

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI
BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 5414 /Del/2018
(Assessment Year: 2008-09)

Surana Enterprises 2890 Kinari Bazar Chandni Chowk New Delhi PAN: AADFS2575H	Vs.	ITO, Ward-47 (3) New Delhi
(Appellant)		(Respondent)

ITA No. 5415 & 5416 /Del/2018
(Assessment Year: 2007-08 & 2008-09)

Surana Jewelers 2790 Kinari Bazar Chandni Chowk New Delhi PAN: AABFS0381H	Vs.	ITO, Ward-47 (3) New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Abhishek Mathur C A
Revenue by:	Shri Pradeep Singh Gautam, Sr. DR
Date of Hearing	03/03/2020
Date of pronouncement	26/05/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

- These are the three appeals involving the similar issue, those are heard together having common arguments from both the parties, and therefore, they are disposed of by this common order.
- Facts involved in all these three appeals are common that assessee has booked alleged bogus purchase bills from M/s Mohit International, surat, operated by Mr. Praveen Kumar Jain, an accommodation entry provider, and also booked the sales of those material, shown necessary gross profit in

its Trading account, but Id AO reopened assessment and made total addition of purchases and CIT (A) confirmed the same.

3. ITA number 5414/Del/2018 is filed by Surana Enterprises against the order of THE COMMISSIONER OF INCOME TAX APPEALS – 16, New Delhi dated 29/05/2018 raising following grounds of appeal; –

- i. That the Honourable Commissioner of income tax (appeals) has erred in law as much as on the facts of the case by upholding the addition of ₹ 802600/– alleged to be bogus purchases without appreciating the fact that the learned assessing officer did not assume the jurisdiction to complete the assessment proceedings as the notice under section 143 (2) of The Income Tax Act, 1961 have been issued by him on the same day when the return of income has been filed by the appellant in compliance to notice under section 148 of the act, which clearly shows nonapplication of mind by him to the return of income filed by the appellant before the issuance of notice under section 143 (2) of the act and thus the reassessment is liable to be quashed.
- ii. That the Honourable Commissioner of income tax (appeals) has erred in law as much as on facts of the case by upholding the addition of ₹ 820600/– alleged to be bogus purchases made by the appellant from M/s Mohit international, are concerned alleged to have been controlled and managed by Sri Praveen Jan and his associates being alleged to be the entry operators.
- iii. That the Honourable Commissioner of income tax (appeals) has erred in law as much as on the facts of the case by confirming the aforesaid addition of ₹ 8 20600/– with regard to the alleged bogus purchases made by the appellant from Mohit international when

the same have been duly confirmed by the proprietor of Mohit international through his affidavit that they have sold the goods to the appellant vide invoice number and I/PD/8YA – 2007 – 08 dated 4/7/2007. This affidavit have been arbitrarily rejected without holding that the affidavit is false and has no evidentiary value and also without affording the opportunity to cross examine that deponent of affidavit. This action is not only bad but also against the principles of natural justice.

- iv. That the Honourable Commissioner of income tax (appeals) has erred in law as much as on the facts of the case without appreciating and giving cognizance to the fact that the payment for purchase has been made through proper banking channels and the appellant had produced before him and also before the learned assessing officer all the necessary supporting documents like purchase bill, bank statements, stock records, affidavit etc. To discharge the initial onus cast upon the appellant and that the same have been rejected by the learned assessing officer without giving any specific reasons for rejection.
- v. That the Honourable Commissioner of income tax (appeals) has further failed to appreciate the fact that the learned assessing officer and the honourable joint Commissioner of income tax had reopened the assessment of the appellant in a hurried manner and only on the basis of the information received from the investigation wing, Mumbai without independent application of their own mind, without carrying out further enquiry and without recording of satisfaction in this regard. The sanction granted by the learned Joint Commissioner of income tax that 'yes this is a fit case'

is not sufficient to comply with the requirement of section 151 of the act and means that the satisfaction is granted in a mechanical manner. Thus the assessment completed by the learned assessing officer under section 147/143 (3) of the income tax act, 1961 is not sustainable in law.

- vi. That the Honourable Commissioner of income tax (appeals) have further failed to appreciate the fact that the learned assessing officer while making the aforesaid addition of ₹ 8 20600/- have relied upon the statement of the Praveen Jan and Shri Nilesh Parmar however the copies of the statements were never provided to the appellant and no opportunity was provided to cross examine these persons in spite of the fact that specific request was made by the appellant from during the reassessment proceedings. Such a denial of opportunity of cross-examination is against the principle of natural justice and the rear smiled reassessment proceedings are liable to be quashed.
- vii. That the Honourable Commissioner of income tax appeals has failed to appreciate the fact that the learned assessing officer has failed to provide the appellant the copy of report of the investigation wing, Mumbai in case of Sri Praveen Kumar Jan whereby it was held that the appellant have been provided with the accommodation entry in this action of the learned assessing officer is not only bad in law but also against the principles of natural justice.
- viii. That the Honourable Commissioner of income tax (appeals) have further failed to appreciate the fact that though the learned assessing officer has made the addition with regard to the bogus purchases but at the same time, he has accepted the books of accounts in

the trading results as declared by the appellant and also the figures of sales and closing stock without appreciating the fact that without purchase, sale is could not have been effected by the appellant.

ix. That without prejudice to the above, the Honourable Commissioner of income tax (appeals) have further failed to appreciate the fact that even if it is presumed that the purchases have been made from the bogus parties, the purchases themselves are not bogus as the figures of sales, stocks have been accepted by the learned assessing officer and thus the addition, if any, to be made, can only be restricted to the profit margin embedded in such purchases and not the entire purchase amount.”

4. Though assessee has raised several grounds of appeal and their argumentative in nature, despite this, they are admitted and assessee is allowed to argue its case. According to the grounds of appeal, the assessee has challenged the reopening of the assessment as well as the addition on its merit.
5. Assessee is a partnership firm. It filed its original return on 23/7/2008. Subsequently action under section 147 of the income tax act was taken based on information received from The Director General of Income Tax (Investigation) Mumbai that the assessee has received accommodation entries from a group owned by Shri Praveen Jain. During the course of search and seizure in the group companies of Shri Jan it was found that he is a leading entry operator in Mumbai indulging in providing accommodation entries like bogus purchases, sales, loan, share capital et cetera. The search and seizure action was carried out on him on 1/10/2013 by investigation wing of the Department. Evidences were collected and statement of various person including Sri Praveen Jain was taken during the course of post such enquiries the AO found that the assessee has made a purchase of ₹ 820600 from Mohit international, a concern controlled and

managed by Sri Praveen Jain and his associates. Therefore, notice under section 148 of the income tax act was issued. Assessee submitted that return originally filed may be treated as return filed in response to the above notice. The reasons recorded were provided to the authorized representative of the assessee and objections raised by him were disposed of as per note sheet entry dated 05/9/2015.

6. The assessee was asked after showing the information received from the investigation wing about the genuineness of the above purchases made by the assessee. The assessee submitted a copy of the affidavit of the proprietor of Mohit international along with the copy of the bill along with many other evidences of payment etc. The learned AO rejected the contention of the assessee for the reason that proprietor of Mohit international was summoned under section 131 of the act and on 2/10/2013, statement was recorded. He submitted that Mr. Praveen Jain is managing and controlling the numerous companies and Nilesh Parmar[Prop. Of Mohit International] is an accountant of approximately 30 companies controlled and managed by Mr. Jain. M/s Mohit international is also controlled by him. No genuine business activities carried out in any of the said accounts. He has never seen any stock in any of the said concern. There is no warehouse for goods where any stock is maintained. There is no place from where any genuine business activities are being carried out in any of the concerned. Mr. Praveen Jain's statement was also recorded on 1/10/2013 where the whole gamut of providing the accommodation entry was confessed. Therefore, based on the above facts, and in absence of any further details submitted by the assessee, with respect to the genuineness of the purchases, learned assessing officer passed an order under section 147 read with section 143 (3) of the act on 21/3/2016 wherein the returned income filed by the assessee of ₹ 31358/- was assessed at ₹ 851960/- making the addition on account of bogus purchases of ₹ 8,20,600/-.
7. The assessee aggrieved with the order of the learned assessing officer preferred an appeal before the learned CIT – A. The learned CIT – A on examination of the remand report by the assessing officer as well as based

on examination of the case record found that approval from joint Commissioner of income tax has properly been taken by the assessee. Therefore, he dismissed the issue raised by the assessee against the reopening of the assessment. On the merits of the addition, the learned CIT – A noted that purchases made by the assessee from Mohit international is a bogus purchase. Thereafter relying on the decision of the honourable Supreme Court in M/s NK proteins Ltd versus deputy commissioner of income tax 250 taxman 22 where the special leave petition is dismissed by the honourable Supreme Court against the decision of the honourable Gujarat High Court, he confirmed the total addition of ₹ 820600. The assessee aggrieved with the order of the learned CIT A has preferred the appeal before us.

8. The learned authorized representative vehemently objected to the reopening of the assessment. It was submitted that that the learned assessing officer has recorded the reasons for reopening of the assessment purely based on the information received from the investigation wing of the income tax department. Therefore, the reopening based on the investigation wing without any application of mind by the learned assessing officer, the reopening is not sustainable.
9. He further referred to the satisfaction recorded by the joint Commissioner of income tax wherein he stated that he has, this is a fit case of approval under section 151 of the income tax act 1961 to issue notice under section 148 of the income tax act, 1961. The learned authorized representative also submitted that the satisfaction recorded by the approving authority is non-application of mind.
10. Assessee further submitted that notice under section 148 of the income tax act was issued on 23/3/2015. The assessee complied with the above notice on 4/8/2015 and on the same date the learned assessing officer issued notice under section 143 (2) of the income tax act. Therefore the argument was that the movement the assessee complied with the notice under section 148 of the income tax act by saying that the return filed originally may be treated as return in response to the above notice, the learned assessing

officer issued the notice under section 143 (2) of the income tax act. Therefore it was submitted that the notice has been issued on the same date, therefore there is no application of mind by the learned assessing officer and therefore notice issued under section 143 (two) is bad in law.

11. He also raised all other issues mentioned in grounds of appeal.
12. The learned authorized representative submitted that purchases have been confirmed by the seller by Mr. Nilesh Parmar, proprietor of Mohit international wherein the goods sold have been confirmed and delivered to the assessee and payment received from the assessee is confirmed. He referred to the affidavit placed at page number 33 and 34 of the paper book. It was further stated that purchases have been made by the assessee and payment have been made by the assessee by account payee cheques. The assessee also referred to the copy of the invoice dated 4/7/2007 of Mohit international Surat issued to the assessee. Assessee also submitted the copy of Accounts and submitted that when the records shows that the impugned purchases entered into the purchases and there is a corresponding sale in the books of accounts of the assessee which have been accounted for by the assessee, the addition made by the learned assessing officer is not proper. He further referred to the copy of purchase and sales registers as on 31st of March 2008 and the D VAT – 16 for the above. He submitted that the gross profit arising on the bogus purchases but quantity entered and sold subsequently, resulting GP already shown in Trading account, addition made by the d AO is double and incorrect addition. Therefore he submitted that on the merits of the case the addition cannot be made.
13. The authorized representative submitted one more paper book wherein the permanent account number of Mr. Nilesh H Parmar, the copy of the return of income for assessment year 2007 – 08, the copies of the balance sheet and profit and loss account of Mohit international for assessment year 2007 – 08, copies of the account is furnished. Identical information is also furnished of that supplier for assessment year 2008 – 09. Therefore, it was submitted that the purchases made by the assessee from the above party is genuine.

