

आयकर अपीलिय अधिकरण
मुंबई पीठ "एस एम सी", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 7747/मुं/2019 (नि.व 2007-08)
ITA NO.7747/MUM/2019(A.Y 2007-08)

M/s. Sun Moon Enterprises,
FC-8160A,FC-8161, FC-8162,
Bharat Diamond Bourse,
Bandra Kurla Complex, Bandra (E),
Mumbai 400 051

PAN:AACFS-2954-D

..... अपीलार्थी /Appellant

बनाम Vs.

Asstt. Commissioner of Income Tax 19(3),
Income Tax Office, Matru Mandir,
Mumbai 400 007

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : None

प्रतिवादी द्वारा/Respondent by : Shri Sanjay J. Sethi

सुनवाई की तिथि/ Date of hearing : 02/06/2021

घोषणा की तिथि/ Date of pronouncement : 26/07/2021

आदेश/ ORDER

This appeal by the assessee is directed against the order Commissioner of Income Tax(Appeals)-3, Mumbai [in short 'the CIT(A)'] dated 30/09/2019 for the assessment year 2007-08.

2. The brief facts of the case as emanating from records are: The assessee is engaged in trading of diamonds. On the basis of information received from DGIT(Inv), Mumbai, the assessment in the case of assessee for assessment year 2007-08 was reopened. As per information received the assessee had obtained accommodation entries to the tune of Rs. Rs.96,06,064/- from M/s.

Little Diam, a concern belonging to Bhanwarlal Jain Group. During assessment proceedings the assessee failed to produce cogent evidence of delivery of goods purchased from suspicious dealer. Except from stock register and details of the cheque payments, no other documents were produced by the assessee. The Assessing Officer accepted the sales turnover declared by the assessee and made addition of Rs.7,68,485/- by estimating suppressed profit margin on unproved purchases at 8%. Aggrieved by the assessment order dated 23/03/2015 passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act'), the assessee filed appeal before the CIT(A) inter-alia challenging reopening of assessment and estimated addition made on alleged bogus purchases. The CIT(A) dismissed the appeal of assessee and upheld the assessment order. Hence, the present appeal by the assessee.

3. Shri Sanjay J. Sethi representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee. The Id. Departmental Representative submitted that the assessee has obtained accommodation entries from a concern belonging to Bhanwarlal Jain Group. A search and survey action was conducted in the case of Bhanwarlal Jain Group on 03/10/2013. During search operation a statement of Bhanwarlal Jain and his family members were recorded, wherein they admitted that the group concern were floated only for providing accommodation entries against commission. The Id. Departmental Representative asserted that the assessee has failed to discharge his onus in proving genuineness of purchases made from M/s. Little Diam, a concern belonging to Bhanwarlal Jain Group.

4. Submissions made by Id. Departmental Representative heard, orders of authorities below examined. Undisputedly, the assessee failed to discharge its onus in proving genuineness of purchases made from M/s. Little Diam. At the same time it is observed that the Assessing Officer has not disturbed the sales turnover declared by the assessee. Therefore, it is only the profit element embedded in such transaction that can be brought to tax. The estimation of suppressed profit margin by Assessing Officer and confirmation by CIT(A) at 8% is very much on the higher side. After unearthing of spate of bogus transaction in the trade of diamond, a Task Group for Diamond Sector was constituted by Department of Commerce, Government of India. The Task Force in its report observed that the net profit in diamond trading ranges between 1% to 3%. Taking into consideration entirety of facts I am of the considered view that ends of justice would be met if the addition on account of unproved purchases is restricted to 3%. I hold and direct accordingly.

5. In the result, appeal by the assessee is partly allowed in the terms aforesaid.

Order pronounced in the open Court on Monday, the 26th day of July, 2021

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 26/07/2021
Vm, Sr. PS (O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai