

IN THE INCOME TAX APPELLATE TRIBUNAL “C(SMC)” BENCH, KOLKATA(श्री ए.टी. वर्की, न्यायिक सदस्य)
[Before Shri A. T. Varkey, JM]**I.T.A. No. 568/Kol/2020**
Assessment Year:2007-08

Smt. Yamuna Mundhra (PAN: AIJPM4068B)	Vs.	Income-tax Officer, Wd-30(4), Kolkata.
Appellant		Respondent

Date of Virtual Hearing	17.02.2021
Date of Pronouncement	19.02.2021
For the Appellant	Shri Ravi Tulsiyan, FCA
For the Respondent	Shri Jayanta Khanra, JCIT, Sr. DR

ORDER

This is an appeal preferred by the assessee against the order of the Ld.CIT(A)-8, Kolkata dated 16.09.2020 for AY 2007-08.

2. The assessee has raised eight grounds of appeal of which ground Nos. 7 and 8 are general in nature so, does not require any adjudication. Ground Nos. 1 and 2 are legal issue challenging the reopening of the assessment proceedings and ground nos. 3 to 6 are in respect of the merits of the addition which are reproduced as under:

“3. That, the Ld. C.I.T.(A) further erred in having upheld the order passed u/s.143(3)/147 of the Act in spite of the fact that the Ld. AO did not dispute the authenticity of Invoices issued by the seller of cut & polished diamond with description of weight, rate, GST TIN No. etc. and the details of payments of Rs.21,79,400/- by Demand Drafts and that being so, he has grossly erred in law in upholding the order passed solely on borrowed information and without application of any independent mind.

4. That, the Ld. Revenue authorities went wrong in having disallowed/added the sum of Rs.21,79,400/- to the total income assuming the purchase of diamonds as bogus solely acting on the alleged statement of one Rajendra Jain during search operation obtained at the back of the appellant and return of notice sent to the said person at the address provided by the assessee when the assessment was based on the statement obtained from that person during search operation, thus establishing his identity.

5. That, the Ld. Revenue authorities erred in suspecting the investment of Rs.21,79,400/- made on purchase of diamond from M/s.Vitrag Jewels out of her personal capital as bogus and accommodation entry having been provided by one Rajendra Jain of the said firm in spite of the fact that the source of the investment was the appellant's S.B.A/c. duly disclosed in the ROI and sec.69C of the Act applies only when the source remains unexplained, which was not the case of the appellant herein.

6. That, as the addition made in the assessment and upheld by the Ld. CIT(A), resulting in erroneous computation of higher income than disclosed by the appellant in the ROI deserves to be deleted, the interest charged of Rs.6,80,544/- u/s. 234B of the Act was uncalled for and liable to be quashed.”

3. The facts as noted by the AO are that the assessee an individual had filed her return of income for AY 2007-08 on 26.07.2007 declaring a total income of Rs.1,04,840/- and the return was processed on 21.08.2008. According to the AO, thereafter an information was received from the DDIT (Inv.), Mumbai dated 14.03.2014 and from DDIT (Inv.), Kolkata dated 26.03.2014 from which it revealed that the assessee took bogus accommodation entries of purchase from M/s. Vitrag Jewels (prop. Mudit Karnawat, PAN-AOVPK0047C) during the AY 2007-08 and the same fact was revealed during search and seizure operation on 03.10.2013 at the residence of Shri Rajendra Jain who on oath has stated that M/s. Vitrag Jewels gave bogus purchase bills to the client without actual delivery of diamonds and thus facilitating accommodation entries for bogus purchase. According to the AO, Investigation Wing of the Department got the documentary evidence from the group searched on 03.10.2013 that assessee took bogus accommodation entry of purchase from M/s. Vitrag Jewels amounting to Rs.21,79,400/-. Further, according to him, the notice u/s. 133(6) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) issued to M/s. Vitrag Jewels as per the retails invoice address given by the assessee was returned back by the postal department with the remark ‘Left’ and, therefore, the AO drew adverse inference against the assessee in respect of this purchase from M/s. Vitrag Jewels and made an addition of Rs.21,79,400/-. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who has confirmed the action of the AO and while dismissing the appeal of the assessee held as under:

“Grounds 2 and 3 agitate the addition made by the AO in respect of bogus purchase of diamonds amounting to Rs 21,79,400/-. After having considered the AO's order and the submissions of the appellant it is clear that she is not doubting the statement made by the jeweller that the transaction was bogus. She is also not explaining the transaction at all on why she would spend a large amount of money and not receive the goods that she has invested in.

This explanation was not given also to the AO. Due the lack of this explanation, and the fact the entire transaction is suspicious in nature, the AO made the impugned addition. Considering the overall circumstances of the of the transaction and the fact that there was no suitable explanation offered in this respect and that no new material has been brought on record to shed some light on the transaction, I have no option but to confirm the action of the AO.”

4. Aggrieved, assessee is before me.

5. Having heard both the parties and on perusal of the record it is noted that the AO issued notice u/s. 148 of the Act dated 29.03.2014 for reopening the assessment and gave the reasons for reopening the assessment vide letter dated 18.06.2014 which reads as under:

“As per your request vide your letter dated 30.04.2014, the reason for reopening your case for AYr. 2007-08 is provided below.

From this office record it has been revealed that the assessee took bogus accommodation entry of purchase from some parties of Mumbai during the assessment year 2007-08. It is seen that Vitrag Jewels (PAN-AOVPK0047C) is the party who gave accommodation to the assessee (PAN-AUPM4066B) and the amount of accommodation was Rs.21,79,400/-. Hence I have reason to believe that there is escapement of income for the said assessment year and the case is fit for reopening u/s. 147 of the I. T. Act, 1961.”

6. The Ld. AR of the assessee Shri Ravi Tulsian brought to my notice that objecting to the aforesaid reasons recorded for reopening, the assessee brought to the notice of the AO that vide letter dated 24.06.2014 the details with necessary documentary proof she had explained that the diamonds were purchased from M/s. Vitrag Jewels at Surat and the same were duly accounted for in the accounts of the relevant year as under:

Bill No.	Date of Purchase	Amount	Payment D.D. No. & Date	Amount	Drawn on
VJS/PD/Nov/22/2006-2007	27/11/2006	Rs. 9,52,000	014978 06.02.2007	Rs.9,00,000	UCO Bank, New Market Branch
VJS/PD/Dec/08/2006-2007	07/12/2006	Rs.12,27,400	014979 06.02.2007	Rs.3,79,400	-do-
			014980 06.02.2007	Rs.9,00,000	-do-
		<u>Rs.21,79,400</u>		<u>Rs.21,79,400</u>	

7. Along with the aforesaid details, the assessee had filed the full address, current contact nos., amount and mode of transaction made for purchase of diamonds during the relevant AY 2007-08 and also filed the photo copies of the bills, retail invoice dated

07.12.2006 (refer page 7 of paper book) wherein the Bill no. VJS/PD/Dec/08/2006-07 and G.S.T. TIN Number & CST Tin Number is found to be given and the goods purchased is recorded as 1. Cut and polished diamonds and the weight in carat is given as 6.46 rate per carat is given as Rs.1,90,000/- and amount of rs.12,27,400/- and another bill 27.11.2006 of an amount of Rs.9,52,000/- (refer page 8 of paper book) is found placed and at page 9 of paper book, Bank counterfoils acknowledged by Vitrag Jewels is found placed. And the Vitrag Jewels had confirmed receipt of payment (refer page 6 of paper book) and all the amounts were given by assessee through banking channel from her S/B account, bank's counterfoils of DD slip and acknowledgment given by M/s. Vitrag Jewels along with the Balance Sheet and P&L Account as on 31.03.2007 and Ledger Account of jewellery. And from a perusal of the Balance Sheet placed at page 10 of paper book it is discerned that assessee has shown this investment in her Balance Sheet as on 31st March, 2007 under the head jewellery. It is noted the assessee's dividend income is to the tune of Rs.20,44,821/- (refer page 11 and 15 of paper book). The assessee had objected to the AO relying upon the statement recorded of third party Shri Rajendra Jain recorded u/s. 132(4) of the Act which was admittedly behind back of the assessee and without giving a copy of the recorded statement to assessee and without allowing cross-examination of Shri Rajendra Jain. It is noted that the AO has not rebutted the documents filed by the assessee to substantiate the genuineness of the transaction. The AO has simply noted the Investigation Wing's information that Shri Rajendra Jain has admitted during search that he was an accommodation entry provider and did not supply the diamonds and instead gave only bills in lieu of commission. It is noted that similar addition based on the statement of Shri Rajendra Jain [of M/s. Vitrag Jewells] alleging bogus purchase of diamonds from M/s. Vitrag Jewels came up before this Tribunal and the order (dated 15.12.2017) was passed (by this author) in the case of Manoj Begani Vs. ACIT, ITA Nos. 932 to 936/Kol/2017 wherein, the Tribunal was pleased to allow that assessee's appeal. On the same reasoning as found by us in the case of Mohan Begani (supra) I am inclined to delete the addition in this case to the tune of Rs 21,79,400/- finding that addition/adverse inference could not be sustained for the following reasons:

- i) That the assessee had discharged the onus on it by proving prima facie the genuineness of the transaction.
- ii) That the AO could not find any fault or infirmities in the evidence filed by the assessee.
- iii) That the AO's reliance on the statements recorded of a 3rd person behind the back of assessee, could not have been relied upon by the AO by keeping the assessee in the dark.
- iv) That the AO erred in drawing adverse inference against the assessee without furnishing the statement of 3rd person.
- v) And AO's omission to provide cross-examination of 3rd parties by the assessee vitiates the 3rd party's statement, so it could not have been relied upon by the AO.
- vi) The AO has not summoned the 3rd parties and himself did not enquire about the allegation.
- vii) That the AO failed to record a finding the statement of 3rd party had made any specific allegation that the assessee was a beneficiary. when the fact was that the assessee had contested the allegations and stood the ground that she (assessee) had in-fact purchased diamonds from M/s. Vitrag Jewels and produced documents to substantiate the same.
- viii) The Ld. CIT(A) erred in observing that from her written submissions, the assessee is not doubting the transaction, when the fact was that assessee an individual lady after purchasing the diamonds from her savings bank (S/B) Account, drew up Demand Draft (D/D) and purchased the diamonds as investment and not claimed any deduction (as expenses) and the impugned purchase is duly shown as investment in her books. And that based on the evidence produced, she objected to the reopening and prayed for dropping the reopening proceeding and produced all documents to discharge the burden before the AO.
- ix) And this Tribunal in the case of Manoj Begani (supra) in detail has gone into the merits of the addition based on the very same statements and deleted the additions on merits as well as found the modus operandi as suggested by the 3rd persons to be illogical and absurd.
- x) And, therefore, overall the statement of 3rd parties without even attributing any wrong doing on the part of this assessee, no adverse view is possible.

As discussed this Tribunal in the case of Manoj Begani (supra) noted that AO made the addition was also based on the statements of Mr. Rajendra Jain and Shri Surendra Jain (key person of Shri Rajendra Jain Group controlled by M/s. Vitrag Jewels) and the Tribunal was pleased to delete the additions by holding as under (relevant portions only) :

“17. In our view in the light of the fact that sales were supported by invoices from M/s. Arihant, M/s. Vitrag and M/s. Kangan and the monies were paid by account payee cheques/RTGS, the least the revenue should have done was to grant an opportunity to the assessee to meet the case against him by providing the material sought to be used against the assessee in arriving before passing the order of reassessment. This not having been done, the denial of such opportunity goes to the root of the matter and strikes at the very foundation of the reassessment and, therefore, renders the orders passed by the AO and the Ld. CIT(A) vulnerable. In our view the assessee was bound to be provided with the material used against him apart from being permitted to cross examine the deponents. We note that the AO kept the assessee in the dark as to the statement of Shri Rajendra Jain and Shri Dharmichand Jain which was recorded on 03.10.2013 at their premises at Surat/Mumbai, admittedly, behind the back of the assessee. Only the Ld. CIT(A) has included their statement in his order. However, we note that he has not even summoned them before him; and should have taken a statement directly from Shri Rajendra Jain and Shri Dharmichand Jain and examined them; and if they implicate the assessee in any manner, then he should have provided an opportunity to assessee to cross examine those deponents, failure to do so, make the order fragile in the eyes of law. We note that the AO issued notice u/s. 133(6) of the Act to M/s. Vitrag and they had replied to the same as brought out by the assessee in page 17 of the impugned order, which fact has not been controverted by Ld. CIT(A). Thereafter, the AO gave the responsibility to the assessee to bring the suppliers of diamonds before him and for not doing so the assessee was saddled with the addition. We note that in such circumstances, the AO ought to have exercised his powers u/s. 131 of the Act and should have summoned them before him. We note that the assessee has given the full details of the 339 ct. of diamond purchased from M/s. Vitrag during the year 2007-08 and has given the address as under:

Name	Address & Phone No.	PAN	Sales Tax Registration
M/s. Vitrag Jewels	803C, Shrinathji Apartment, Rampura Main Road, Surat, Ph. No. 02613008385	AOVPK0647C	GST 24220400561 CST 24720400561

