

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/TAX APPEAL NO. 1060 of 2024**

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THE PRINCIPAL COMMISSIONER OF INCOME TAX 1

Versus

SUNILKUMAR PARASMAL JAIN

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Appearance:

KARAN G SANGHANI(7945) for the Appellant(s) No. 1

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***CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA***

***and***

***HONOURABLE MR. JUSTICE PRANAV TRIVEDI***

**Date : 11/11/2025**

**ORAL ORDER**

***(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)***

1. Heard learned Senior Standing Counsel Mr. Karan Sanghani for the appellant.

2. This Tax Appeal is filed under Section 260A of the Income Tax Act, 1961 (For short "the Act") against the order dated 06.05.2024 passed by the Income Tax Appellate Tribunal, Surat (For Short "the Tribunal") in ITA No. 750/SRT/2023 for the Assessment Year 2010-11 raising the following substantial questions of law :-

*"(A) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT is justified in dismissing the appeal of the Revenue against the decision of the learned CIT (A) in restricting the addition made by the AO at the rate of 100% of bogus purchases amounting to Rs.10,73,43,555/- to 6% of the bogus purchases, ignoring the fact that these purchases*



*are sham transactions fabricated through bogus paper concerns of Bhanwarlal Jain Group Companies which were engaged in providing accommodation entries ?*

*(b) Whether, on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in dismissing the appeal of the Revenue relying upon the decision of the co-ordinate Bench of ITAT, Surat, in the case of Pankaj J. Chaudhary in ITA No. 1379/AHD/2017?*

*(c) Whether, on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is correct in not considering that the amount claimed as payment to hawala dealers was, in effect, suppression of profits by obtaining bogus purchase bills, which was liable to be added to the income of the Assessee?*

*(d) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT has erred in not considering -*

*\* the judgment of Gujarat High Court in the case of N.K. Industries Ltd. v. DCIT on TA No. 240 to 242 of 2003 which has been upheld by the Hon'ble Apex Court in Special Leave to Appeal No. 769 of 2017 dated 16.01.2017, wherein the Hon'ble High Court decided that 100% purchases from bogus parties was liable to be added in the hands of the assessee, reversing the order passed by the Hon'ble ITAT that restricted addition to 25%, holding that such restriction goes against the principles of Section 68 and 69C of Income Tax Act ?*

*\* the judgment of Calcutta High Court in the case of PCIT v. Premlata Tekriwal (143 taxmann.com 173) involving similar issue of purchase of bogus concern to suppress profits wherein the court held that "since it was*



*established that expenditure was unexplained/bogus, entire amount of bogus expenditure was to be added to income of assessee?*

*\* the ratio of judgment of Hon'ble Apex Court on the issue of unexplained expenditure (bogus purchase) in the case of N.K. Proteins v. Dy. CIT [2017] 84 taxmann.com 195/250 Tax,am 22 (SC) wherein, the SLP filed by the assessee has been dismissed by the Hon'ble Apex Court?*

*(e) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT is justified in dismissing the appeal of the revenue wherein the AO has made 100% addition of bogus purchases amounting to Rs.10,73,43,555/- made by the assessee with the entry provider not appreciating the non-genuineness of the expenditure booked was established by the information received from DIT (Inv)-II, Mumbai and the assessee was not able to discharge its onus to establish the genuineness of transaction before the AO as well as the learned CIT (A)?*

3. Brief facts of the case are that :-

3.1. The respondent assessee filed its return of income for Assessment Year 2010-11 on 21.09.2010, declaring the total income of Rs.1,61,270/-.

3.2. On the basis of the information received from the Investigation Wing, Mumbai in case of Shri Bhanwarlal Jain Group, it was found that the said group was engaged in the business of issuing non-

genuine and purchase accommodation bills, unsecured entries to loans various parties and the assessee was found to have obtained non-genuine purchase bills from the said group amounting to Rs.10,73,43,555/-.

3.3. The case of the assessee was therefore reopened and assessment order under Section 143(3) read with Section 147 of the Act was passed on 22.11.2016, assessing total income at Rs.10,76,34,425/- after making an addition of Rs.10,73,43,555/- on account of bogus purchases.

3.3. Being aggrieved, the assessee preferred an appeal before the CIT (Appeals). The CIT (Appeals) vide order dated 13.09.2023 partly allowed the appeal and restricted the addition made by the Assessing Officer of 100% of the bogus purchases to 6% of the bogus purchases.

3.4. Being aggrieved, the Revenue preferred an appeal before the Tribunal. The Tribunal by impugned order dated 06.05.2024 dismissed the appeal of the revenue and upheld the view of CIT (Appeals) restricting the addition to 6% of the bogus purchases. The Tribunal has relied on its decision rendered in the case of Pankaj K. Chaudhary in ITA 1379/Ahd/2017 for Assessment Year 2007-08.



4. This Court finds that in several matters arising out of transactions with the said Bhanwarlal Jain Group, the Tax Appeals of the Department have been dismissed where the learned ITAT has assessed the disallowance at 6% , as has been done in the present case. This Court in the case of PCIT v. Keshri Exports [2024] 168 Taxmann.com 528 (Gujarat) after considering the decision inf the case of Pr. CIT v. Pankaj J. Chaudhary rendered in Tax Appeal No. 617 of 2022 dated 07.03.2023 has upheld the disallowance of 6% of bogus purchases.

5. The relevant extracts from the judgment in the case of Keshri Exports (supra) is as under :-

*"5. The Assessing Officer noticed the contentions of the assessee that confirmation, purchase bills, bank statement, stock register, copy of ITR were already filed. The Assessing Officer was, however, of the view that transactions were bogus and merely that it routed through the banking channel, was not sufficient to conclude that they were the genuine transactions. The contention of the assessee that he had not dealt with the Bhanvarlal Jain group was also negatived. The appellate Commissioner took the view that disallowance was required to be sustained at 12.5% of the purchase. The Assessing Officer was directed accordingly to workout disallowance. In para 10.6, the Commissioner of Income Tax (Appeals), recorded thus,*

*"As held above, it is clear that the appellants have made purchases from elsewhere, but have obtained bills from the impugned suppliers. From the Trading & P & L account and Audit report it can be seen that the GP rate shown by appellant is 1.85% oil sales. In such circumstances the disallowance of 100% of purchases cannot be justified. Also as held above, the appellant would nave indulged in above*



*practice in order to get some benefit. And it is this benefit derived by the appellant that need to be taxed. What would be the magnitude of benefit derived by the appellant is the mute question. In the appellant's case, it is seen that GP rate shown is 0.78%".*

*5.1 The final view was expressed in para 10.10,*

*"Following the above judicial pronouncements and views taken by Ld. CIT(A) & AOS in a few identical cases. In a couple of identical cases, where the GP shown by the appellants is more than 5%, I have confirmed the disallowance of the impugned purchases to the extent of 5% of the impugned purchases. However in the instant case the appellant is showing measly G.P. of only 0.78% on turnover. In view of this I am of the considered opinion that disallowance of 12.5% of the impugned purchases would be reasonable and would meet the ends of justice. Hence, the disallowance is restricted to 12.5% of the impugned purchases for the assessment year in appeal.*

*5.2 The disallowance at 100% was made in the assessment order for the year under consideration to the tune of Rs. 4,34,00,343/-, which was reduced to 12.5% at Rs. 54,25,040/-. Thereafter, the issue was dealt with by the appellate Tribunal. The appellate Tribunal endorsed to the view taken by the appellate Commissioner. It was observed that Assessing Officer failed to consider the evidence furnished by the assessee.*

*5.3 Considering the facts and relevant aspect, the Income Tax Appellate Tribunal partially allowed the appeal of the assessee to further reduce the disallowance at 6%. In so concluding, the Tribunal observed in paragraph No.21 as under,*

*".....during the financial year under consideration the assessee has shown total turnover of Rs. 66,09,62,458/-. The assessee has shown Gross Profit @ 78% and net Profit @ 0.02% (page 11 of paper Book). The assessee while filing the return of income has declared taxable income of Rs. 1,81,840/- only. We are conscious of the facts that dispute before us is only with regard of the disputed purchases of Rs. 4.34 Crore, which was shown to have purchased from the entity managed by Bhanwarlal Jain Group. During the search action on Bhanwarlal Jain no stock of goods/material was found to the investigation party. Bhanwarlal Jain while filing return of income has offered commission income (entry provider). Before us, the Ld. CIT-DR for the revenue*



*vehemently submitted that the ratio of decision of Hon'ble Gujarat High Court in Mayank Diamond Private Limited (supra) is directly applicable on the facts of the present case. We find that in Mayank Diamonds the Hon'ble High Court restricted the additions to 5% of GP. We have seen that in Mayank Diamonds P Ltd (supra), the assessee had declared GP @ 1.03% on turnover of Rs 1.86 Crore. The disputed transaction in the said case was Rs. 1.68 Crore. However, in the present case the assessee has declared the GP @ 0.78%. It is settled law that under Income-tax, the tax authorities are not entitled to tax the entire transaction, but only the income component of the disputed transaction, to prevent the possibility of revenue leakage. Therefore, considering overall facts and circumstances of the present case, we are of the view that disallowances @ 6% of impugned purchases / disputed purchases would be sufficient to meet the possibility of revenue leakage. In the result the ground No. 2 of appeal raised by the assessee is partly allowed and the grounds of appeal raised by revenue are dismissed."*

6. *In so concluding, the Tribunal observed in paragraph No.21 as under,*

*".....during the financial year under consideration the assessee has shown total turnover of Rs. 66,09,62,458/-. The assessee has shown Gross Profit @ 78% and net Profit @ 0.02% (page 11 of paper Book). The assessee while filing the return of income has declared taxable income of Rs. 1,81,840/- only. We are conscious of the facts that dispute before us is only with regard of the disputed purchases of Rs. 4.34 Crore, which was shown to have purchased from the entity managed by Bhanwarlal Jain Group. During the search action on Bhanwarlal Jain no stock of goods/material was found to the investigation party. Bhanwarlal Jain while filing return of income has offered commission income (entry provider). Before us, the Ld. CIT-DR for the revenue vehemently submitted that the ratio of decision of Hon'ble Gujarat High Court in Mayank Diamond Private Limited (supra) is directly applicable on the facts of the present case. We find that in Mayank Diamonds the Hon'ble High Court restricted the additions to 5% of GP. We have seen that in Mayank Diamonds P Ltd (supra), the assessee had declared GP @ 1.03% on turnover of Rs 1.86 Crore. The disputed transaction in the said case was Rs. 1.68 Crore. However, in the present case the assessee has declared the GP @ 0.78%. It is settled law that under Income-tax, the tax authorities are not entitled to tax the entire transaction, but only the*



*income component of the disputed transaction, to prevent the possibility of revenue leakage. Therefore, considering overall facts and circumstances of the present case, we are of the view that disallowances @ 6% of impugned purchases / disputed purchases would be sufficient to meet the possibility of revenue leakage. In the result the ground No. 2 of appeal raised by the assessee is partly allowed and the grounds of appeal raised by revenue are dismissed.”*

*6. The view taken and the conclusion arrived at by the appellant Tribunal are based on material before it and after analysing the facts and figure available before it. When the Tribunal has thought it fit to reduce the disallowance at 6% from 12.5%, the Tribunal had before it the facts which were duly analysed by it. No interference is called for in the said conclusion and findings of the Tribunal in the present appeal by this court.*

*6.1 The another weighing aspect is that the Tax Appeal No. 674 of 2022 in Principal Commissioner of Income Tax 1, Surat vs. M/s.Surya Impex which came to be decided by the co-ordinate Bench on 16.1.2023 dealt with the very issue of accommodation entries provided by Bhanwarlal Jain Group. The group involved in the said case is the same group who is saddled with allegations of providing accommodation entry to the assessee. In M/s. Surya Impex (supra) the court held in favour of the assessee. The questions of law involved in the said case were of the same nature and were in the context of similar facts involving the same group.*

*7. For all the above reasons, substantial questions of law proposed by the appellant in this appeal stands already answered. No question of law much less any substantial questions of law arise in the facts of the present case. No other substantial question of law arises. The appeal is meritless. It is summarily dismissed.”*

6. In view of the above, the substantial questions of law proposed by the appellant in the appeal stands already answered and therefore, no question of law much less any substantial questions of law, can be said to have arisen in the facts of the present case.

7. The Tax Appeal is accordingly dismissed. No order as to costs.

**(A. S. SUPEHIA, J)**

**(PRANAV TRIVEDI, J)**

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