

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.7385/Del/2018
Assessment Year: 2010-11

Diamond Tradex Co. Ltd. 2885, 2nd Floor, Haryana Singh Road, Karol Bagh, Delhi PAN No.AACCD3460E	Vs	ACIT Central Circle – 17 New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Nirbhay Mehta, Advocate Sh. Ashwani Gupta, CA
Respondent by	Sh. Vivek Kumar Upadhyay, SR DR

Date of hearing:	13/07/2023
Date of Pronouncement:	17/07/2023

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-27, New Delhi dated 25.09.2018 pertaining to A.Y. 2010-11.

2. The grievance of the assessee read as under :

1. *That on the facts and circumstances of the case and in law, the*

order passed by CIT (A)-27, New Delhi (hereinafter referred to as CIT (A)), is bad in law.

2. *That on the facts and circumstances of the case and in law, the CIT (A) was not justified in upholding the action of AO in reopening the case u/s 147 of the act and contending that the AO has applied his mind and come to an independent conclusion that he has reason to believe that the income of the assessee has escaped assessment which was a jurisdictional requirement for reopening of the assessment under u/s 147/148 of the I.T Act*

3. *That on the facts and circumstances of the case and in law the CIT (A) was not justified in sustaining 25% of addition made by the Ld. AO being 25% of 1,39,21,785/- by relying on the decision of Hon'ble High Court of Gujrat in the case of CIT vs Bholanath Poly Fab Pvt ltd 355 ITR 290.*

4. *That on the facts and circumstances of the case and in law the CIT(A) was not justified in sustaining the addition made by AO on account of alleged bogus purchase from M/s Kothari Impex and M/s Khushi Gems Pvt Ltd .*

5. *That on the facts and circumstances of the case and in law, the CIT (A) was not justified and has erred in sustaining addition of Rs 2,78,435/- on the presumption that commission of 2% was paid for arranging accommodation entries aggregating to Rs. 1,39,21,785/-.*

6. *That the appellant craves leave to add, alter, modify any of the grounds at the time of hearing or before the hearing.*

3. Briefly stated the facts of the case are that on the basis of the information received from the Investigation Wing notice u/s. 148 was issued pursuant to which the assessee stated that the return already filed may be treated as a return of income filed in response to notice u/s. 148 of the Act.

4. The assessee was also asked to furnish copy of purchase bills in respect of the purchases made by it from Kothari Impex and Khushi Gem Pvt. Ltd. Assessee filed the necessary details. Taking a leaf out of the statement of Sh. Vijay Narendra Kothari given to Investigation Wing the AO came to the conclusion that there was no actual business of trading in diamonds carried out by Khushi Gem and Kothari Impex but these concerns were indulged in paper transactions only giving accommodation entries by issuing sale bills without affecting any sales.

5. The AO completed the assessment by treating the purchases made from Kothari Impex and Khushi Gem Pvt. Ltd. as bogus purchases and made addition of Rs.13921785/-.

6. Proceeding further the AO was of the firm belief that the assessee must have paid some commission for taking accommodation entries and went on to make addition @ 2% and made addition of Rs.278435/-.

7. Assessee carried the matter before the CIT(A) but without any success.

8. Before us the Counsel for the assessee vehemently stated that the entire purchases are duly recorded in the books of accounts and the AO has not pointed out any error or defect in the books of account.

9. It is the say of the Counsel that though the AO has treated the impugned purchases as bogus but at the same time has accepted the corresponding sales. Referring to the judgment of the coordinate Bench in ITA No.7834/Del/2018 the Counsel stated that that was the appeal of Vinod Karsanbhai Patel who happens to be a Director of the assessee company and in that case also purchases were made which have been treated as bogus purchases and the coordinate Bench has made the addition only of gross profit.

10. Per contra the DR strongly supported the findings of the AO but could not bring any distinguishing decision in favour of the revenue.

11. We have given a thoughtful consideration to the orders of the authorities below. The undisputed fact is that the alleged bogus purchases are part of the total sales made by the assessee and accepted by the AO. Assuming yet not accepting that the

impugned purchases are bogus all that can be added is the profit element embedded there in as held by the Hon'ble High Court of Bombay in the case of Mohammed Hazi 103 taxmann.com 459 which has been followed by the coordinate Bench in ITA No.7384/Del/2018. We find that the net profit shown by the assessee is 7.50%, therefore, the AO is directed to restrict the addition to 7.50% of Rs.13921785/- being the alleged bogus purchases and delete the balance amount.

12. We further direct the AO to delete the addition 278435/- being alleged commission on accommodation entries as the said amount has been subsumed in the aforementioned addition.

13. The Counsel did not press the grounds challenging the reopening of the assessment and the same are dismissed as not pressed.

14. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 17.07.2023.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: .07.2023
Neha