

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No. 446/SRT/2019 (AY: 2012-13)
(Hearing in Virtual Court)**

A.C.I.T. Circle-1(2), Surat.	Vs.	M/s Lypsa Gems, Plot No. 230, Special Economic Zone, Sachin, Surat-394230. PAN : AAEFL 0483 G
APPELLANT		RESPONDEDNT

Department by	Shri H.P. Meena, CIT-DR
Assessee by	Shri Kamlesh Doshi, A.R.
Date of hearing	05/04/2022
Date of pronouncement	13/05/2022

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. The appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-2, Surat [in short 'ld. CIT(A)] dated 11/07/2019 for the Assessment Year (A.Y.) 2012-13. The Revenue in its appeal has raised the following grounds of appeal:

- "1. On the facts and circumstances of the facts and in law, whether the Ld. CIT(A) was justified in deleting the addition made U/s 69C on account of bogus purchases claimed by the assessee by relying on the decision of Hon'ble Guj High Court in the case of Sajnai Jewels Vs DCIT(SCA No.17935 of 2015, dated,09.06.2016 ignoring that the said decision was on the re-opening of the assessment and in the instant case, the additions were made after bringing necessary evidence on record in regard to the bogus purchase by way of accommodation entries as admitted by the parties controlled by Shri Bhanwarlal Jain group during the course of search action on 03.12.2013.*
2. *On the facts and circumstances of the facts and in law, whether the Ld. CIT(A) was justified in deleting the addition made U/s 69C on account of*

bogus purchases claimed by the assessee on the ground that since source of payments for purchase are duly explained in the books of accounts, the provision of section 69C was not applicable without appreciating the fact that the assessee failed to produce the day to day purchase and consumption register of goods and failed to establish any physical transfer of goods against the impugned payments alleged to have been made through banks and therefore, the entire transactions are merely book entries in the nature of sham transactions which is the characteristic of accommodation entry.

3. *On the facts and circumstances of the facts and in law, whether the Ld. CIT(A) was justified in deleting the addition made U/s 69C on account of bogus purchases claimed by the assessee on the ground that even if the purchases are bogus, the same will qualify for deduction U/s 10AA as it is derived from the same eligible business, ignoring the fact that such income would not qualify as business income for getting deduction U/s 10AA and that it should be treated as income from other sources by applying section 69C of the IT Act .*
 4. *It is, therefore, prayed that the order of the Id. CIT(A) may be set aside and that of assessing office may be restored to the above extent."*
2. Brief facts of the present case are that the assessee is engaged in the business of cutting, polishing and manufacturing of diamonds. The assessee also in imports rough and export of polished diamonds. The assessee filed its return of income for the Assessment Year (A.Y.) 2012-13 declaring NIL income. In the computation of income, the assessee claimed deduction under Section 10AA of the Income Tax Act, 1961 (in short, the Act) of Rs. 40,91,698/-. The case of assessee was selected for scrutiny. During the assessment, the Assessing Officer noted that the assessee has shown certain purchases from the entities managed by Bhanwarlal Jain group. Bhanwarlal Jain group were indulging in providing accommodation entries by running

various bogus concerns including Kothari & Company, Little Diam, Jewel Diam and Rahul Export. The assessing officer was having such information as the investigation wing of revenue made a search action on Rajendra Jain Group. The assessee has shown purchases from Kothari & Company, Little Diam, Jewel Diam and Rahul Export of Rs. 3.09 crores. The Assessing Officer after referring the modus operandi of Bhanwarlal Jain and its group, issued show cause notice to the assessee as to why the aggregate amount of purchase of Rs. 3.09 crores should not be treated as unexplained expenditure and added to the income of assessee. The assessee filed its reply dated 30/03/2015 and stated that the alleged statement of Bhanwarlal Jain recorded by the Investigation Wing are general and self-contradictory. It relates to accommodation entries of purchase, loans and advances to various parties and not specific or to any of the party. The assessee furnished ledger confirmation, ITR, copy of computation of income, Profit & Loss account and the bank statement showing the payment through banking channel. The assessee also stated that the proposed addition is based on assumption and presumption. The assessee also asked for cross examination of Bhanwarlal Jain. The assessee also relied on certain case laws which is recorded by the Assessing Officer in the assessment order. The assessee also claimed that its income is exempt under Section 10AA of the Act and there is no motive of lowering down the profit. Addition if any should be considered while making the deduction under Section 10AA of the Act and

relied on the decision of Hon'ble Himachal Pradesh High Court in the case of CIT Vs. Allied Industries (2010) 229 CTR 462.

3. The reply of assessee was not accepted by the Assessing officer. The Assessing Officer on the basis of statement of Bhanwarlal Jain and the report of Investigation Wing held that the evidence collected during the search operation is available with the Revenue about the accommodation entries provided by Bhanwarlal Jain group. Hence, the assessee's reply has no substance. On the contention of assessee that they are eligible for deduction under Section 10AA of the Act, the Assessing Officer held that the assessee has claimed deduction on higher side. The assessing officer held that the assessee has not established the physical delivery of goods. Day to day purchase register and consumption register is not produced by the assessee. No stock in trade was and available with the hawala trader, though they were claiming as trader and importer of rough and cut diamonds. If no stock was found with the seller party, how the purchaser can get the physical delivery of goods, thus, the transaction so made are sham and mere books entry only which shows a perverted picture of the assessee. On the aforesaid observation the Assessing Officer disallowed the entire expenses on account of purchases from the four entities managed by Bhanwarlal Jain group of Rs. 3.09 Crore.
4. On appeal before the Id. CIT(A), the assessee filed detailed written submission. In the submission, the assessee reiterated the similar fact as

contended before the Assessing Officer. The assessee also explained that they are in the business of manufacturing of cut and polished diamonds and rough diamonds. After manufacturing cut and polished diamond, they are exported to various parties outside the India. The unit of assessee is established in Special Economic Zone (SEZ), Sachin and the assessee complied with all conditions stipulated in Section 10AA and claimed exemption of Rs. 40,91,698/-. The assessee claimed that his case is covered by the decision of Hon'ble Gujarat High Court in the case of Sajani Jewels Vs DCIT in Civil Appeal No. 17935 of 2015. The assessee's only source of income is from business and there is no other source of income. All profits of the unit is derived from manufacturing activities and qualifies for deduction under Section 10AA of the Act.

5. The Id. CIT(A) after considering the submissions of the assessee has held that the Hon'ble Jurisdictional High Court in the case of Sajani Jewels (supra) held that there was no escapement of income for the concern eligible for Section 10AA deduction. The Hon'ble High Court also held that source of payment for purchases being duly explained from the books of account, the provisions of Section 69C is not applicable. The facts of this case is identical to the case of Sajani Jewels (supra). It was also held that even if, 5% of purchases are estimated for addition, the same will be qualifies for deduction under Section 10AA of the Act as it derived from the eligible business. Since the profit of business being eligible for Section 10AA, there is no incentive in

inflating the purchases through bogus purchase bill. With the aforesaid view the Id. CIT(A) deleted the entire addition. Aggrieved by the order of the Id. CIT(A), the Revenue has filed the present appeal before this Tribunal.

6. We have heard the submissions of the learned Commissioner of Income tax -departmental representative (Id. CIT-DR) for the Revenue and the Id. Authorised Representative (AR) for the assessee. The Id. CIT-DR for the Revenue has supported the order of A.O. The Id. CIT-DR submits that the Investigation Wing of the Revenue made full-fledged investigation in the case of Bhanwarlal Jain and his group. Bhanwarlal Jain group was managing various companies, firms and proprietorship concerned in the name of his family members or relatives and there indulging in providing accommodation entries without actual delivery of goods. The assessee was shown purchases of 3.09 crores from Bhanwarlal Jain group and his various concerns. The assessee's transactions are not genuine and claimed bogus claim under Section 10AA of the Act on the basis of such in genuine purchases. No stock in trade was found at the time of search at Bhanwarlal Jain and his group concern. Bhanwarlal Jain disclosed the modus operandi of their entry providing scheme as recorded by assessing officer in his order. The hawala dealer were not doing any genuine business except providing bogus entry. Once no stock was found with the seller party, how the purchaser can get the physical delivery of goods, thus, the transaction so made are sham and mere books entry. Mere payment of the purchases through banking channel

is not sufficient, which is made only to show the sham transaction as genuine.

7. On the other hand, the Id. AR of the assessee submits that the assessee is eligible for deduction under Section 10AA of the Act, the entire profit of assessee is exempted under Section 10AA, and therefore, they have no occasion to make purchases from the alleged Hawala traders. The income of assessee is fully exempted under Section 10AA therefore, all the allegations of bogus purchases are false. The assessee has made genuine purchases. The Assessing officer has not rejected books of account nor disputed the sales/export of assessee. The sale/export is not possible in absence of purchases. The manufacturing unit of assessee is situated in SEZ and exports are fully verifiable through custom authorities. The Id. AR further submits that the case of assessee is squarely covered by the decision of Hon'ble Jurisdictional High Court in the case of Sajani Jewels Vs DCIT (supra).
8. We have considered the rival submissions of the parties and have gone through the orders of the lower authorities carefully. We find that the assessing officer after recording reasons that the assessee is one of the beneficiary of the accommodation entry received from Bhanwar Lal Jain proceeded for assessment. The assessing officer made the disallowance of the entire purchase shown from the entity managed by Bhanwar Lal Jain and his Group. We find that the assessing officer has not disputed the sale

of the assessee and merely held that the assessee has inflated expenses. The assessing officer has not rejected the books of account of the assessee. The sale and export of the assessee are also not disputed by the assessing officer. It is not possible to make sale in absence of purchases. It is settled position under law that when the genuineness of the purchases are doubtful and the sale is not disputed by the revenue authorities, only the income component of such transaction is to be disallowed to avoid the possibility of revenue leakage and not the substantial part of entire transaction. This view has been taken by Hon'ble jurisdictional High Court in the case of Bholanath Poly Fab (2013) 355 ITR 290 / 40 taxmann.com 294 (Guj). It is known fact that in case of Bhanwarlal Jain and its group concern, their income was assessed as entry provider which has been affirmed by the Tribunal. Before Ld. CIT(A) the assessee made similar submissions as made before assessing officer as well as before this Tribunal. The Ld. CIT(A) after considering the submissions of the assessee held that the Hon'ble Jurisdictional High Court in the case of Sajani Jewels (supra) held that there was no escapement of income for the concern eligible for Section 10AA deduction. The Ld. CIT(A) also held that Hon'ble High Court held when the source of payment for purchases was duly explained from the books of account, the provisions of Section 69C is not applicable. The Ld. CIT(A) took his view that the facts of this case is identical to the case of Sajani Jewels (supra) and deleted the entire disallowances. It was also held that even if, 5% of purchases are

estimated for addition, the same will be qualifies for deduction under Section 10AA of the Act as it derived from the eligible business. The Ld. CIT(A) solely relied on the decision of Sajani Jewels (supra). On careful perusal of the decision in Sajani Jewels (supra), we find that the said case is on the validity of re-opening under section 147 and other reference in the order is in the form of *obiter*. Thus, with our utmost regard to the decision of Sajani Jewels (supra) , the ratio of said decision is not squarely applicable on the facts of present case. In the present case the Assessing Officer clearly held that the assessee clearly failed to prove the delivery of the goods. Day-to-day purchase register was not produced. Moreover, no certificate certifying that Custom Authorities had certified the purchases.

9. As we have already recorded that the disallowance of 100% of the purchases are not justified when the sales of the assessee is not disputed. No doubt, the assessee is engaged in export of cut and polished diamonds and entire profit of the assessee from eligible export is exempt. Yet, the assessee has not fully established, the fact that entire purchases from the concern managed by Bhanwarlal Jain Group is genuine. The purchases from such hawala traders are mainly made to inflate the expenses. The Assessing Officer in para-3 of his order has clearly recorded the modus operandi disclosed by Bhanwarlal Jain and his associates during the search action. The payments in such transaction is made through banking transaction to show the sham transaction as genuine transaction. The combination of this

bench in other similar cases wherein the purchases are shown from Bhanwarlal Jain or Rajendra Jain or Gautam Jain group have restricted or enhanced the addition to the extent of 6% of such amount or disputed purchases. Therefore taking consistent view, the order of Ld. CIT(A) is modified and the Assessing Officer is directed to restrict the disallowance of bogus purchases to the extent of 6% of aggregate purchases shown from four parties of Rs.3.09 crores. The Assessing Officer is further directed to work out the eligibility of exemption under section 10AA. In the result, grounds of appeal raised by Revenue are partly allowed.

10. In the result, appeal of the Revenue is partly allowed.

Order pronounced on 13/05/2022 in open court and result was also placed on notice board.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Surat, Dated: 13/05/2022

**Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

By Order

Sr. Private Secretary, ITAT Surat