आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, Hon'ble JUDICIAL MEMBER
AND Dr. ARJUN LAL SAINI, Hon'ble ACCOUNTANT MEMBER

(Virtual Hearing)

आ.अ.सं./I.T.A No.354/AHD/2017

निर्धारण वर्ष/Assessment Year: 2007-08

The Deputy Commissioner of Income Tax, Circle-3(3), Surat.	Vs.	M/s. Minaxi Diamonds, 46-49, Siddhkutir Industrial Estate, Varachha Road, Surat – 395 006. **[PAN: AAEFM 7791 A]**
अपीलार्थी / Appellant		**प्रत्यर्थी/Respondent**

निर्धारितीकीओर से /**Assessee by**	Shri Mehul K.Patel – AR
राजस्वकीओर से /**Revenue by**	Smt. Anupama Singla – Sr.DR

सुनवाई की तारीख/ Date of hearing:	11.01.2021
उद्घोषणा की तारीख/Pronouncement on:	11.01.2021

<u>आदेश /O R D E R</u>

<u>PER PAWAN SINGH, JUDICIAL MEMBER:</u>

1. This appeal filed by the Revenue is directed against the order of Learned Commissioner of Income Tax (Appeals)-3, dated 24.11.2016 for the A.Y.2007-08. The Revenue raised the following grounds of appeal:

> *"1. On the facts and circumstances of the case CIT(A) has erred in restricting the addition made by the AO on account of disallowance of non-genuine purchases from 2,13,33,709/- to Rs.10,66,700/-.*
>
> *2. On the facts and circumstances of the case and in law, the CIT(A) has erred in directing to make an addition of 5% of unverified purchases which is not as per law. Once purchases are not genuine then either entire such purchases are to be disallowed or books of accounts ought to have been rejected and G.P. estimated.*

> *3. On the facts and circumstances of the case and in law, the CIT(A) has not considered the fact that even in the case of M/s.Mayank Diamonds Pvt.Ltd referred by him, the Hon'ble Guj.High Court has directed to estimate G.P. @5%, and not 5% of unverified purchases were directed to be added.*
>
> *4. On the facts and circumstances of the case and in law, It is therefore, prayed that the order of the Ld.CIT(A) Surat may be set aside to that extent and that of the AO's may be restored to that extent."*

2. Brief facts of the case are that the assessee is a partnership firm engaged in the business of manufacturing and trading of diamonds. For the assessment year under consideration, the assessee filed its Return of Income declaring total income at Rs.23,78,860/-. The return was processed and accepted under section 143(1) o the Act. Subsequently, assessment was reopened under section 147 of the Act. Notice under section 148 dated 29.03.2014 was served upon the assessee. The assessment was reopened on the basis of information received from Deputy Director of Income Tax (DDIT), Investigation Wing, Surat wherein the Assessing Officer (AO) was informed about the investigation conducted by DDIT Surat about hawala entry provider, who were indulging in providing bogus entry of sale and purchase without actual delivery of goods. The assessee was one of such beneficiary of bogus purchases. On the basis of such information, the AO recorded reasons for reopening. Notice under section 148 29.03.2014 was served on the assessee. In response to the notice under section 148, the assessee filed it reply dated 29.04.2014 and furnished the copy of return of income. The AO after serving

statutory notice under section 143(2) of the Act and 142(1) of the Act proceeded for reassessment. The AO noted that as per the information received from DDIT(Investigation Wing), Surat the assessee has sown purchases from Three hawala dealers, who have actually not purchased any diamonds, hence, there could be no sales. The assessee has shown purchases from three such parties:

S.No	Entry giver i.e. sellers	Amount(Rs.)
1	Rutuja Gems (HirenKumar D shah)	4888860/-
2	Neelam Gems(Chintan SS Shah)	10590149/-
3	Hiren Gems (Nilesh B Pachighar)	5854700/-
	Total	Rs. 2,13,33,709/-

3. During the assessment the AO issued show cause notice as to why the entire purchase from all these parties should not be treated as bogus. The assessee filed its reply vide its reply dated 23.03.2015 and stated that the assesse has made genuine purchase all from three parties. The assessee furnished copy of ledger accounts and invoices and the proof of payment through bank. The explanation and the evidences furnished by the assessee was not accepted by the Assessing Officer. The Assessing Officer on the basis of report of DDIT, Surat, treated the entire purchases from three parties as bogus and made addition in the assessment order passed under section 143(3) of the Act r.w.s 147 of the Act dated 30.03.2015.

4. On appeal before the ld.CIT(A), the assessee contended that they have furnished details of entire purchases, payments were made through account payee cheque, copy of stock book for whole year with purchase bills was furnished. The assessee further

contended that the assessee sale represents 100% export sales which is made after following lengthy process, the export of the assessee is not doubted by any of the Government Agency. Thus, there is no suppression of sales. The Assessing Officer has not proved that cheque amount after enchased and cash has been received back. During the relevant period, the assessee has shown Gross Profit of 6.28% and Net Profit of 2.39% which is fair enough in the trade of assessee. The assessee also relied on various case laws including decision of Hon'ble jurisdictional High Court in Mayank Diamonds Private Limited reported in [2014] 11 TRI 812 (Guj) wherein Hon'ble High Court has held that Gross Profit represents 5% average rate of the industry of diamonds, and upheld 5% Gross Profit Rate was upheld. The ld.CIT(A) after considering the submission of assessee restricted the disallowance of impugned purchase to the extent of 5%.. Thus, aggrieved by the order of the ld. CIT(A), the Revenue has filed present appeal before this Tribunal.

5. We have heard the submission of the ld. Departmental Representative (DR) for the Revenue and ld. Authorised Representative (AR) of the assessee and have gone through the orders of the Authorities below. The DR for the Revenue submits that the case of assessee was reopened on the basis of information received from DDIT, Investigation Wing, Surat. The investigation team made full-fledged investigation about the hawala dealers, who were indulged in providing accommodation entry. The Assessing

Officer was informed that assessee is one of the beneficiaries who have availed accommodation entries without purchase of any diamonds. The assessee was shown bogus purchases from three hawala parties. The assessee before the Assessing Officer could not substantiate the purchases. The assessee has shown the purchases to inflate the profit by showing such bogus purchases. The ld.CIT(A) while granting relief to the assessee held that report of Investigation Wing was not provided to the assessee. The bogus parties were not engaged in the diamond related business. The assessee failed to prove the genuineness of the transaction. The Ld. DR for the revenue prayed for restoring the order of assessing officer.

6. On the other hand, the Authorised Representative (AR) of the assessee supported the order of the ld.CIT(A). The Authorised Representative further submits the ld.CIT(A) has reasonably restricted the disallowance to 5% of the alleged bogus purchases, though the entire purchases from all three parties were genuine. The Ld. AR for the assessee prayed for dismissal of appeal.

7. We have considered the rival submission of both the parties and have gone through the orders of Lower Authorities. We have noted that the Assessing Officer made addition solely on the basis of report of DDIT(Investigation), Surat. The Assessing Officer has not made any investigation independently. The books of accounts of assessee was not rejected. The sales of assessee was not doubted. No sale is possible in absence of purchase. The Assessing Officer

has not given any findings on the documentary furnished by the assessee i.e. with regard to ledger account of the parties, invoices of purchases and the payment made through banking channels.

8. Before the Ld.CIT(A), the assessee filed a detailed written submission as recorded in para 7 of the impugned order. On filing of written submission of the assessee, the ld.CIT(A) directed the Assessing Officer to furnish the report of Investigation Wing along with its enclosure, record of enquiries made by the Assessing Officer along with notices issued and reply received if any. Copy of the seized documents pertaining to hawala parties by DDIT (I) Surat. The copy of statement of hawala parties and any other relevant information or incriminating material. In pursuance of the direction of ld.CIT(A), the Assessing Officer furnished copy of report of Investigation Wing. In response to the enquiries conducted by the Assessing Officer and the notices if any was issued, the Assessing Officer submitted that summons under section 131 of the Act were issued to the bogus/hawala traders. The Inspector was deputed to serve the summon. The Inspector reported that none of the parties exist at the given address. With regard to seized documents of hawala parties, the Assessing Officer submitted that on the basis of search, various cases have been reopened in various charges. The same report is not available to this office. Copies of the statement of proprietor/ amendment/ director of the hawala parties were filed. For relevant

incriminating material, the Assessing Officer stated that no material is available in his office.

9. The ld.CIT(A) after receipt of report of Assessing Officer, allowed the joint inspection of the record vide order sheet noting dated 26.02.2016 as recorded in para 8.1 of the impugned order. After inspection of record the assessee filed its counter comments/rejoinder by way of submission dated 23.09.2016. The contents of reply/rejoinder of assessee is recorded in para 8.2 of the impugned order. In the said reply/rejoinder, the assessee stated that DDIT, Investigation, Surat has not taken statement on oath on any of the supplier. No information was called by assessing officer under section 133(6) of the Act. The Assessing Officer simply relied on the report of DDIT, Investigation, Surat. The copy of statement required by ld.CIT(A) is not made available. Relevant incriminating material is also not made available.

10. The ld.CIT(A) after considering the submission of assessee, contents of remand report and the rejoinder submission by assessee concluded that considering the fact and circumstances of the case and various judicial decisions, the disallowance of 5% of impugned purchases would be reasonable.

11. We are also of the considered opinion that under Income Tax Act only real income can be taxed by the Revenue. We may further note that even in cases where the whole transaction is not verifiable due to various reasons, the only taxable is the taxable income component and not the entire transaction. The Hon'ble

Bombay High Court in the case of “CIT vs. Hariram Bhambani” in ITA No.313 of 2013 decided on 04.02.15 held that the Revenue is not entitled to bring the entire sales consideration to tax, but only the profit attributable on the total unrecorded sale consideration alone can be subject to income tax. In our view, wherein the allegation bogus purchases, if the assessee is failed to prove the complete transaction beyond doubt, the Assessing Officer is not entitled to make 100% disallowance of purchases without bringing sufficient material on record. In such cases only, profit element embedded in such transaction is liable to be disallowed. Therefore, we affirm the order of ld.CIT(A). No contrary law is brought to our notice to other view.

12. In the result, appeal of the Revenue is dismissed.

Order pronounced on 11-01-2021 by placing result on notice board.

Sd/-	**Sd/-**
(Dr.ARJUN LAL SAINI)	**(PAWAN SINGH)**
(लेखा सदस्य/ACCOUNTANT MEMBER	**(न्यायिक सदस्य/JUDICIAL MEMBER)**

सुरत/ **Surat,** दिनांक **Dated:** 11th Jan, 2021 /#*SGR*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

/ / **TRUE COPY** / /

Assistant Registrar, Surat