14. The learned authorized representative has also submitted a detailed paper book containing 28 judicial pronouncements of various authorities and submitted that the case of the assessee is covered by the decision of SIL Gold versus ITO in ITA number 1049/del/2018 placed at page number 39 – 43 of the paper book. Thus, the issue is squarely covered in favour of assessee.
15. The learned departmental representative vehemently supported the orders of the lower authorities. It was submitted that the reasons recorded by the learned assessing officer were based on the statement recorded by the person who has given the accommodation entry of the purchase of goods. He further submitted that the proprietor of the supplier have also submitted in a statement that he is merely an accountant and does not supply any goods. The learned CIT – A also noted the above fact and stated that based on these information which are clinching, the learned assessing officer after recording his reasons, reopened the case of the assessee. Therefore he submitted that when the information received from the investigation wing was so crystal-clear that the purchases made by the assessee are bogus, it is merely an accommodation entry and goods have never passed on by the seller to the assessee, there is no reason to disbelieve the fact that the learned assessing officer has a reasonable belief that assessee has booked bogus purchases. Therefore he confirmed the reopening of assessment. With respect to the satisfaction, it was submitted that the issue is squarely covered in favour of the revenue by the decision of Mrs.Sonia Gandhi and M/s Meenakshi oversees of Honorable Jurisdictional High court in case where the identical satisfaction recorded by the approving authority was accepted as in accordance with the law. Therefore he submitted that there is no infirmity in reopening the assessment of the assessee as assessee has obtained an accommodation entry of ₹ 8 20600/-.He submitted that assessee has produced the bill, if assessee claims it to be genuine, it is assessee who should have brought Mr. Nilesh Parmer before Ao for verification to state that his earlier statement is wrong and how he has supplied to goods to the assessee. He submitted that merely an affidavit

does not support the case of the assessee he submitted that in all these three appeals assessee has booked bogus bills and has shown the lower profits so addition is correctly made. With respect to the addition on the merit, it was submitted that the genuineness of the purchases have not been proved by the assessee. Merely because the assessee has been billed purchases, payment have been made by cheque, when the seller has confessed to be bogus, the addition has correctly been made. It was further submitted that the learned and CIT – A while confirming the addition has relied on the decision of the honourable Supreme Court. On the issue of applicability of decision of SIL Gold (supra) he submitted that it did not consider the decision of Honourable supreme court so it cannot be relied up on. Even otherwise, he submitted that there is no correlation between any goods received by assessee and its corresponding sales. There is no stock register, there is no track when the goods are received and when they are sold. In this circumstances, the addition cannot be deleted. Therefore, it was submitted that there is no infirmity in reopening of the assessment as well as making the addition in the hands of the assessee.

16. The ld AR in rejoinder submitted that assessee has shown the trading account where the purchases have been entered and sales have been booked, therefore there is no reason to say that assessee has not booked corresponding sales.
17. We have carefully considered the rival contention and perused the orders of the lower authorities.
18. We first come to the issue of reopening of the assessment. In the present case, revenue has conclusively shown that assessee has purchased only the bill and goods along with the bill has not been received. This is confirmed by the seller during the course of search. The seller is also controlled by one accommodation entry provider he also confirmed the same. During the course of search it was found that the seller was not at all engaged in any business except providing an accommodation entry. The investigation wing of the income tax department on the basis of search, on the basis of posts such inquiries, and on the basis of the statement of the accommodation

entry provider, conclusively provided evidence to the Id AO that the assessee by purchase of goods from Mohit international has obtained an accommodation entry of purchase of goods. The case of the assess was never scrutinized in response to return filed by the assessee. There is a tangible material available with the assessee. There is live link in the material as well as income of the assessee as the party issuing the bill has confirmed that it has not supplied by the material but has provided accommodation entry. Identical issue arise before honorable Gujarat high court in case of [2017] 394 ITR 65 PUSHPAK BULLION PVT LTD VERSUS DEPUTY COMMISSIONER OF INCOME TAX where in the same accommodation entry operators, same bill provider and same modus operandi in the same period with the assessee's original return not picked up for scrutiny, the case of the assessee was reopened and in writ petition same was upheld. Honourable High court held as under :-

“5. We have perused materials on record. We may recall that the original assessment was not framed after scrutiny. The return filed by the assessee was accepted under section 143(1) of the Act. In this context, we may refer the decision of the Supreme Court in the case of Assistant Commissioner of Income- Tax v. Rajesh Jhaveri Stock Brokers P.Ltd. reported in 291 ITR 500 in which it was held and observed as under:

“13.....In the scheme of things, as noted above, the intimation under section 143(1) (a) cannot be treated to be an order of assessment. The distinction is also well brought out by the statutory provisions as they stood at different points of time. Under section 143(1)(a) as it stood prior to April 1, 1989, the Assessing Officer had to pass an assessment order if he decided to accept the return, but under the amended provision, the requirement of passing of an assessment order has been dispensed with and instead an intimation is required to be sent. Various circulars sent by the Central Board of Direct Taxes spell out the intent of the Legislature, i.e., to minimise the Departmental work to scrutinise each and every return and to concentrate on selective scrutiny of returns. These aspects were highlighted by one of us (D.K.Jain,J) in Apogee International Limited v. Union of India (1996) 220 nITR 248 (Delhi). It may be noted above that under the first proviso to the newly substituted section 143(1), with effect from June 1, 1999, except as provided in the provision itself, the acknowledgment of the return shall be deemed to be an intimation under section 143(1) where (a) either no sum is payable by the assessee, or (b) no refund is due to him. It is significant that the acknowledgment is not done by any Assessing

Officer, but mostly by ministerial staff. Can it be said that any “assessment” is done by them ? The reply is an emphatic “no”. The intimation under section 143(1) (a) was deemed to be a notice of demand under section 156, for the apparent purpose of making machinery provisions relating to recovery of tax applicable. By such application only recovery indicated to be payable in the intimation became permissible. And nothing more can be inferred from the deeming provision. Therefore, there being no assessment under section 143(1)(a), the question of change of opinion, as contended, does not arise.”

6. With this background, dealing with the petitioner's sole contention of the Assessing Officer having abandoned reasons for re-opening the assessment while dealing with the objections raised by the petitioner regarding the share application money, it was stated as under:

“6. The undersigned has gone through the objections filed by the assessee. The sole objection of the assessee is that the information on basis of which the reopening has been initiated is erroneous and ill conceived. As per the reasons recorded the company has received share application money from the three parties tabulated below.

S.N	Name of Hawala operator	Amount	Date	Nature of transaction
1	Kunal Gems	6,34,00,000	20.9.2006	Bogus Investment re applicat
2	Natasha Enterprises	3,13,90,000	21.2.2007	Bogus investment re applicat
3	Mohit International	3,13,80,000	10/01/07	Bogus investment re applicat
	Total	12,61,70,000		

However, as per assessee, it has in fact received share application money of ₹ 90,00,000/- from following two parties as on 31.3.2007 relevant to AY 2007-08.

Sr.No	Name	Amount
1	Ken Securities Ltd., Ahmedabad	7500000
2	Winter fresh Food Pvt.Ltd. Ahmedabad	1500000
3	Total	9000000

Thus assessee has contended that the reason recorded for reopening is erroneous.

