

आयकर अपीलीय अधीकरण, न्यायपीठ –“C(SMC)” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A(SMC)” BENCH: KOLKATA
 (समक्ष) श्री ए.टी. वर्की, न्यायिक सदस्य)
 [Before Shri A. T. Varkey, JM]

ITA No. 1681/Kol/2019
 Assessment Year: 2010-11

Dhandhia Gems PAN: AAFFD1334H	Vs.	ITO, Ward 37(4), Kolkata
Appellant		Respondent

Date of Hearing	30.06.2020
Date of Pronouncement	03.07.2020
For the Appellant	Shri Akkal Dudhewewala, Id.AR
For the Respondent	Shri Dhruva Jyoti Roy, JCIT, Id. Sr.DR

ORDER

This is an appeal preferred by the assessee against the order of Ld. CIT(A), 11, Kolkata dated 18-04-2019 for the assessment year 2015-16.

2. The effective grounds of appeal pressed by the assessee before me are as follows:-

“2. That the Assessment Order is bad, illegal and void because the AO did not supply the copy of the information received by him from D.I. (Inv) based on which information, the assessment was re-opened.

3. For that in the facts & circumstances of the case the ld. AO was unjustified in treating in purchase of goods from AVI Exports amounting to Rs. 105150/- as bogus purchase and unexplained expenditure, inspite of the fact that full details of the goods purchased, mode of payment of the same, Name, Address & Telephone Number of the person through whom the goods were purchase, Visa-vis the details of sales of those goods and the details of closing stock.”

3. Facts of the case as noted by the AO is that the assessee in this case trades in jewellery items. Information was received from the Director of Income Tax (Investigation) informing the AO that some accommodation entry operators in Mumbai were giving accommodation entries in lieu of commission through a maze of bogus purchase and sales in the name of companies managed by these operators to gems and jewellery merchants across the country. In this regard, M/s. Dhandhia Gems (the assessee), being a trader in

jewellery items, was also a beneficiary, who had received entries by way of non-genuine purchase bills to the tune of Rs. 1,05,150/- from AVI Exports during the Financial Year 2009-10 relevant to the Assessment Year 2010-11. Accordingly the case was selected for re-assessment u/s. 147 of the Income-tax Act, 1961 (hereinafter referred to the 'Act') by way of issuance of notice u/s. 148 of the Act.

4. After reopening the assessment, the AO observed that the assessee when asked to explain about the purchase made from M/s. AVI Exports, it replied that it had properly disclosed purchase of diamonds worth of Rs. 1,05,150/- from M/s. AVI Exports and made the payment through banking channel. According to the assessee, it had filed copy of P&L account and details of purchase, which were duly supported by copies of bill to show the genuineness of the purchase. However, the AO did not accept the contention of the assessee. He noted that though the assessee has disclosed the transaction with M/s. AVI Exports, the transaction was merely an accommodation entry provided by M/s. AVI Exports to the assessee and not genuine. The assessee when confronted with the fact of Investigation Wing coming to know about M/s. M/s. AVI Exports which was an accommodation entry provider and that assessee was a beneficiary, the assessee replied that it has purchased diamonds genuinely from M/s. AVI Exports and the payment was made through banking channel and denied the allegations that M/s. AVI Exports was an accommodation entry provider/operator. However, the AO did not agree with the contention of the assessee. According to AO, merely using of banking channels for payments could not establish the genuineness of the transaction, when the accommodation entry provider has himself on oath submitted that they are providing accommodation entry. TheAO observed that he asked the assessee to produce evidences regarding movement of goods (Transport/Road Challans etc.) from Surat, for which the assessee replied that the assessee collected the diamonds through its broker, Sri Vikash Agarwal, who delivered the diamonds from M/s. AVI Exports to the assessee and pointed out that diamonds worth Rs. 1,05,150/- no one transports by trucks etc, when it can be brought in pocket of the broker. However, according to the AO, this fact of Shri Vikash Agarwal delivering the diamonds from Surat to the assessee at Kolkata could not be substantiated and thereafter, the AO made the entire addition of Rs. 1,05,150/- as unexplained expenditure by the assessee. Aggrieved, the assessee preferred an appeal before the Id. CIT(A), who while dismissing the appeal noted

