

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH  
MUMBAI**

**BEFORE: SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
&  
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.40/Mum/2020  
(Assessment Year :2007-08)**

M/s. Ashinihi 702, Satyaprasad CHSL Plot No.192, Dixit Cross Road Vile Parle East Mumbai- 400 057	Vs.	ITO Ward 19(1)(2) 219, 2 <sup>nd</sup> Matru Mandir Mumbai – 400 007
<b>PAN/GIR No. AAGFA0866N</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Ms. Dinkle Hariya
Revenue by	Shri Brajendra Kumar
<b>Date of Hearing</b>	<b>20/07/2021</b>
<b>Date of Pronouncement</b>	<b>23/07/2021</b>

**आदेश / O R D E R**

**PER M. BALAGANESH (A.M.):**

This appeal in ITA No.40/Mum/2020 for A.Y.2007-08 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-30, Mumbai in appeal No.CIT(A)-30/19(1)(2)/13153/2015-16 dated 26/09/2016 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 30/03/2015 by the Id. ITO, 19(1)(2), Mumbai (hereinafter referred to as Id. AO).

2. At the outset, there is a delay in filing of appeal by the assessee by 33 days. Considering the reasons stated in the affidavit for the condonation of delay, we are inclined to condone the delay of 33 days and admit the appeal for adjudication.

3. The ground Nos. 1 & 2 raised by the assessee were stated to be not pressed by the Id. AR at the time of hearing. The same is reckoned as a statement made from Bar and accordingly, the ground Nos. 1 & 2 raised by the assessee are dismissed as not pressed.

4. The ground No.3 raised by the assessee is challenging the disallowance made on account of non-genuine purchases in the sum of Rs. 90,31,869/-.

4.1. We have heard rival submissions and perused the materials available on record. We find that assessee is a partnership firm engaged in the business of manufacturing and export of cut and polished diamonds. The return of income for the A.Y.2007-08 was originally filed by the assessee firm on 26/10/2007 declaring total income of Rs.8,87,580/- which was duly processed u/s.143(1) of the Act and scrutiny assessment was completed u/s.143(3) of the Act on 11/12/2009 determining total income at Rs.9,03,840/-. This assessment was sought to be reopened by issuance of notice u/s.148 of the Act after recording the reasons for reopening with the prior approval of Id. Commissioner of Income Tax, Range-16, Mumbai. In the re-assessment proceedings, the Id. AO observed that pursuant to the search and seizure action conducted in the case of Banwarlal Jain and his group on 03/10/2013, it was established that group concerns of the group are all paper companies /

firms / proprietorship concerns with no real business activities and which are operating solely with the purpose of facilitation of fraudulent financial transactions which includes, among others, providing of accommodation entries in the form of unsecured loans to interested parties, issuing of bogus sale bills to various parties and providing the bogus front of concerns which do not want to import diamonds in their own hands / books of accounts. It is not in dispute that assessee made purchases from the following parties:-

Name of the Party	Amount(Rs.)
Primer Srar	39,71,367/-
Ankita Exports	50,60,502/-
<b>Total</b>	<b>90,31,869/-</b>

4.2. The aforesaid two concerns were stated to be belonging to Banwarlal Jain and others. Accordingly, the Id. AO sought to show-cause the assessee as to why the same should not be construed as accommodation entries and accordingly, the purchases of Rs.90,31,869/- should not be disallowed. In response to the said show-cause notice, assessee filed the requisite details by providing the bank statements evidencing the payments made to those suppliers by account payee cheque together with the details of corresponding sales made out of the disputed purchases. The Id. AO did not dispute the details of corresponding sales provided by the assessee. No independent enquiries in any manner whatsoever were carried out by the Id. AO on the documents with supporting evidences furnished by the assessee. We find that the Id. AO without resorting to such verification, proceeded to disallow the entire value of disputed purchases of Rs.90,31,869/- in the assessment merely on the premise that the parties from whom the assessee had made purchases are belonging to Banwarlal Jain Group by

explaining the entire modus operandi operated by Banwarlal Jain Group. This action of the Id. AO was upheld by the Id. CIT(A).

4.3. We find that assessee had provided the details of corresponding sales made out of the disputed purchases, which has not been doubted by the Revenue in the instant case. Hence, it would be just and fair to bring to tax only the profit element embedded in the value of such disputed purchases. It could be safely concluded that assessee could have made purchases from the grey market in order to have some savings in the indirect taxes and incidental profit element thereon for making purchases in cash. We find that based on the report of the task group for diamond sector published by the Government of India, Ministry of Commerce and Industry, in this regard, wherein the benign / presumptive taxation threshold was set at 2.5%, we hold that profit percentage embedded in the value of disputed purchases estimated at 3% thereon, would meet the ends of justice. Hence, in these peculiar facts and circumstances of the instant case, we deem it fit to fix the profit percentage at 3% as agreed by the Id. AR at the time of hearing. We find that Id. DR placed reliance on the Co-ordinate Bench decision of Delhi Tribunal in the case of DCIT vs Smt Phoolwati Devi reported in 122 TTJ 502 (Delhi). We find that this was the case of an addition made u/s 68 of the Act wherein the addition was sustained in the light of surrounding circumstances and applying test of human probabilities, which was rendered in the peculiar facts of that case. In our considered opinion, the same cannot be applied universally. Each decision need to be looked into in the light of facts and circumstances prevailing in the case.

4.4. Per contra, the Id. AR placed reliance on the Co-ordinate Bench of Mumbai Tribunal in the case of Rosy Blue India Pvt Ltd vs DCIT in ITA No.

1724/Mum/2019 for A.Y. 2014-15 dated 16.2.2021 wherein under similar facts and circumstances, the profit percentage was fixed at 3%. The Id AR also placed reliance on the decision of Mumbai Tribunal in the case of M/s Sejal Gems Pvt Ltd vs DCIT in ITA No. 3872/Mum/2017 dated 22.3.2019 wherein under similar facts and circumstances, this tribunal had restricted the profit element at 2% of value of purchases. But since assessee in the instant case had already accepted for adoption of 3% as profit percentage, respectfully following the aforesaid decisions of Mumbai Tribunal, we hold that profit element embedded in the value of disputed purchases that needs to be brought to tax in the instant case should be 3%. Accordingly, the grounds raised by the assessee are partly allowed.

**5. In the result, appeal of the assessee is partly allowed.**

Order pronounced on 23/07/2021 by way of proper mentioning in the notice board.

**Sd/-**  
**(SAKTIJIT DEY)**  
JUDICIAL MEMBER

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 23/07/2021  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**