7. The contention of the assessee has been examined. The reopening of the assessee company's case for AY 2007-2008 is valid for following reasons:

a. The three entities mentioned in the reasons recorded for reopening were run, controlled and operated by Shri Praveen Kumar Jain. During the search conducted by Mumbai Investigation wing on Shri Praveen Kumar Jain on 1.10.2013, it has been established and admitted that ShriPravin Kumar Jain's only business was providing accommodation entries through dummy concerns. These accommodation entries were in the nature of bogus share capital, bogus unsecured loan are bogus sale/purchase entries.

b. As per information provided by the investigating wing, Mumbai. The three entities viz. Kunal Gems, Natasha Enterprises and Mohit International were not carrying out any genuine business and were engaged in providing accommodation entries of the nature of bogus share capital, bogus unsecured loan or bogus sale/purchase entries.

c. The assessee has nowhere denied that it has not made any transaction with the three concerns. The reason being that the accommodation entries must have been routed through Banking channel, for which the trail cannot be obliterated by the assessee. However, the accounting treatment of the same is in control of the assessee and it has accounted the transactions with the three entities in head other than Share capital/bogus investment i.e. as Sale transactions.

d. It can be easily presumed that entities which have no real business besides facilitating accommodation entries were not capable of such purchase of bullion/jewellery. Thus assessee has fabricated sale bill in name of these entities in order to account for the credits.

e. The information that bogus share premium has been received by the assessee from the three dummy entities was passed on by the Mumbai Investigating wing. The nature of entry provided has been gathered from the entities searched during course of search conducted by Mumbai Investigation wing on Shri Praveen Kumar Jain on 1.10.2013 and during post search investigation. Thus what treatment the beneficiary of such accommodation entry has given in its own books of accounts is subject to verification. In the assessee company's case it is certain that the assessee company has benefitted from accommodation entry which was prima facie the case of share application/bogus investment as mentioned in reason for reopening. This fact is not vitiated by the fact that the assessee has treated the accommodation entry credits as sales in its books, which is an afterthought arrangement and fudging of books of accounts.”

7. Upon perusal of the above quoted portions of the objections of the petitioner and the Assessing Officer disposing them of, it can be seen that the Assessing Officer had nowhere abandoned reasons which were the foundation for issuance of the notice for re-opening. He had considered the objections of the petitioner and disposed them of on the basis of material on record. The sole ground of the petitioner therefore, must fail.

8. In the present case, notice for re-opening having been issued in the case of assessment which was not framed after scrutiny. The Assessing Officer would have considerable latitude in issuing notice for re-opening if it is found that he had tangible material to form a belief that income chargeable to tax had escaped assessment, it would not be appropriate on our part to strike down the notice. For such reasons, the petition is dismissed.”

19. Therefore, naturally, the reopening of the assessment are in accordance with the law. The issue is also squarely covered by the decision of SIL gold (supra) wherein on identical facts and circumstances the issue of reopening of the assessment challenged by the assessee was rejected. For the similar reasons, being identical facts, we also reject the argument of the learned authorized representative and grounds of appeal of the assessee with respect to the reopening of the assessment.
20. On the issue of the sanctions/approval granted by the joint Commissioner of income tax, the issue is squarely covered against the assessee by the decision of the honourable Delhi High Court in case of soniagandhi&ors. Vs. Assistant commissioner of income tax &ors.(2018) 170 DTR 0057 (Del), (2018) 304 CTR 0561 ((Del)), (2018) 407 ITR 0594 (Delhi), (2018) 257 TAXMAN 0515 (Delhi) and Principal Commissioner of Income Tax v. Meenakshi Overseas Pvt. Ltd., ITA 651/ 2015 (judgment dated 11.1.2016) where identical satisfaction was recorded by the approving authority, the honourable Delhi High Court held that there is no error/infirmary can be pointed out. Therefore we are of the view that sanctioned by the authority for reopening of the assessment is also proper.
21. The assessee has raised an over argument that on the date of compliance with the notice of 148 issued by the assessing officer, the AO has issued the