that the proprietor of M/s. AVI Exports, Shri Rajendra Jain in whose case search & seizure action was conducted has on oath admitted that he has floated several companies for giving accommodation entries in lieu of commission and assessee was a beneficiary of accommodation entry by way of non genuine purchase of diamonds of Rs. 1,05,150/- from M/s. AVI Exports during the relevant AY. According to the Id. CIT(A) the modus operandi employed by Shri Rajendra Jain, Shri Surendra Jain and Shri Sanjoy Chowdhury was that they had created many fictitious firms and entities through which bogus bills were issued against commission to the desiring parties like the assessee and when this fact came to the notice of the department during the search conducted in their premises, the statements of said persons were recorded u/s. 131 of the Act, wherein they have confessed that they had been operating a network of various concerns through which such business of providing accommodation entries were run. Therefore, the Id. CIT(A) was of the opinion that since the entry provider, Shri Rajendra Jain has confessed and has explained the details of modus operandi employed by them in providing accommodation entry in lieu of commission, the Id. CIT(A) was pleased to confirm the order of the AO. Aggrieved, the assessee is before this Tribunal.

5. Having heard both the parties and after perusal of the records, it is noted that similar matter has been adjudicated by this Tribunal. It has been brought to my notice by the Id.AR of the assessee that this Tribunal has deleted similar addition in the case of M/s. M.B Jewellers & Sons vs. DCIT by order dated May, 24,2018 passed in ITA No. 104/Kol/2018 for the AY 2007-08, wherein on similar grounds/facts the additions made by the AO on the strength of statement of ShriRajendra Jain had been deleted. It is noted that the Tribunal while allowing the appeal of the assessee has observed as under:-

"7. We have heard the rival submissions and perused the materials available on record including the paper book filed by the assessee comprising of pages 1 to 100. We find that the assessee was maintaining proper books of accounts including all the details, stock registers, bills nad vouchers in respect of its traded goods. All the purchases from the parties were made against proper bills and such goods were used in making jewellery and ornaments which were further sold as finished goods at profit and all major items of purchases are identifiable and are matched with subsequent sales. In respect of specific purchases made from M/s Vitrag Jewels (i.e the disputed purchases before us), the assessee had furnished the date of purchase together with its quantity, rate and value and its corresponding sales on various dates and items which were lying as closing stock in the books together with the parties to whom such diamonds were sold and cheque realization thereon from the said customers.

These details are enclosed in page 59 of the paper book filed before us. We find that the sales made by the assessee has been accepted by the revenue. Hence the natural corollary is without the purchases, there cannot be any sales. But it does not automatically mean that the purchases would be entitled for deduction. The purchases would be eligible for deduction only when the source for such purchases are explained. In the instant case it is the case of the revenue that the assessee had issued account payee cheques to M/s Vitrag jewels (supplier of diamonds to assessee) and had received cash in return from them and the said cash is utilized by the assessee for purchase of diamonds from unknown parties in the grey market. We find that there is absolutely no evidence that is brought on record to prove that the assessee had indeed received cash back from Vitraj jewels in lieu of cheque issued to them or from any other party except making a wild allegation to that effect and by placing reliance on the statement of ShriRajendraJain. We also find that ShriRajendra Jain had subsequently retracted his statement by way of an affidavit deposing before the Notary Public on 9.1.2014 (enclosed in pages 96 to 100 of paper book). He had also explained the circumstances under which the original statements had been recorded and effectively stated that the same was recorded under coercion and the statement recorded therein were as per the desire and will of the DDIT (Inv) who recorded the statement. ShriRajendraJain had also initially filed an affidavit on 21.10.2013 (enclosed in pages 91 to 95 of paper book) retracting the statement recorded by DDIT (Inv) . He also filed a letter to DCIT, Central Circle -4, Surat on 31.10.2014 explaining the entire facts of the case and the circumstances warranting him to file two affidavits [i.e on 21.10.2013 and 9.1.2014 reiterating the same) [enclosed in pages 88 to 90 of paper book). Hence the version of the revenue that the assessee had received cash back in lieu of cheques issued to suppliers of diamonds, stands negated pursuant to the retraction of statement of ShriRajendraJain which is the only source of evidence available with the revenue and which has been heavily relied upon by the revenue. A statement once retracted cannot be treated as a reliable source or an evidence to allege that the assessee had received cash back in lieu of cheques issued.

7.1. We find that the tax audit report of the assessee clearly mentioned that the assessee is maintaining regular books of accounts including the day to day stock register and quantity and quality details of stock from which purchase, consumption and sale of stock was also proved. We find that in response to the query raised by the Ld. AO regarding the purchases made from M/s VitragJewels and AVI Exports, the assessee furnished the bills containing the name address as well as the sales tax numbers both Gujarat and Central sales tax together with the PAN of those parties from whom goods were purchased. The payments were made to them by account payee cheques. We find that the tax auditor had reported the complete quantitative details of opening stock purchases, stocks transfere4 sales, closing stock in respect of each showroom in respect of Gold, Gold ornaments, diamonds, pearls and coloured stones which are enclosed in page 35 of the paper book. The Ld. AO vide his letter dated 7.7.2014 asked the assessee the details of purchases made from M/s Vitrag Jewels and M/s AVI Exports (though no addition has been made in respect of purchases from this party) in FYs 2005-06, 2006-07 and 2007- 08 and the

corresponding sales made thereon. We find that the assessee filed a reply thereon vide letter dated 19.8.2014 enclosed in pages 46 to 52 of paper book. In the said letter the assessee had explained the modus operandi of its purchase activity in the following manner:

'It has been asked to explain manner of receipt of above said items of purchases in the hands of the assessee. It is to submit that normally as a general business practice, brokers/dealers from sarrafa bazaar/jewellery market (mainly from Surat and Mumbai), visit a prospective buyer's business place and display various items of diamonds and precious/semi-precious stones and the buyer makes the final selection and bills are subsequently raised by the seller directly. Naturally we had also been purchasing diamonds, precious and semi-precious stones from outside dealers in the above manner. Furthermore, at time partners, their close family members or family friends also visit the sellers place partners. Sometimes, orders are also placed over phone and goods are sent through trusted and regular couriers. As a normal business practice, goods are regularly received in the above stated manner. However, at the moment it is not possible to exactly recollect how the above consignments were received because of long time gap'

7.2 We find that the assessee had furnished the summary of diamonds movement for the period 1.4.2005 to 31.03.2007 indicating the quantity and value in opening balance, purchases, sales and closing balance (enclosed in page 53 of paper book). We find that the assessee had also filed the purchase bills of M/s. Vitrag Jewels (enclosed in pages 68 to 72 of the paper book) together with the ledger account of M/s. Vitrag Jewels as appearing in the books of the assessee firm for the period 1.4.2006 to 31.03.2007 and for the period 1.04.2007 to 31.03.2008 wherein the payments were made to M/s. Vitrag Jewels by account payee cheques. Admittedly the payments were made to M/s. Vitrag Jewels through account payee cheques on 22.02.2008 (Rs. 10,00,000/-) and on 27.03.2008 (Rs. 5,57,470/-). Hence the primary allegation of the Ld. AO that the assessee had received the csh back in lieu of account payeecheques issued from M/s. Vitrag jewels (based on the statement of ShriRajendrajain) and used the said cash for purchasing diamonds from Unknown parties in the grey market, gets defeated on this count also, in as much as, the Ld. AO had accepted the fact that factum of purchases of diamonds indeed has been made by the assessee in the Asst. Year 2007-08 [i.e. the year under appeal) and whereas the payments were made to VitragJewels only in next Asst. Year i.e. A. Y. 2008-09. While this is so, it is highly impossible for M/s. Vitrag jewels to first hand over the cash even without receiving the cheques from the assessee. Hence no cash could be available with the assessee to make purchase of diamonds from unknown parties in the grey market in Asst. Year 2007-08. Hence the allegation of the Ld. AO only leads to impossible situation.

7.3 We find that the Hon 'ble jurisdictional High Court in the case of CIT vs Alpha Hydronics Pvt. Ltd. in ITA No. 549 of 2004 dated 10.11.2014 had held as under:

We find that the Tribunal while allowing the appeal of the assessee and held as under:

We have considered the rival submissions and gone through the facts of the case. We find that in the present case there is a binding contract between the parties by which the recipients of the commission had the right to enforce realization of commission stipulated between the parties. We also find from the communication between the parties that the payment was duly received by the parties and paid by the assessee by account payee cheques. The revenue has not alleged that the parties to the transactions are related to each other or that the payments are not genuine or that the payments having been made by the assessee to the recipients have found their way back to the assessee some way or the other. Such being the case, we find that the authorities below were not justified in rejecting the claim of the assessee for payment of commission. Since all the ingredients necessary for genuine business transaction exist in this case we do not find any merit in the addition made by the AO and in the action of the Ld. CIT(A) in confirming the same. In reversing their orders, and respectfully following the decision of the Hon 'ble Calcutta High Court in the case of Master & Plant [India] Ltd., (supra) and the case of the Tribunal, Mumbai Bench (Third Member) discussed herein above, we allow the appeal of the assessee"

Heard Mr. Das, learned advocate appearing for the appellant revenue and Mr. J.P, Khaitan, learned senior advocate appearing for the respondent assessee. Before us the revenue could not demonstrate either the money was not paid or the money was paid and routed back to the assessee. In the circumstances interference with the order of the Tribunal is not warranted. No. question arise for adjudication. The application and the appeal are dismissed

7.4. We also find that similar issue had been addressed by this tribunal in respect of purchases made from M/s Vitrag jewels in connection with the statement of Shri Rajendra Jain in the case of Manoj Beganiv ACIT in ITA No. 932/Kol/2017 for Asst Year 2008-09 ; ITA Nos. 933 to 935/Kol/2017 for Asst Years 2010-11 to 2012-13 and ITA No. 936/Kol/2017 for Asst Year 2014-15 vide consolidated order dated 15.12.2017 wherein this tribunal had elaborately discussed the modus operandi of all the transactions from various angles and decided the issue in favour of the assessee. The findings given thereunder are not reiterated herein for the sake of brevity.

7.5 In view of the aforesaid findings in the facts and circumstances of the case, we hold that there is no case made out by the revenue for making an addition towards purchases of Rs. 15,57,470/- and we hereby direct the Ld. A.O. to delete the same. Accordingly, the ground 2 and 3 raised by the assessee are allowed."

6. Since the facts and law relating to the addition made in this case is similar and the Id. DR could not point out any difference in fact or law, respectfully following the order of the Tribunal in M/s. M.B Jewellers (supra) and also it is noted that similar issue had been addressed by this tribunal in respect of purchases made from M/s Vitrag jewels on the

strength of statement/admission of Shri Rajendra jain in the case of Manoj Beganivs ACIT in ITA No. 932/Kol/2017 for Asst Year 2008-09 ; ITA Nos. 933 to 935/Kol/2017 for Asst Years 2010-11 to 2012-13 and ITA No. 936/Kolj2017 for Asst Year 2014-15 vide consolidated order dated 15.12.2018 wherein this tribunal had elaborately discussed the modus operandi of all the transactions from various angles and decided the issue in favour of the assessee. The findings given thereunder are not reiterated herein for the sake of brevity. In the light of the above said discussion, I am inclined to allow the appeal of the assessee and direct deletion of addition of Rs 1,05,150/-

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

Order is pronounced in the open court on 3rd July 2020.

Sd/-
(Aby. T. Varkey)
JudicialMember

Dated :, 3rd July 2020

**PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant –Dhandhia Gems 39/5 Ramtanu Bose Lane, Kolkata-6.
 2. Respondent –ITO, W 37(4), Kol 3 Govt. Pl West, Kolkata-1.
 3. CIT(A)-4, Kolkata (sent through e-mail)
 4. CIT- , Kolkata.
 5. DR, ITAT, Kolkata. (sent through e-mail)
- By order,

/True Copy,

Assistant Registrar