

IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'SMC', KOLKATA

[Before Shri P.M. Jagtap, AM]

I.T.A. No. 2302/Kol/2017

Assessment Year: 2011-12

Shri Gautam Kumar Pincha.....*Appellant*
Room No. 604, 6th Floor,
19, Synagogue Street,
Kolkata - 700 001.
[PAN: AKGPP 6211 L]

I.T.O. Ward 34(4) Kolkata.....*Respondent*
Aayakar Bhawan, Poorva,
110, Shantipally,
Kolkata - 700 107.

Appearances by:

Shri Miraj D Shah, AR appearing on behalf of the Assessee
Shri P.K. Mandal, Addl. CIT appearing on behalf of the Revenue.

Date of concluding the hearing : February 19, 2018

Date of pronouncing the order : April 11, 2018

ORDER

This appeal filed by the assessee is directed against the order of Ld. CIT(A) - 10, Kolkata dated 30.08.2017 and the solitary issue involved therein relates to the addition of Rs. 4,57,600/- made by the A.O. and confirmed by the Ld. CIT(A) on account of alleged bogus purchases of diamonds.

2. The assessee in the present case is an individual who is engaged in the business of manufacturing and trading of ornaments and jewellery. The return of income for the year under consideration was filed by him declaring a total income of Rs. 7,59,290/-. A search and seizure action was conducted by the department in the cases belonging to Sanjay Choudhury Group, Mumbai. As revealed during the course of the said action, the said group was indulging in

providing accommodation entries in the nature of bogus sales in lieu of commission in the name of various benami concerns including one namely M/s. Nazar Impex Pvt. Ltd. The modus operandi of providing accommodation entries was found to be as under:

“Actual importers of rough diamonds import part of their diamonds through benami concerns operated by Sanjay Choudhury and family with a view to suppress their turnover, profits and capital requirement. On receipts of consignments by these benami concerns, the diamond is handed over to the real importer thereby creating a bogus stock in the books of the benami concerns. Against the bogus stock, bogus sales bills are issued to parties who purchase diamonds from the grey market and are in need for bogus purchase bills to regularize the purchase in the books. These parties make payment through cheque which is made payment to the party from whom import is made thereby squaring off this transaction. Against the cheque, the party wants the cash back. The real importer, who purchases the consignment out of books in cash, sells the same in cash in market thereby generating cash. The real importer has its accounts with Angaria. It instructs Angaria to make payment for the imported consignment in cash to the group concerns. The group concerns on receiving the cash from Angaria returns the cash to the party.”

3. Since the assessee had entered into one transaction of purchase of diamond from M/s. Nazar Impex Pvt. Ltd. amounting to Rs. 4,57,600/- vide bill dated 24.07.2010, his assessment for the year under consideration was reopened by the A.O. by issuing a notice under section 148 on 11.06.2015. During the course of reassessment proceedings, the assessee was called upon by the A.O. to clarify the information received by the A.O. regarding bogus purchase of diamonds from M/s. Nazar Impex Pvt. Ltd. In reply, the following explanation was offered by the assessee:

“At the outset, your assessee denies completely the allegation of bogus purchases of Rs. 4,57,600/- from M/s. Nazar Impex Pvt. Ltd. made vide Bill No. NIPLS/PD/JUL/16/10-11 dated 24.07.2010. This invoice is neither

fabricated nor self made. Your assessee has brought merchandise in form of 91.52 carats and polished diamonds at the rate of Rs. 5,000/- per carat aggregating Rs. 4,57,600/- against the purchase from M/s. Nazar Impex Pvt. Ltd. The payments of this transaction has been made through account payee instrument. No cash was received back by the assessee from M/s. Nazar Impex Pvt. Ltd. in lieu of the purchase invoice no NIPLS/PD/JUL/16/10-11 dated 24.07.2010 from Rs. 4,57,600/- from any person. The entire quantity of 91.52 carats of diamonds were entered into stock register in July, 2010 and from time to time the stock of diamonds have been sold. Both entries for inward movement and outward movement are reflected in the stock register. The implication of this accounting as well as stock entries suggest that the entire quantity of 91.52 carats of diamonds have been recorded properly which are sold during the financial year 2010-11 or subsequently. The movement of diamonds is controlled and therefore there is no question of there being bogus purchase of diamonds from Nazar Impex Pvt. Ltd. Further the books of accounts and other records like invoices, statements, vouchers etc. are maintained in the proper manner and there are audited as per the provisions of I.T. Act, 1961 and the auditors have not made by adverse remarks against the maintenance and appropriateness of the accounts."