notice under section 143 (2) of the act on the same date. Therefore the notice issued by the assessing officer under section 143 (2) of the act is without application of mind. We do not find any force in the argument of the learned authorized representative. According to the provisions of section 143 (2), the assessing officer on receipt of return, if considers it necessary or expedient, to ensure that assessee has not understated the income or has not computed the excessive loss or has not under paid the tax in any manner asks assessee to attend before him. In the present case the assessing officer was already having the original return of income filed by the assessee under section 139 of the act. Thus, there is no change in the facts contained in original return as well as the letter submitted by the assessee. It was merely reiteration of same facts as contained in that return. On receipt of notice under section 148 of the act the assessee has merely written a letter that original return may be considered as a return filed in response to the notice under section 148 of the act. Therefore, the original return was already available with the revenue/assessing officer. Further, the evidences were so clinching in the form of statement of the entry operator, statement of the supplier of the invoice and the inquiries conducted by the income tax department clearly proved that assessee has obtained an accommodation entry. Further, it cannot be said that if the notice has been issued by the assessing officer on the same date on which return of income has been filed/or the return originally filed is intimated to be return in response to notice under section 148 of the act, the assessing officer cannot apply his mind immediately. According to us , he can. There is no minimum threshold or gap of time prescribed under section 143 (2) of the act. Therefore, putting an artificial time break between the time of intimation of the return filed by the assessee and notice to be issued by the assessing officer would be unreasonably putting a burden on the revenue. In view of this, we dismiss this argument of the AR.

22. In this case allegation is that assessee has obtained bogus purchase bills. In such an allegation probably three common situations[many other can be visualized] arise :-

- a. Assessee buys an accommodation entry without procuring goods, goods are procured from grey market and then used in manufacturing or traded by selling the goods to third party. Thus Assessee books sales in the trading account and also debits purchase price in the trading account, in such situation, if and only if, the quantity details of commodity traded or used in manufacturing are available and can be shown before revenue authorities conclusively, then, normally the gross profit is already embed in the trading account. Therefore, an only expense the assessee incurs is commission for obtaining accommodation entry and investment in buying the goods from grey market. In such a case assessee has not shown the income of commission as well as investment, which can be added.
 - b. In another situation where assessee does not maintain quantity details, in such a situation onus would be on the assessee to prove linkage of goods received and sold. If assessee fails to prove that, or quantity details does not support the assumption of selling the goods, the complete addition can be made over and above the cost of commission of obtaining the accommodation entry.
 - c. There may be third or many other situations also as held by Hon Delhi high court in *la Medica 250 ITR 575*, where also the complete addition can be made.
23. Naturally the revenue has not disputed that assessee has not sold goods so purchased from Mohit international. Therefore, it is apparent that the goods have not received from Mohit international physically but they have been obtained by the assessee outside books of account and sold to its various customers. Thus, it is apparent that assessee has merely procured bill without the goods supplied by the seller and booked in its purchase account. Sales made by the assessee are not disputed. The assessee has submitted the copies of the invoices, copies of the purchase register, copies of the balance sheet trading account and profit and loss account for the year ended on 31st of March for respective years. Identical issue arose in case of *SIL gold, New Delhi versus ITO Ward 53 (4) New Delhi* in ITA number

1049/Del/2018 dated 14/11/2018 wherein the addition was sustained only to the extent of 2% of the purchase being the commission paid to the entry operator. it is held as under :-

“14. On the merits of the case, we have carefully considered the contention of both the parties. We find that the assessee has purchased the goods from *Mohit international*, sold them as per sale price recorded in the books and result in profit thereon. The assessee also supported the purchases with the copies of the bill and payments were made by account payee cheques. There was also no evidence to show that the amount was recycled back to the assessee and particularly the assessee has shown that the sales have been made out of the purchases made from *Mohit international* which were also accepted by the revenue. Further, the assessee has shown from the copies of the travelling expenses with respect to travel from the early to Surat on various dates. Therefore the issue before us is squarely covered by the decision of the honourable Gujarat High Court in tax appeal number 691 of 2017 dated 18/9/2017 in case of *TejuaRohitkumarKapadia* against which the SLP has been dismissed by the honourable Supreme Court wide order dated 4/5/2018.

In any case, the learned commissioner of income tax has also added the gross profit only with respect to the alleged bogus purchase of the goods. When the sales are already accounted for in the books of accounts then once again making an addition of the gross profit will amount to double addition. In view of this we hold that when the assessee has already shown gross profit in the books of account on sale of those goods which are allegedly purchased from an accommodation entry provider no further addition can be made on account of the gross profit as it would amount to double addition. Hence we reverse the finding of the learned commissioner of income tax appeals in upholding the addition of ₹ 9 0000/- . However with respect to the addition of Rs. 11360 on account of the alleged commission on the accommodation entry provided by the Praveen Jain group, we do not find any infirmity in the order of the learned commissioner of income tax appeals in upholding the addition to that extent for the simple reason that there is no denial from the assessee that assessee has not purchased goods from

M/s *Mohit international* which is part of Praveen Jain group. Accordingly, ground number 3 of the appeal of the assessee is partly allowed.”

24. Naturally, in this case, also, the assessee has shown sales of the goods, or otherwise the goods are lying in the closing stock. If the goods have been sold, the assessee in its trading operation has disclosed the resultant gross profit. Assessee submitted that goods purchased by the assessee has not entered in quantity terms in the books of accounts of the assessee and same has been sold during the year at market rate, thus gross profit on such sales have been embed in the trading account of the assessee. In the *SII Gold* (supra) we have not confirmed the addition on account of investment in the purchase of goods outside it books to match the bogus purchase invoice, but at any time understanding of the situation and consequent results if not visualized properly earlier , can be corrected. In view of this, we direct the assessing officer to confirm the addition to the extent of 2% of the purchase amount involved in the alleged accommodation entry obtained by the assessee and further addition of 5 % to the extent of investment in goods procured by the assessee which has been sold. Accordingly, AO is directed to delete the balance addition.
25. In view of above facts, appeal filed by the assessee is partly allowed.
26. Now we come to the appeal of the M/s Suarana Jewellers for assessment year 2007 – 08 in ITA number 5415/del/2018 wherein the identical addition has been made by the revenue on account of bogus purchases made from insurance Mohit international of Rs. 1194250/-. For the reasons given by us in case of the appeal of Surana enterprises, we confirm the reopening of the assessment validly made by the assessing officer. For the similar reasons given by us in deciding the appeal of the same assessee for assessment year 2008 - 2009 wherein we have directed the learned assessing officer to retain the addition to the extent of 2% of the bogus purchases on account of expenditure incurred for obtaining the accommodation entry as the profit on the sale of the goods and 5 %

investemnts in sale of goods, we direct the AO to retain the addition of 2% of the bogus purchases and 5 % of investment and delete the balance addition.

27. In view of the above facts appeal filed by the assessee M/S SuranaJewellers is partly allowed.
28. Now we come to the appeal of M/s SuaranaJewellers for assessment year 2008 -2009 in ITA number 5416/del/2018 wherein the assessee of has obtained the accommodation entry of ₹ 1 718500 from MrsMohit and to international. As the facts of the case are identical to the facts of the case of the assessee for assessment year 2007 – 08 wherein we have deleted the addition of 2% of the bogus purchases obtained by the assessee, similarly, we confirming the action of the learned assessing officer for reopening of the assessment, direct the AO to retain the addition of 2% of the bogus purchases and 5 % of the investmentand delete the balance addition.
29. Accordingly appeal filed by the assessee for assessment year 2008 – 09 is partly allowed.

Order pronounced in the open court on 26/05/2020.

-Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 26/05/2020
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi