



IN THE INCOME TAX APPELLATE TRIBUNAL
"J" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, ACCOUNTANT MEMBER

ITA no.3118/Mum./2017
(Assessment Year : 2008-09)

Dy. Commissioner of Income Tax
Central Circle-2(4), Mumbai

..... Appellant

v/s

M/s. Ronak Gems Pvt. Ltd.
Shop no.5, Mehta Bhawan
Opp. Charni Road Station
Opera House, Mumbai 400 004
PAN - AABCR7550G

..... Respondent

C.O. no.193/Mum./2017
(Arising out of ITA no.3118/Mum./2017)
(Assessment Year : 2008-09)

M/s. Ronak Gems Pvt. Ltd.
Shop no.5, Mehta Bhawan
Opp. Charni Road Station
Opera House, Mumbai 400 004
PAN - AABCR7550G

..... Cross Objector
(Original Respondent)

v/s

Dy. Commissioner of Income Tax
Central Circle-2(4), Mumbai

..... Respondent
(Original Appellant)

Assessee by : Shri Dharmesh Shah a/w
Shri Dhaval Shah
Revenue by : Ms. Arju Garodia

Date of Hearing - 08.09.2017

Date of Order - 04.10.2017

ORDER**PER SAKTIJIT DEY, J.M.**

Aforesaid appeal by the Revenue and cross objection by the assessee are against order dated 31st December 2016, passed by the learned Commissioner (Appeals)-53, Mumbai, for the assessment year 2008-09.

2. The only issue raised by the Revenue in its appeal is with regard to part reduction of addition made on account of bogus purchases. Whereas, in the cross objection the assessee apart from challenging the addition partly sustained by the learned Commissioner (Appeals) on account of bogus purchase has also raised a legal issue challenging the validity of re-assessment under section 147 of the Income-tax Act, 1961 (for short "*the Act*").

3. At the outset, we propose to deal with the ground raised by the Revenue in its appeal along with corresponding ground raised on merits by assessee being ground no.5 of the cross objection.

4. Brief facts are, the assessee a company carries on business in trading of diamond. For the assessment year under dispute, the assessee had originally filed its return of income on 29th August 2008, declaring total income of ₹ 3,43,362. Subsequently, a survey under section 133A of the Act was conducted in the business premises of the

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assessee on 13th August 2008, which was converted to a search under section 132(1) of the Act and consequent thereupon a proceeding under section 153A of the Act assessee initiated against the assessee. In response to the notice issued under section 153A of the Act assessee was filed its return of income and ultimately the Assessing Officer completed assessment under section 143(3) r/w section 153A of the Act vide order dated 31st December 2010, determining the total income at ₹ 1,52,78,500. Against the assessment order so passed, the assessee approached appellate authorities with which we are not concerned with in the present proceeding. When the matter stood thus, the Assessing Officer on the basis of information received from DGIT (Inv.), that in the course of search and seizure operation in respect of Rajendra Jain Group and some others on 3rd October 2013, it was found that the assessee has taken accommodation entries by way of bogus purchase from M/s. Mouli Mani Impex Pvt. Ltd. and M/s. Sparsh Exports Pvt. Ltd., reopened the assessment for the impugned assessment year.

5. During the re-assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of purchases made from the concerned parties with supporting evidence. That besides, to ascertain the genuineness of purchase transactions the Assessing Officer conducted enquiry independently by issuing notices under

section 133(6) of the Act to the concerned parties calling for various information as noted in Para-5 of the assessment order. In response to the query raised by the Assessing Officer, the assessee submitted purchase and sale invoices, stock register, ledger copies, bank statement showing payment made to the parties, etc. Further, in response to the notices issued under section 133(6), the two parties from whom the assessee had purchased goods also complied by furnishing informations as were called for by the Assessing Officer. However, the Assessing Officer did not accept the purchases made from the two parties to be genuine on the reasoning that the assessee could not produce delivery challans / angadia receipts, etc., to prove **actual delivery of goods at assessee's business premises**. He, therefore, held that purchases claimed to have been made from the two parties are not genuine. However, considering the fact that the assessee has maintained stock register and was able to furnish the quantitative details of purchases along with the corresponding sales, the Assessing Officer observed that the goods have entered into **assessee's stock from undisclosed source and probably from grey market**. He, therefore, held that in the facts of the assessee's case, the profit element embedded in the bogus purchases has to be assessed to tax. Accordingly, he disallowed 8% out of the alleged bogus purchase of ₹ 9,12,47,945 and added back an amount of ₹

7,29,835. Being aggrieved of the addition so made, the assessee preferred appeal before the first appellate authority.

6. The learned Commissioner (Appeals) after considering the submissions of the assessee, though, agreed with the Assessing Officer that the purchases made from the concerned parties cannot be treated as genuine, however, he sustained disallowance @ 2.5% of the alleged bogus purchases.

7. Learned Departmental Representative relying upon the observations of the Assessing Officer submitted that disallowance @ 8% of the bogus purchase being reasonable should be restored.

8. Learned Authorised Representative submitted that during the original assessment proceedings, each and every purchases made by the assessee was examined by the Assessing Officer thoroughly and the Assessing Officer had disallowed purchases made from two parties amounting to ₹ 62,98,980, which were subsequently deleted by the Tribunal. In the original assessment proceedings, the Assessing Officer has not doubted the purchases made from these two parties. He submitted, even in the re-assessment proceedings also the assessee has again submitted all documentary evidences to prove the genuineness of the purchases made from the two parties. He submitted, the concerned parties have also complied to the notices

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issued under section 133(6) of the Act by the Assessing Officer by furnishing of documentary evidences in support of the sales made to the assessee. He submitted, without making any further enquiry and merely because the assessee was unable to produce delivery challan / angadia receipts, the Assessing Officer has disallowed a part of the purchases. The learned Authorised Representative submitted, since the assessee deals in diamond it does not required transportation through any vehicle or goods carrier so that transportation receipts, delivery challan will be available. He submitted, diamonds are generally carried by either a person himself or through his agent. Therefore, there is no question of furnishing any transport receipt / delivery challan, etc. He submitted, since, the assessee has proved the purchases through documentary evidences no addition should be made.

9. We have heard rival contentions and perused the material available on record. It is evident, pursuant to a search and seizure action in case of Rajendra Jain Group and some other persons conducted on 3rd October 2013, the DGIT (Inv.), Mumbai, reported to the Assessing Officer that the assessee is a beneficiary of accommodation entries provided by M/s. Mouli Mani Impex Pvt. Ltd. and M/s. Sparsh Exports Pvt. Ltd., through bogus purchase of diamond. However, the nature of information / material available implicating the assessee has neither been discussed by the Assessing

Officer nor has been brought to our notice by the learned Departmental Representative. Be that as it may, on a perusal of the original assessment order dated 31st December 2010, passed under section 143(3) of the Act, for the impugned assessment year, it is revealed that the Assessing Officer had specifically examined the purchases made by the assessee during the relevant previous year. After examining the details, the Assessing Officer called upon the assessee to prove the genuineness of certain purchases excluding the purchases made from the two parties which are subject matter of dispute in the present appeal. After examining the details, the Assessing Officer disallowed purchases of ₹ 62,98,980, from two parties and added back to the income of the assessee. However, in appeal proceedings, the Tribunal deleted such addition. Even during the re-assessment proceedings, in response to the query raised by the Assessing Officer the assessee had again produced necessary and relevant documentary evidences to prove the genuineness of the purchases. In fact, during the assessment proceedings, the Assessing Officer to ascertain the genuineness of the purchases issued notices under section 133(6) of the Act to the concerned parties calling for the following details.

- i) *Nature of your business and also the nature of transaction you have entered into with the above assessee for the period A.Y. 2008-09;*

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- ii) Copy of your acknowledgment of income tax return file by you for assessment year 2008-09;*
- iii) Copy of ledger of M/s. Ronak Gems Pvt. Ltd. for A.Y. 2008-09 appearing in your books of account;*
- iv) Ledger accounting evidencing the purchase / sale from M/s. Ronak Gems Pvt. Ltd.*
- v) The copy of Bank Statement for the above period reflecting / highlighting the above transactions;*
- vi) Details of total purchased / sold during the above period to the above party and submit the copies of bills and vouchers; and*
- vii) Confirmation of the transaction with M/s Ronak Gems Pvt. Ltd.*

10. As observed by the Assessing Officer in Para-5.3 of the assessment order, in response to the notices issued under section 133(6) of the Act, the concerned parties submitted all details called for by the Assessing Officer and also confirmed the sales made by them to the assessee. The Assessing Officer after examining the bank statements of those two parties has also found that after the credit of cheques issued by the assessee in the account of the suppliers there was no cash withdrawal to indicate that money was refunded back to the assessee. Further, the Assessing Officer has also accepted the fact that though the genuineness of purchases from these two parties is doubted but the genuineness of purchases as a whole cannot be doubted since the assessee has not only maintained the details of stock but was able to co-relate purchases with sales by furnishing quantitative details. Thus, from the aforesaid facts, it is very much

clear that all documentary evidences available on record prima-facie demonstrate the genuineness of purchases made from the concerned parties. More so, when the concerned parties themselves in response to notices issued under section 133(6) have furnished documentary evidences in support of sales made by them to the assessee. Therefore, in our considered view, the primary onus cast upon the assessee to prove the genuineness of purchases has sufficiently been discharged. If the Assessing Officer still had doubt regarding the purchases made from the concerned parties it should have triggered further enquiry or investigation at his end and he should have brought cogent evidence on record to establish the fact that purchases claimed to have been made from the concerned parties are not genuine. It is not a case where the sellers / suppliers are found to be non-existent or had not complied to the notices issued by the Assessing Officer by furnishing necessary information. In this case, the suppliers have come forward and have confirmed the sales effected to the assessee through proper documentary evidences. Thus, on the face of such evidences available on record, the purchases made cannot be held as bogus merely on presumption and surmises and on the sole reasoning that the assessee was unable to produce delivery challan / angadia receipts. In this **context, assessee's explanation that diamond did not** require to be transported through vehicle appears plausible. In view of the aforesaid facts, we hold that, even, disallowance @ 2.5% as made

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by the learned Commissioner (Appeals) is also unjustified. Accordingly, we delete the addition sustained by the learned Commissioner (Appeals). Ground raised by the Revenue in its appeal is dismissed and ground no.5 of the cross objection is allowed.

11. Insofar as grounds no.1 to 4, raised by the assessee in its cross objection are concerned, in view of our decision herein above, these grounds being of mere academic interest are dismissed.

12. **In the result, Revenue's appeal** is dismissed and cross objection is partly allowed.

Order pronounced in the open Court on 04.10.2017

**Sd/-
N.K. PRADHAN
ACCOUNTANT MEMBER**

**Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER**

MUMBAI, DATED: 04.10.2017

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

True Copy
By Order

*Pradeep J. Chowdhury
Sr. Private Secretary*

(Dy./Asstt. Registrar)
ITAT, Mumbai