4. The explanation offered by the assessee was not found acceptable by the A.O. According to him, the payment against the diamonds purchased by the assessee from M/s. Nazar Impex Pvt. Ltd. was made after a period of 21 days. He held that it was hard to believe that a seller from Surat would give a credit of 21 days to an unknown buyer in Kolkata. He accordingly treated the purchases claimed to have made from M/s. Nazar Impex Pvt. Ltd. as bogus and added the said purchases amounting to Rs. 4,57,600/- to the total income of the assessee in the assessment completed u/s 147/143(3) vide an order dated 15.12.2016.

5. Against the order passed by the A.O. u/s 147/143(3), an appeal was preferred by the assessee before the Ld. CIT(A) and the

submission made before the A.O. in support of its claim that the purchase made from M/s. Nazar Impex Pvt. Ltd. were genuine was reiterated on behalf of the assessee before the Ld. CIT(A). The Ld. CIT(A) however did not find merit in the same for the following reasons:

a. There is the clear information and factual finding that certain information was received by the Ld. A.O. and this was absolutely authentic based on statements recorded by the Investigation Wing during search and seizure operation of the Sanjay Choudhury Group, Mumbai.

b. The appellant has not been able to counter in any manner the observations of the Ld. A.O. regarding the bank statement furnished by the assessee, and the fact that from such statement it emerges that the impugned payment was made in favour of the alleged seller several days after the date on which the assessee has claimed to have made the purchase. I agree with the Ld. A.O. that such a happening is very unlikely because no seller would sell goods to an unknown buyer on credit, and therefore it militates against basic tenets of commercial transactions the seller(s) waited for one month for payment from an unknown buyer (the appellant-assessee) from Kolkata.

c. The appellant assessee was unable to provide any evidence of the transportation of the diamonds from the seller to Kolkata, or the movement of the buyer from Kolkata to Mumbai. In any business, it is quite expected that even if the goods are handed over by hand, there has to be confirmation of handing over / taking over of goods as a part of the record of transactions. These are vital documents, and are a sine qua non, even if there may not be any evidence of freight or transport. In the instant case, such vital evidence is conspicuous by its absence.

d. There is not much merit in the argument of the Ld. AR that payments were made by account payee cheques, as these indicate documents for transfer of money, and remain mere documents without the corresponding documents relating to transfer of goods. In my considered view of the matter, the evidentiary value of payments by bank therefore is enormously diminished for the case at hand.

e. I also find that there is no merit in the claim of the appellant that the Ld. A.O. did not conduct any independent enquiry from his side. It is to be observed that at any rate the onus was cast upon the appellant to clearly bring on record that the purchases were made from the alleged parties, especially as the transactions were suspicious in nature. For the case at hand, the appellant has failed to discharge such basic onus of proof of delivery."

For the reasons given above and keeping in view the ratio of the various case laws discussed in his impugned order, the Ld. CIT(A) confirmed the addition of Rs. 4,57,600/- made by the A.O. by treating the purchase of diamonds claimed to be made by the assessee by M/s. Nazar Impex Pvt. Ltd. as bogus. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

6. The learned counsel for the assessee mainly reiterated before the Tribunal, the submissions made by the assessee before the authorities below in support of his issue under consideration. He contended that the purchases in question made by the assessee from M/s. Nazar Impex Pvt. Ltd. were disallowed by the authorities below by treating the same as bogus mainly for the delay in making the payment against the said purchases and there was no adverse material brought on record to show that the same were bogus. He contended that the claim of the assessee for the said purchases was duly supported by the relevant documentary evidence and even though the same was produced by the assessee before the authorities below, they completely overlooked the same. He submitted that a bill raised by the party for the said purchases was produced by the assessee to show the genuineness of his claim. He invited my attention to the copy of the said bill placed at page no 6 of the Paper

Book to point out that 91.52 carats of cut and polished diamonds were purchased by the assessee under an authentic bill wherein all the relevant details including VAT and CST no of the supplier were given. He also invited my attention to the copy of ledger of M/s. Nazar Impex Pvt. Ltd. in the books of account of the assessee placed at page no 7 of the Paper Book to point out that payments against said purchases made on 26.07.2010 were settled on 31.07.2010 and 16.08.2010 by account payee cheques. He contended that there was thus no inordinate delay in making payments against the said purchases as presumed by the authorities below. He also invited my attention to the copy of relevant stock record to show that the quantity of diamonds purchased by the assessee from M/s. Nazar Impex Pvt. Ltd. was duly entered in stock record and sale of the same was also duly shown in the stock record. He contended that the authorities below however brushed aside this entire evidence brought on record by the assessee to establish the genuineness of the purchases in question and treated the same as bogus by relying on the information received from the Investigation Wing without verifying the claim of the assessee independently. By relying on the decision of Division Bench of this Tribunal in the case of Manoj Begani vs ACIT (ITA 932 to 936 dated 15.12.2017), he contended that the similar claim of the assessee for purchases based on similar documentary evidence was allowed by the Tribunal.

7. The learned DR, on the other hand, contended that specific information was received by the A.O. from the Investigation Wing about M/s. Nazar Impex Pvt. Ltd. indulging in giving accommodation

entries. He contended that the said information was sufficient to show that the genuineness of the purchases in question claimed to be made by the assessee from M/s. Nazar Impex Pvt. Ltd. was doubtful and the unusual delay in payment by the assessee against the said purchases further established that it was a case of bogus purchases. He contended that the assessee also failed to establish the mode of delivery of the diamonds claimed to be purchased from Surat party. He contended that all these circumstances were sufficient to show that the purchase of diamonds claimed to be made by the assessee from M/s. Nazar Impex Pvt. Ltd. was bogus and the authorities below were fully justified in disallowing the same.

8. I have considered the rival submissions and also perused the relevant material available on record. It is observed that the information was received by the A.O. from the Investigation Wing of the department that the benami concerns of Sanjay Choudhury Group, Mumbai were indulging in providing accommodation entries in lieu of commission. The said information also contained the details of modus operandi of providing accommodation entries followed by the said benami concerns. Since M/s. Nazar Impex Pvt. Ltd. was one of such concerns belonging to Sanjay Choudhury Group and the assessee had claimed to have purchased diamonds of Rs. 4,57,600/- from the said concern, the assessment in the case of the assessee for the year under consideration was re-opened by the A.O. During the course of assessment proceedings, it was explained by the assessee in reply to the query raised by the A.O. that purchase of diamonds made from M/s. Nazar Impex Pvt. Ltd. vide bill No. In IPLS/PD/JUL/16/10-11

dated 14.07.2010 was genuine. It was also pointed out that the payment against the said bill was settled by account payee cheque and the quantity of diamond purchased was not only entered into the stock register, but even corresponding sale of the same was duly recorded. The relevant documentary evidence was also filed by the assessee before the A.O. to support and substantiate his explanation. As rightly contended by the learned counsel for the assessee, the authorities below however brushed aside this cogent evidence produced by the assessee and treated the purchase of diamonds by the assessee from M/s. Nazar Impex Pvt. Ltd. as bogus merely on the ground that there was some delay in payment by the assessee against the said purchase. No enquiry whatsoever was made by them to verify the claim of the assessee for the purchase of diamond in question from M/s. Nazar Impex Pvt. Ltd. which was duly supported by the relevant documentary evidence.

9. In the case of Manoj Begani vs ACIT (supra) cited by the assessee, the claim of the assessee for purchase duly supported by documentary evidence was disallowed by the revenue authorities by treating the same as bogus in the similar circumstances, but when the matter travelled to the Tribunal, the Tribunal vide its order dated 15.12.2017 (supra) allowed the claim of the assessee for purchase on the basis of the documentary evidence placed on record for the following reasons given in paragraph no 15 of its order:

"We note that the A.O. disregarded all these documentary evidence and insisted the assessee to produce the Principal Officer of M/s. Vitrag and since the assessee failed to produce them, he made the disallowance of the entire diamond purchased by the assessee through cheques / RTGS. The

assessee has produced the VAT return and VAT audit report also, which is placed at pages 73 to 86 of the paper book. The assessee has also produced the sales bill related to diamonds sold out by the assessee which was made out of the very same purchases disallowed by the A.O. which is found place from pages 56 to 59 of the paper book. We note that the A.O. has not disturbed the sales shown by the assessee in respect of the diamond purchased from M/s. Vitrag and M/s. Arihant and M/s. Kangan (AY 2010-11 to 2012-13). When the sales of the very same diamonds have been accepted by ASSESSING OFFICER/CIT(A) without a murmur, the purchases could not have been disallowed without cogent material. In this case, for whatever reason best known for him, Shri Rajendra Jain who controls M/s. Vitrag and M/s. Arihant have made the statements wherein he explain in detail the modus of the whole operation, which defies logic and can be termed absurd on the fact of it, and when the fact remains that he and his concerns were legally importing jewels/diamonds directly from foreign suppliers named in Box 'B' and that he admits of receiving the cheques / RTGS from assessee in Box 'E' and when the fact remains that Shri Rajendra Jain's concern M/s. Vitrag and M/s. Arihant utilised the cheques / RTGS given by the assessee (for the diamond purchased by him) and in turn is remitted in foreign exchange towards the bills raised by the foreign exporters (Box 'B'), in no way show that the assessee had made any purchase outside the books or from the grey market. We are unable to understand as to the role of the nine persons (whose names are appearing in Box 'D') The modus operandi as suggested by Shri Rajendra Jain does not fit into the logic or rational reasoning of a common prudent person. However, the uncontroverted fact remains that Shri Rajendra Jain and his concerns are legally importing the diamonds directly from foreign concerns stated in Box 'B' on credit (we explained earlier), so it is not understood as to what is the role of persons named in Box 'D'. Shri Rajendra Jain's answer to question no 26 that he and his concerns placed the orders with the foreign concerns named in Box 'B' and collects the diamond in his office / show room. Let us pause for a minute and let us discard the role of persons named in Box 'D' for argument sake and then see the whole transaction. The diamonds are legally imported from foreign concerns named in Box B, by concerns in Box C which are delivered to persons in Box 'E' i.e. assessee and cheques / RTGS are issued in the name of the concerns controlled by Shri Rajendra Jain in Box C i.e. M/s. Vitrag and M/s Arihant which is turn they utilised the cheques / RTGS given by the assessee remit the foreign exchange to the foreign concerns in Box 'B'. So, from all these facts discussed above, the only probability is that the role of nine persons named in Box 'D' can only be

that of Angadias and not as that what Shri Rajendra Jain has attributed them to do. No other role can be played by these people unless and otherwise the department is able to bring any evidence to show that after the issue of cheques / RTGS to Shri Rajendra Jain's concerns M/s. Vitrag and M/s. Arihant, the money component i.e. the unaccounted money of the assessee has been given back to the assessee, whereas it is clearly stated by Shri Rajendra Jain to Q No. 18 that cash component is generally settled by the key person controlling the concern in Box 'D' directly or indirectly by cheques / RTGS services of Angadia. So, therefore, the entire disallowance of the purchase / expenditure is based on surmises and conjectures, and the assessee by furnishing the documents (supra) has discharged the burden of proof casted upon it to show that the purchase was done bonafidely and not with the unaccounted money of the assessee"

10. In my opinion, the ratio of the decision of the Division Bench of this Tribunal in the case of Manoj Begani (supra) is squarely applicable to the facts of the present case and respectfully following the same, I delete the disallowance of Rs. 4,57,600/- made by the A.O. and confirmed by the Ld. CIT(A) by treating the purchase of diamond made by the assessee from M/s. Nazar Impex Pvt. Ltd. as bogus.

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

Order Pronounced in the Open Court on 11th April, 2018.

Sd/-

(P.M. Jagtap)

ACCOUNTANT MEMBER

Dated: 11/04/2018

Biswajit, Sr. PS

Copy of order forwarded to:

1. Shri Gautam Kumar Pincha, Room No. 604, 6th Floor, 19, Synagogue Street, Kolkata – 700 001.

2. ITO Ward 34(4), Aayakar Bhawan Poorva, 110, Shantipally, Kolkata – 700 107.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata

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