admitted that only accommodation entries were given and no actual sale to those parties. In view of the same, I am in agreement with the findings of the AO that the purchases are not made from these parties but from the grey market by paying cash and as the bills are not available for such transactions, obtain bills from third parties, who after receipt of cheques returned the cash after deducting its commission. A person who procures the material from the grey market and exports the same and receives the sale proceeds through proper banking channels, to complete the chain of transaction i.e. to book the purchases against the sale proceeds received, he obtains the bills from entry providers, like Shri Bhanwarlal Jain entities in the present case- issues cheque t them and receives the amount back in cash. In this background only most of the cheques were issued to Bhanwarlal group entities and the appellant has no other option but to take bills from the entry providers as they needs to complete the trading activity in respect of the diamonds sold in the books of accounts. From these findings it can thus be safely assumed that the appellant has grossly failed in its duty to mitigate the burden cast upon it in so far as proving the genuineness of the transaction, from the said parties are concerned.

6.5 In this regard it is also pertinent to mention that while dealing with the concept of burden of proof, onus of proving is always on the person who makes the claim. While dealing with the issue of deciding the burden of proof, Hon'ble Supreme Court in the cases of CIT Vs. Durgaprasad More 82 ITR 540 and Sumati Dayal Vs. CIT 214 ITR 801 has held that the apparent must be considered real until it is shown that there are reasons to believe that the apparent is not real and that Taxing Authorities are entitled to look into surrounding circumstances to find out the reality and the matter has to be considered by applying the test of human probabilities. The Hon'ble court also held that, it is no doubt, true that in all cases in which a receipt is sought to be taxed as income, the burden lies on the department to prove that it is within the taxing provision and if a receipt is in the nature of income, the burden to prove that it is not taxable because it falls within exemption provided by the Act, lies upon the assessee. In the case of Durga Prasad More (Supra), the Hon'ble Court went on to add that a party who relies on a recital in a Deed has to establish the truth of this recital, otherwise it will be very easy to make self serving statements in documents either executed or taken by a party who relied on those recitals. If all that an assessee who wants to evade tax has to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. The Hon'ble Court further held that the Taxing Authorities were not required to put on blinkers while looking at

the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents.

6.6 Reliance is also placed on the judgement of Hon'ble supreme Court in the case of Sri Meenakshi Mills Ltd 63 ITR 609 where it was held that the I.T. Authorities are entitled to pierce the veil of Corporate Entity and to look into reality of transaction. In the case of McDowell & Co. 154 ITR 148(SC) it was stated that implications of tax avoidance are manifold. First, there is substantial loss of much needed public revenue. Next, there is serious disturbance caused to the economy of the country due to piling of mountains of black money, causing inflation. Thus, there is "the large hidden loss" to the community, by some of the' members in the country being involved in the perpetual war waged between' the tax payer and his expert team of advisors, and accountants on the one side and the tax gatherer and his perhaps not so successful advisors on the ot er side.

6.7 The onus to prove that apparent, is not the real one, is on the party who claims it to be so, as held by the Hon'ble Supreme Court in the case of CIT v. Daulat Ram Rawatmull [1973] 87 ITR 349 and CIT v. Durga Prasad More (supra). In the latter case, it has been held by the Apex Court that though an apparent statement must be considered real until it was shown that there were reasons to believe that apparent was not the real, in a case where an authority relied on self serving recitals in documents, it was for the party to establish the proof of those recitals, the taxing authorities were entitled to look into the surrounding circumstances to find out reality of such recitals. It is also a settled legal pr position that if no evidence is given by the party on whom the burden is cast, the issue must be found against him. However, in the instant case, the appellant has miserably failed to lead evidence.

6.8 The Hon'ble Supreme Court, in the case of Chuharmal v. CIT [1988] 172 ITR 250 I 38 Taxman 190 highlighted the fact that the principle of evidence law are not to be ignored by the authorities, but at the same time, human probability has to be the guiding principle, since the AO is not fettered, by technical rules of evidence, as held by the Hon'ble Supreme Court in the case of Dhakeswari Cotton Mills Ltd. CIT [1954] 26 ITR 775. The Hon'ble Supreme Court, in the case of Chuharmal (supra) held that what was meant by saying that Evidence Act did not apply to the proceedings under Income-Tax Act, 1961, was that the rigours of Rules of evidence, contained in the Evidence Act was not applicable; but that did not mean that when the taxing authorities were desirous of invoking the principles of Evidence Act, in proceedings before them, they were prevented from doing so. It was further held by the Hon'ble Apex Court that all that Section 110 of the Evidence Act, 1872 did, was to embody a salutary principle of common law jurisprudence viz. where a person was found in possession of anything, the onus of proving that he was not its owner, was on that person. Thus, this

principle could be attracted to a set of circumstances that satisfies its conditions and was applicable to taxing proceedings.

6.9 The Ld. AR has relied on a number of decisions with regard to the evidentiary value of a statement taken during survey and argued that the statements of Shri Bhanwarlal Jain does not have any evidentiary value. However in the said case, search and survey actions were conducted simultaneously and the statements were recorded during the course of search and seizure proceedings and post search investigations. In view of the same, the arguments of the appellant and cases cited do not come to the rescue of the appellant on this issue.

6.10 The appellant contends that the AO did not make any independent inquiries on his own. However in this case the investigation wing of the Income Tax Department conducted several inquiries in the post search investigation after the search action in the Bhanwarlal group cases and intimated to the assessment wing with clear cut findings that accommodation entries were provided to several parties by the group and the appellant is one among the beneficiaries from such accommodation entries. The appellant also argues that the said parties are assessed with different authorities and the books of accounts are also audited. In this regard it is to state that the AO never doubted the identity of the party but the purchases made from them was doubted. Just because the documentation part is perfect, the transaction cannot become genuine. In the present case the suppliers clearly admitted that they have not done any business and given only accommodation entries and also they are only name lenders to Shri Bhanwarlal Jain and there is no chance of real purchases made by them from these parties. In these circumstances, Ld. AO held that though the transactions are not genuine the appellant must have purchased the goods from some unknown entities and estimated' the G.P margin on such pu chases.

6 11 In this case, I find that quantitative details were maintained, Ld. A.O. not doubted the genuineness of sales, only estimated the profit @ 8% on the total purchases made from the concerns of Shri Bhanwarlal Jain by recording a finding that the appellant made the purchases from some other party. Thus, the issue would boil down to finding out what is the correct element of profit embedded in bogus purchases which the appellant would have made from such unknown entities. In this regard, it is apt to refer certain decisions dealing the similar issue. The decision of Gujarat High Court in the case of Bholanath Poly Fab Pvt. Ltd. 355 ITR 290 (Guj) where the Hon'ble Court was battling with the finding of Hon'ble ITAT that purchases were made from bogus parties since notice issued by the A.O. to these parties were allegedly received returned/unserved' and the assessee was unable to produce any confirmation from these parties. The Tribunal had held that though purchases were made from bogus parties, nevertheless, the purchases themselves were not bogus as the entire quantity of opening stock, purchases and sales

were tallying and hence, only the profit margin embedded in such amount would be subjected to tax. The Hon'ble Gujarat High Court taking cognizance of the fact held that whether purchases themselves were bogus or whether parties from whom such purchases were made were bogus, is essentially a question of fact and the Tribunal having examined the evidence on record and concluded that the assessee did produce cloth and sell finished goods, the entire amount covered under such purchase would not be subjected to tax and only the profit element embedded therein was to be taxed. While coming to the above conclusion, the Hon'ble High Court also relied on the decision in the case of Sanjay Oil Cake Ind. 316 ITR 27(Guj).

6.12 In Sanjay Oilcake Industries Vs Commissioner of Income-tax [2009] 316 ITR 274 (Guj), it was held as under:

"12. Thus, it is apparent that both the Commissioner (A) and the Tribunal have concurrently accepted the finding of the Assessing Officer that the apparent sellers who had issued sale bills were not traceable. That goods were received from the parties other than the persons who had issued bills for such goods. Though the purchases are shown to have been made by making payment thereof by account payee cheques. the cheques have been deposited in hank accounts ostensibly in the name of the apparent sellers, thereafter the entire amounts have been withdrawn by bearer cheques and there is no trace or identity of the person withdrawing the amount from the bank accounts. In the light of the aforesaid nature of evidence it is not possible to record a different onclusion, different from the one recorded by the Commissioner (Appeals) and the Tribunal concurrently holding that the. apparent sellers were not genuine, or were acting as conduit between the assessee-firm and the actual sellers of the raw materials. Both the Commissioner (Appeals) and the Tribunal have, therefore, come to the conclusion that in such circumstances, the likelihood of the purchase price being inflated cannot be ruled out and there is no material to dislodge such finding. The issue is not whether the purchase price reflected in the books of account matches the purchase price stated to have been paid to other persons. The issue is whether the purchase price paid by the assessee is reflected as receipts by the recipients. The assessee has, by set of evidence available on record, made it possible for the recipients not being traceable for the purpose of inquiry as to whether the payments made by the assessee have been actually received by the apparent sellers. Hence, the estimate made by the two appellate authorities does not warrant interference. Even otherwise, whether the estimate should be at a particular sum or at a different sum, can never be an issue of law. "

6.13 Similarly, in yet another decision of Hon'ble Gujarat High Court in the case of CIT vs. Simit Sheth (2013) 38 Taxmann.com 385 (Guj), Hon'ble Court was seized with a similar issue where the A.O. had found that some of the alleged suppliers of steel to the assessee had not supplied any goods but had only provided

sale bills and hence, purchases from the said parties were held to be bogus. The A.O. in that case added the entire amount of purchases to gross profit of the assessee. Ld. CITCA) having found that the assessee had indeed purchased though not from named parties but other parties from grey market, partially sustained the addition as probable profit of the assessee. The Tribunal however, sustained tile addition to the extent of 12.5%. Taking into account the above facts, the Hon'ble Gujarat High Court held that since the purchases were not bogus, but were made from parties other than those mentioned in books of accounts, only the profit element embedded in such purchases could be added to the assessees income and as such no question of law arose in such estimation. The tribunal for arriving the profit-embedded in the transactions @ 12.5% held as under:

"Having-heard the submissions of both sides, we have been informed that the malpractice of bogus purchase is mainly to save 10% sales tax etc.; It has also been nformed that in this industry about 2.5% is the profit margin. Therefore respectfully following the decisions of the co-ordin te b nch pronounced on identical circumstances, we hereby direct that the disallowance is required to be sustained at 12.5% of the purchase from those parties. With these directions we hereby decide the grounds of the rival parties which are partly allowed."

6.14 As narrated earlier the Ld. A.O. in this case has himself held that the purchases were not bogus though the party from whom the purchases were made by the appellant was found to be bogus and that is the reason for which AO considered the profit element embedded on such purchases which is estimated @ 8% of the total purchases. The motive behind obtaining bogus bills thus appears to be inflation of purchase price so as to suppress rue profits. Considering the facts of the case as well as the v rious case laws cited (supra) especially in the case of CIT vs. Simit P. Sheth (supra), I agree with the action of the AO estimating the addition on the total purchases.

6.15 However AO estimated the profit margin @ 8% and the reasons given are that' most of the traders in the market actually operate at this level of margin in the open market; this fact was identified by the GOI introducing the Benign Assessment Procedure (BAP) for the assesses who are into manufacturing and /or trading of diamonds. BAP was to be applicable for those diamond merchants, who were showing a profit margin of 8% of their turnover. Although, this BAP talks about the net profit margin (NP), for a petty dealer, operating without any establishment, the GP would be almost similar to NP. Hence, it was assumed that the margin in the market, for a pretty dealer, would be 8% which is the same margin that is now being adopted for purchases made in cash from the grey market and for which the bills are procured from the Bhanwarlal Jain group concerns: Though I am in agreement with the reasoning of the AO for estimation of the profit percentage, I feel that the AO has not given the correct reasoning for estimation of the profit percentage

@ 8% in this , nature of trade. While deciding the profit element embedded in the bogus purchase cases, Gujarat High court adopted the profit @ 12.5% by taking the benefit derived out of the saving of taxes and the profit margin in that line of trade. In the light of the above, one has to see in the present case, who are in the manufacturing and trading of diamonds, the profit element embedded estimation @ 8% is correct or not. In diamond trade the rate of VAT is stated to be 1% and in some places like Surat the same is fully exempt. Coming to the profit margin in the trade, the task force group for diamond industry constituted by the Government of India, Ministry of Commerce and Industry, after considering the BAP scheme, recommended presumptive tax for net profit calculated @2% of trading activity and @3% for manufacturing activity or @ 2.5% across the board. It is also ascertained that the operating profit in case of diamond trading for computation of ALP by the TP wing is consistently in the region of around 1.75% to 3%. It is also brought to my notice that the AOs are also adopting 3% on the purchases made from Bhanwarlal group concerns, as the profit element embedded, in the subsequent assessments finalised on the similar set of facts. In view of the same and also since the profit margin is lesser in this sector, adopting 8% by the AO, is not based on correct footing. Considering the lesse profit margin in this sector i.e. around 2 to 3 percent and the taxes saved is around 1 % and also on purchases made f om places like Surat, there is no levy of tax, I am of the considered opinion that if the addition is sustained to the extent of 3% of the purchases made as the profit element embedded in such purchases from the sixteen parties belonging to the Bhanwarlal Group concerns, the same will meet the ends of justice. Accordingly I direct the AO to restrict the addition @3% on the total purchases of Rs 17,84,98,737/- from the sixteen parties, which works out to Rs.53,54,962/-. Grounds raised on his issue are partly allowed."

6. Aggrieved by the appellate order dated 28-03-2016 passed by learned CIT(A), both assessee and Revenue are in appeal before the tribunal.

Ld. Counsel for the assessee submitted that the additions to the tune of Rs. 1.42 crores have been made by the A.O by estimating profits at the rate of 8% of the alleged bogus purchases of Rs. 17.48 crores , which additions were reduced to 3% of the alleged bogus purchases by learned CIT(A) . It was submitted by learned counsel for the assessee that no enquiry was made by the A.O as no notices/summons u/s. 133(6)/131 were issued by the A.O . Our attention was also drawn to page no. 30 of the paper book /para no. 4 wherein in reply to the A.O notice dated 16-03-2015, reply dated 25.03.2015 is placed. Our attention were drawn to page 32-35/paper book wherein quantitative reconciliation of stock was submitted along with reply dated 25-03-2015. It was submitted that total sales of the assessee

were exceeding Rs. 86 crores (page 10/pb) , out of which export sales wereto the tune of Rs.80.31 crores. Our attention was drawn to page 14 of learned CIT(A) appellate order wherein the decision of learned CIT(A) in bringing to tax 3% of the said alleged bogus purchases were placed. It was submitted that search and survey operations were conducted in the case of Mr Bhanwarlal Jain group and the AO made additions based on statements given by Mr Bhanwarlal Jain during search and survey conducted on him. It was submitted that the assessee was considered as beneficiary of the bogus purchases allegedly made from the benami entities /concerns of Sh Bhanwarlal Jain. It was submitted by learned counsel for the assessee that the AO has not made any independent enquiries and profit embedded in such purchases to the tune of 8% was added to the income of the assessee by the AO which was reduced to 3% by learned CIT(A). It was submitted that the said 16 parties from whom the assessee allegedly made bogus purchases are not absconding/missing while they are available at the addresses mentioned in their respective affidavits submitted before the authorities below but none of the authorities have deemed it proper to make any enquiry with these parties. These affidavits dated 24-03-2015 were claimed to be submitted before th AO on 25-03-2015. It was submitted that parties have confirmed in their affidavits that they have sold goods to the assessee . It was submitted that these 16 parties may be called upon for cross examination and verification of the facts submitted therein the affidavits executed by them. Our attention was also drawn to page no. 32 to 35 wherein reconciliation of stocks as to purchases made from these 16 parties were submitted before the A.O. It was submitted total sales were to the tune of Rs. 86 crores and it was submitted that purchases to the tune of Rs. 17,84,98,737/- were made from these 16 parties allegedly belonging to Sh. Bhanwarlal Jain group. It was submitted that these sixteen parties have confirmed that they have sold the material to the assessee. Our attention was also drawn to page no. 14 of the learned CIT(A) appellate order wherein vide appellate decision the learned CIT(A) computed additional income being embedded profit of 3% of the said alleged bogus purchases which was brought to tax , while the A.O estimated additional profit embedded in these purchases to the tune of 8% which was brought to tax by the AO. Our attention was also drawn to page no. 36 of the paper book wherein affidavit executed on 24-03-2015 by one of the said supplier (Prime Star) is placed .

Our attention was also drawn to page no. 37 of the paper book wherein confirmation from Prime Star is placed . Our attention was also drawn to page 40 of the paper book wherein the income tax return of the said supplier Prime Star for the A.Y 2012-13 is placed. Our attention was also drawn to page no. 40 to 46 wherein the audited accounts of Prime Star for FY 2011-12 are placed . Our attention was also drawn to page 47 of the paper book wherein VAT registration of Prime Star is placed . Our attention was also drawn to page no 48 where in copy of PAN of Prime Star is placed. It is claimed that all these documents were duly filed before the AO vide reply dated 25-03-2015 which has not been looked into by the AO while fastening tax-liability on the assessee . It was submitted that A.O did not make any enquiry before fastening tax liability on the assessee. It is claimed that these documents w.r.t. all sixteen alleged hawala suppliers were duly submitted before the AO on 25-03-2015 . It was submitted that the Revenue has placed reliance only on the investigation done by DGIT (Inv) Mumbai while no independent investigations were done by the authorities below. Reliance was placed on the other decision of the tribunal in the case of Fancy Wear v. ITO in ITA no. 1596 and 1597/Mum/2016 for A.Y 2010-11 and 2011-12(copy placed in file) and reliance was also placed on the decision of the tribunal in the case of ITO v. Ratnalaya Diamonds Pvt. Ltd. in ITA no. 3760/Mum/2016 for AY 2007-08(copy placed in file), vide orders dated 16.08.2017 wherein both of us were party to that order in ITA no. 3760/Mum/2016 . our attention was also drawn to page no. 4, para 7 of the said order in the case of Ratnalaya Diamonds Private Limited(supra) which is reproduced hereunder :-

> " 7. *We have heard rival contentions and perused the material available on record. It is evident on record, in the course of assessment proceedings; the assessee has furnished affidavits of the concerned parties from whom it has purchased diamond along with the confirmation of the accounts accompanied by the bank statement. However, the Assessing Officer has not made any enquiry with regard to the evidences submitted by the assessee. It is well settled that a sworn affidavit carries evidentiary value. Therefore, the Assessing Officer was duty bound to consider the averments made in the affidavit and to falsify the averments made in the Affidavits, the Assessing Officer should have examined the concerned persons. It is also a fact on record that the assessee has furnished quantitative tally before the Assessing Officer reconciling the purchases with sales. It is also a fact that the Assessing Officer has not disputed the sales effected by the assessee. As against the evidences brought on record by the assessee,*

the Assessing Officer has relied upon some adverse material neither confronting them to the assessee nor allowing the assessee to cross examine the persons whose statement was relied upon by the Assessing Officer. Therefore, the addition on peak basis cannot be sustained. Moreover, while estimating the profit suppressed on alleged bogus purchases @ 6%, the learned Commissioner (Appeals) has relied upon the CBDT instructions no.2/2008 dated 22nd February 2008. That being the case, we do not find any infirmity in the order of the learned Commissioner (Appeals) on this issue. Accordingly, grounds raised are dismissed.

8. In the result, Revenue's appeal is dismissed."

It was also submitted that quantitative reconciliation of the stock were duly submitted before the authorities below (page no. 32 to 35 /paper book) and it was submitted that the diamonds were purchased and exported . Our attention was also drawn to page no. 24 of the paper b ok to contend that the assessee has declared G.P ratio of 6.4% and Ne Profit ratio of 3.86% for the impugned assessment year. Our attention was also drawn to page no 347 of the paper book wherein report is placed of the task group for diamond sector to make India an "International trading hub for rough diamonds' which was appointed by Department of Commerce , and it was submitted that in the said report it is proposed by the task force appointed by Department of Commerce t bring to tax income computed at the presumptive rate of 2 5.% of turnover . However , it was submitted that instructions issued by CBDT no. 2/2008 dated 22.2.2008 w.r.t. Benign Assessment Procedure has proposed to bring tax income computed at the rate of 6% for the total turnover . The copy of the said instructions are reproduced here under:-

"SECTION 143 OF THE INCOME-TAX ACT, 1961 - ASSESSMENT -"BENIGN ASSESSMENT PROCEDURE" FOR ASSESSEES ENGAGED IN DIAMOND MANUFACTURING AND/OR TRADING

INSTRUCTION NO. 2/2008, DATED 22-2-2008

The undersigned is directed to state that the 'Benign Assessment Procedure', in the case of assessees engaged in diamond business as announced by Hon'ble Finance Minister in his Budget Speech on 28-2-2007 shall be as under:-

A. The procedure will apply to assessees engaged in the business of manufacturing and/or trading of diamonds (referred to below as such business).

B. If an assessee has shown a sum equal to or higher than 6 per cent of his total turnover from such business as his income under the head 'Profits and gains of business or profession' for a particular assessment year, the Assessing Officer shall accept his trading results.

C. (i) The assessee shall be required to maintain separate books of account of such business.

(ii) Acceptance of profit at 6 per cent or above as per para (B) for a particular assessment year will not be a precedent for that assessee or for any other assessee.

D. The procedure shall not apply to an assessee for an assessment year-

(iv) where assessment is being made pursuant to a-

(i) search and seizure action under section 132; or

(ii) requisition made under section 132A; or

(iii) survey action 133A

(v) where 50 per cent or more of the income from such business of an assessee is claimed as deduction under Chapter III or under Chapter VI-A of the Income-tax Act;

(vi) where there is information regarding escapement of income.

E. The rate of profit as a percentage of turnovers would be reviewed annually on the basis of revenue generation and results of scrutiny assessments, searches and surveys made during the year.

2. The above instruction is issued under section 119(1) of the Income-tax Act, 1961 and would be applicable for assessments made during financial year 2008-09. The instruction may be brought to the notice of all concerned in your Region."

It was again reiterated that no inquiry was made by the A.O with respect to these purchasing parties. On being asked by the Bench, the learned counsel for the assessee after taking instructions from the representatives of the assessee who were present in the Court during the course of hearing stated before the Bench that no inquiry has been initiated by any Government Department such as CBI, ED, Customs, Income-Tax etc. against the assessee w.r.t. its business activities in the field of manufacturing and trading of diamonds.

Ld. DR on the other hand submitted that as per paper book itself assessee has given the replies and the affidavits only at the fag-end on 25-03-2015 , while the assessment was getting time-barred on 31-03-2015 and the A.O did not get the time to verify the contents and the correctness of the said

affidavits and the replies submitted by the assessee on 25-03-2015 w.r.t. purchases from these sixteen parties. It was submitted that the assessment order was passed by the AO on 27-03-2015 which was only two days after the submission of these documents by the assessee before the AO on 25-03-2015.The learned DR relied upon assessment order passed by the AO.

7. We have considered rival contention and perused the material on record including orders of the authorities below and case laws relied upon. We have observed that the assessee is engaged in the business of manufacturing and trading of polished diamonds . The search and survey action was conducted by DGIT (Inv) Mumbai in the case of Shri. Bhanwarlal Jain and others on 03.10.2013. The investigation wing Mumbai, unearthed various concerns/entities being managed , controlled and operated by Sh. Bhanwarlal Jain and his family members although these concerns/entities were having name sake/ dummy directors/ partners/ proprietors in these concerns/entities who were acquaintances of Shri. Bhanwarlal Jain and his family members . It came to the notice of Revenue that the assessee has taken accommodation entries of alleged bogus purchases from the following sixteen parties belonging to Sh. Bhawarlal Jain group for A.Y 2012-13 as under:-

Sr. No.	Name of the hawala party	Bill amount
1.	Prim Star	2641957
2.	Meenakshi	13458256
3	Mohit Enterprises	8919122
4	Mayur Exports	2565869
5	Navkar India	19298450
6	Rajan Diamonds	5034664
7	Parvati Exports'	9878834
8	Malhar Exports	10427640
9	Navkar Diamonds	4529981
10	Balaii Impex	6874280
11	Aastha Impex	32529911
12	Surya Diam	16728813
13	Mukti Exports	21339084
14	N am an Exports	2892957
15	Pankai Exports	12119790
16	Pushpak Gems	9259129
		178498737

The assessee in response to the notice issued by the AO asking to explain the transactions with these concerns, submitted that the purchases made from these parties were genuine which were duly entered in the books of accounts maintained by the assessee. It was explained that payments have been made for purchases from these parties through cheques only. The A.O observed that the assessee has only furnished stock register entry, cheque payments, custom appraisal report in respect to export sale but no other document such as delivery challans were produced by the assessee during the course of assessment proceedings , which led A.O to believe that these purchases shown by the assessee from these firms are bogus. The A.O concluded that since the assessee has provided stock statement wherein the entries of these purchases were made , the only conclusion as per AO can be drawn is that the assessee has purchased these items from open/grey markets either directly or through brokers from some parties known to the assessee in cash without bills and to justify the same invoices were obtained from these sixteen suppliers who have mer ly issued paper invoices without supplying any material . The AO concluded that the assessee was beneficiary of the accommodation bills issued by these parties. The AO observed that the assessee has claimed sales to be genuine , it is proved that the assessee was actually in poss ssion of the goods as there cannot be sales without purchases. It was concluded by the AO that purchases were actually made by the assessee from grey market without bills at a lower prices and the assessee has been benefited due to margin of the grey market. The A.O concluded that to give it a colour of being genuine purchases, the assessee has obtained bogus bill from the suppliers and purchase rates as mentioned in the suppliers sale invoices cannot be accepted, which led AO to make additions of the profit embedded in such bogus purchases to the tune of 8% of said alleged bogus purchases vide assessment framed u/s 143(3), which was later restricted to 3% of alleged bogus purchases by learned CIT(A) in his appellate orders . The assessee is claiming that it submitted affidavits , confirmations and the tax returns including audited financial statements of all these parties vide reply dated 25-03-2015 but the AO did not took cognisance of the same which has prejudiced assessee as also no independent enquiry by issuing notices/summons u/s 133(6)/131 were conducted by the AO as well by learned CIT(A) and mere reliance is placed on the investigation conducted by DGIT(Inv) , Mumbai to prejudice assessee.

It is also claimed that the statement of Sh. Bhanwarlal Jain incriminating assessee was recorded at the back of the assessee and is used by Revenue to prejudice assessee without furnishing copies of the said incriminating statement as well without offering said Bhanwarlal Jain before the assessee for cross examination and hence no prejudice can be done to the assessee under these circumstances as principles of natural justice are not complied with which vitiates the orders of the authorities below . We have observed that the assessee has submitted reply along with affidavit, confirmations, tax returns including audited financial statements of these parties before the AO only at fag-end on 25.03.2015 when the assessment was getting time-barred on 31.03.2015 . The A.O framed assessment order u/s 143(3) on 27.03.2015 which is only two days after submission of aforesaid reply by the assessee on 25-03-2015 whereby hardly any time is left to frame assessment while the limitation for framing assessment u/s 143(3) was getting time barred on 31-03-2015. The A.O has also not commented on these documents claimed to have been filed by the assessee on 25-03-2015 in the assessment order dated 27-03-2015 framed by the AO u/s 143(3). The A.O made the additions to the tune of 8% of the alleged bogus purchases towards embedded profits from such purchases vide assessment order dated 27-03-2015 passed u/s 143(3). It is a fact that the AO did not made any enquiry w.r.t. these sixteen parties by issuing notices/summons u/s 133(6)/131 and he relied on the incriminating statement recorded of Sh. Bhanwarlal Jain before DGIT(Inv.), Mumbai which was recorded at the back of the assessee as is emerging from records as well copies of such statement was also not furnished to the assessee. It was claimed by the assessee before learned CIT(A) that all documents such as affidavits, tax returns including financial statements, confirmations from said parties were submitted before the AO but the same were not looked into by the AO. The learned CIT(A), however restricted the additions to the tune of 3% of alleged bogus purchases. The learned CIT(A) whose powers are co-terminus with the powers of the A.O entered into blame game by alleging that the A.O has not undertaken the enquiry etc. instead of getting the enquiry done by himself or directing the AO to do the necessary enquiry as was warranted keeping in view factual matrix of the case. The learned CIT(A) ought to have directed AO to comply with the principles of natural justice by furnishing copies of statement of Sh. Bhanwarlal Jain to the assessee for rebuttal and offering said Mr Bhanwarlal

Jain for cross examination. The powers of learned CIT(A) are co-terminus with the powers of the A.O and in case the A.O has not conducted enquiry which ought to have been conducted or cross examination was not allowed of Sh Bhanwarlal Jain by the AO, it was incumbent on the learned CIT(A) to have directed necessary enquires/investigation into the matter by conducting such enquiry himself or directing the AO to do said enquiry, instead of blaming the A.O. . The learned CIT(A) was fully aware that the assessee has submitted the necessary documents such as affidavits, confirmations, tax return including audited financial statements etc. of these suppliers only at the fag-end on 25-03-2015 when the assessment was getting time-barred on 31-03-2015 due to law of limitation but despite that learned CIT(A) did not considered worthwhile to make necessary enquiries u/s 133(6)/131 which the A.O could not made due to he delay by the assessee in filing necessary evidences/explanation and rather learned CIT(A) gave relief to the assessee after blaming the A.O which made the appellate order of learned CIT(A) untenable in the eyes of law . The learned CIT(A) erred in relying on the recommendatory report of task force on diamond sector constituted by Department of C mmerce to grant relief to the assessee as the said report had no force of law and was merely recommendations of the task force w.r.t. diamond sec or by estimating presumptive income @3% of turnover , which ought no to have been followed by learned CIT(A) as the said report at the best have persuasive value but not backed with the force of law . The Hon bl Delhi High Court in the case of CIT v. Jansampark Advertising & Marketing Private Ltd. (2015) 56 taxmann.com 286(Del) has held that learned CIT(A) powers are coterminous with that of the AO and the learned CIT(A) should have conducted enquiry if it is required in the matter and the AO having failed to conduct the same. The Hon'ble Supreme Court in the case of CIT v. Kanpur Coal Syndicate (1964) 53 ITR 225(SC) has also held that powers of learned CIT(A) are co-terminus with powers of the AO. The assessee has relied on the decision of Ratnalaya Diamonds Private Limited(supra) of which both of us were party to the said order, however, in the said case the assessee has before the tribunal given concession to be assessed at an additional income computed at the rate of 6% of the alleged bogus purchases accepting CBDT circular no. 2/2008 dated 22-02-2008 for benign assessment procedure in the case of diamond sector and under the said factual matrix , the tribunal upheld the appellate order of learned CIT(A)

upholding additions to the tune of 6% of the alleged bogus purchases. The assessee in the instant case has challenged the appellate order of learned CIT(A) and seeking deletion of the additions so made by authorities below. The purchases are appearing in the books of the assessee and the assessee is seeking benefit of deduction of these purchases against its income , hence primary onus is on the assessee to prove that purchases are genuine and that too in the midst of incriminating statements of Sh Bhanwarlal Jain as well investigations conducted by DGIT(Inv.). We have also gone through the replies dated 25-03-2015 submitted by the assessee before the AO (page 29-303/pb) wherein the assessee has claimed to have submitted affidavits, tax returns including audited accounts , confirmations etc of these parties and these documents need verification and examination by the AO. Thus under the circumstances keeping in view factual matrix of the case, we are inclined to set aside the matter back to the file of the A.O for denovo determination of the issue on merits in accordance with law after conducting such enquiries and verifications as are necessary for completing the assessment in de-novo proceedings If the department wants to rely on statement of Sh. Bhanwarlal Jain or of any other party which is recorded at the back of the assessee incriminating assessee or any other incriminating material to prejudice assessee, the copies of such statements and /or material shall be made available by the AO to the assessee before prejudicing assessee and an opportunity of rebuttal shall by provided by Revenue to the assessee including cross examination in accordance with principles of natural justice. The matter is set aside and restored to the file of the A.O for denovo determination of the issue on merits in accordance with law . Needless to say that the A.O shall provide opportunity of being heard to the assessee in accordance with principle of natural justice in accordance with law. The AO shall admit evidences/explanations submitted by the assessee in its defence in set aside proceedings. We order accordingly.

8. In the result both the appeals of the assessee as well of the revenue are allowed for statistical purposes.

Order pronounced in the open court on 29.11.2017

आदेश की घोषणा खुले न्यायालय में दिनांकः 29.11.2017 को की गई ।

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Mumbai, dated: 29 .11.2017

Nishant Verma
Sr. Private Secretary
copy to…

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench, H
6. Master File

// Tue copy//

BY ORDER

DY/ASSTT. REGISTRAR
ITAT, MUMBAI