18. The full details of the party has been given from page 18 to 21 of Ld. CIT(A) 's order wherein all the details regarding the sale and purchase have been given and reproduced. We note that the assessee had submitted audited books of account and the AO could not figure out any deficiency thereof. The AO disregarded the documents submitted during the reassessment which includes details of purchase, sale and profits, suppliers' bills and bills raised by customers, bank statement showing payment to suppliers and receipt from customers, stock reconciliation statement etc. The AO neither denies the sales which was made from the stock generated from the alleged bogus purchase of Rs.27,28,000/- nor pointed out any quantitative discrepancy in the stock figure. The AO did not issue summons on the suppliers u/s. 131 of the act nor did he do any enquiry with the suppliers jurisdictional AO though PAN details were available. The AO did not do any enquiry with the sales tax authorities though VAT/CST no. was available. The AO did not enquire with the banker (HDFC) though the entire payment/receipt was

routed through banking channels. So, therefore, this is a case of clear cut non enquiry at all and the addition was based on surmises and conjectures.

19. In order to ascertain the veracity of the statement of Shri Rajendra Jain, the department ought to have confronted, the assessee with the statement of Shri Rajendra Jain and Dharmichand Jain and given an opportunity to the assessee to cross examine them which has made the statement of all these legally fragile as held by Hon'ble Supreme Court in Andaman Timber Industries (supra). As stated earlier, and even if we believe Shri Rajendra Jain's statement in totality, in order to complete the chain of events then the statements of nine persons in Box 'D' or corroborative relevant material is vital to pin down the assessee. However, as stated earlier in our order at page 13 the assessee has discharged the onus casted upon it to prove that he purchased the diamonds from M/s. Arihant, M/s. Vitrag nd M/s. Kangan. So the addition made by the AO/CIT(A) cannot be sustained, therefore, it is directed to be deleted.

20. Before we part, we thought of stating the reason as to how we are of the opinion that the entire transaction/modus operandi as suggested by Shri Rajendra Jain is absurd/non-believable are for the following reasons: According to the pictorial chart prepared by the Investigation Wing and thereafter as explained by Shri Rajendra Jain the following transaction takes place in the following order.

- a) Ist step. The nine persons in Box 'D' places the order with Shri Rajendra Jain's concerns which are shown in Box 'C'.
- b) IInd step. Thereafter, Shri Rajendra Jain's concerns in Box 'C' booked the order with foreign suppliers named in Box 'B'.
- c) IIIrd step. The foreign suppliers in Box 'B' sent the diamonds to Shri Rajendra Jain's concerns in Box 'C'.
- d) IVth step. The diamonds which have arrived at the concerns of Shri Rajendra Jain in Box 'C' gets collected by persons from Box 'D'.
- e) Vth step. Thereafter, the persons named in Box 'D' supplies the diamonds to persons named in Box 'E' (i.e. the assessee in this case) and persons like assessee gives their unaccounted money/cash for the diamonds to persons in Box 'D'.

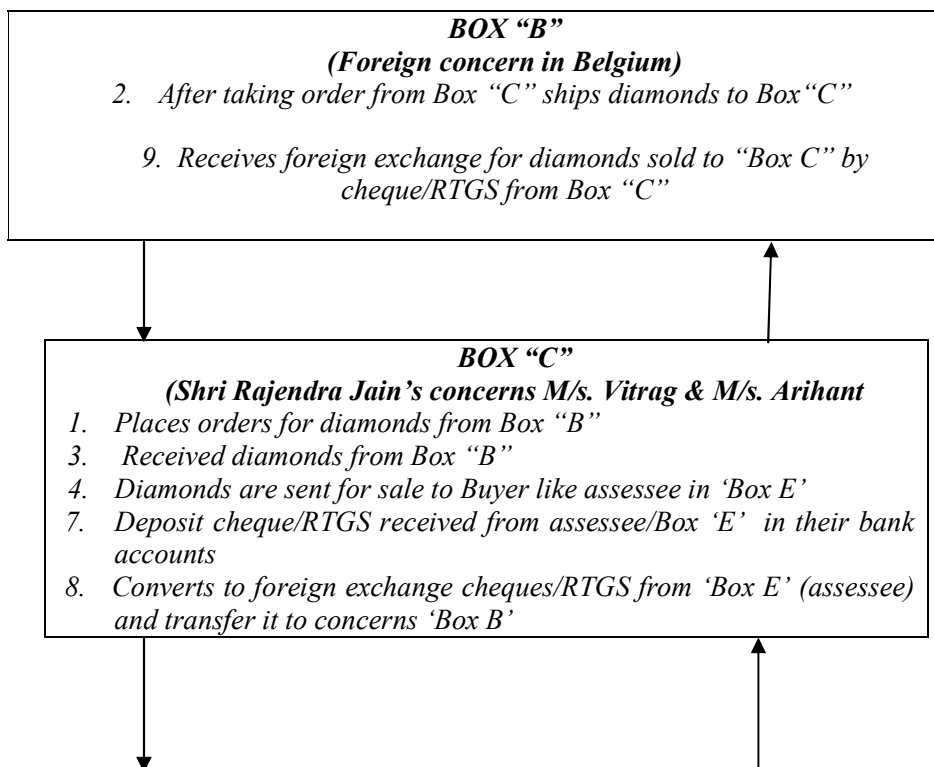
[Since the persons like assessee in Box 'E' has collected the Diamonds from persons named in Box 'D' it was termed that the assessee has purchased diamonds from grey market.]

- f) VIth step. Since persons like assessee have purchased from grey market, and in order to keep the books of account properly, the persons like assessee in Box 'E' approaches Shri Rajendra Jain's concerns in Box 'C' for fake bills in lieu of commission.
- g) VIIth step. The Box 'C' concerns of Shri Rajendra Jain issued fake bills to persons named in Box 'E' for commission and acts as an accommodation entry provider.
- h) VIIIth step. The cheque/RTGS received from persons named in Box 'E' (assessee) is converted to foreign exchange and sent to the foreign suppliers to square up the transaction.
- i) IXth step. The cash component in the cheque/RTGS given by the persons named in Box 'E' (assessee) is given to persons named in Box 'D'.

21. The aforesaid is the modus operandi as suggested by Shri Rajendra Jain, which we do not accept because it is illogical and absurd on the face of it. It is like touching the nose not directly but by bringing the hand from behind the neck and touching it. If the aforesaid modus operandi is what is happening on the ground, then the nine persons named in Box 'D' makes money without touching anything because the entire foreign suppliers are supplying the diamonds on credit to persons named in Box 'C' (i.e. like Shri Rajendra Jain's concerns.). According to above modus operandi, the persons named in Box 'D' collects the diamonds from Shri Rajendra Jain's concern in Box 'C' (It needs to be

kept in mind that Shri Rajendra Jain's concern legally books the order from foreign suppliers shown in Box 'B' and is shipped to them directly i.e concerns named in Box C) and persons in Box D after collecting diamond from Box C as stated before, gives it to persons named in Box 'E' (i.e. people like the assessee) and collect the unaccounted money for (sale of diamonds). Thereafter, in order to regularise the transaction the persons named in Box 'E' (like assessee) in order to get the fake bill gives the cheque/RTGS to Shri Rajendra Jain's concern in Box 'C' who in turn converts the cheques/RTGS to foreign exchange and square it up with the foreign supplier and thereafter, the cash component in the cheques/RTGS is given to the persons named in Box 'D'. So in the result, the persons named in Box 'D' makes money twice (i) by selling the diamonds to assessee and collects the unaccounted money from them and (ii) then when the assessee gives by cheque/RTGS to Shri Rajendra Jain's concern in Box 'C' (i.e. for fake bill), then the cash components of the cheque is given to persons (second time) named in Box 'D', which proposition/modus operandi cannot happen at all because the Box 'D' persons have collected already unaccounted money which will definitely be containing the cost of diamond plus their profit, then again how the persons in Box 'C' will give the cash component embedded in cheques/RTGS. This is nothing but an absurdity. What is intriguing and defies logic is that, the diamonds once legally imported and received by concerns in Box 'C' directly from foreign supplier named in Box 'B', then when the assessee in Box 'E' is admittedly giving cheques/RTGS to persons in Box 'C', why can't they buy directly diamonds from concerns named in Box 'C' only, why go for persons named in Box 'D', whose role in our humble opinion doesn't fits in at all. That is why the explanation of assessee which is the practice followed by Diamond merchants like assessee need to be seen. According to assessee, the diamonds are brought by 'Angadias' to their respective show rooms for sale and once assessee selects and purchase the diamonds, cheques/RTGS are issued in the name of concerns issuing invoice/bills, which in this case is concerns legally importing diamonds named in Box C which fits into the modus as explained by assessee is plausible and after taking out the contradictions facts are corroborated by the statement of Shri Rajendra Jain. In the facts and circumstances the role of persons named in Box D can be that of Angadias or persons controlling them.

What actually happen will be clear from the chart given below –



**BOX "E"
(ASSEESSEE)**

5. Buys diamonds from Angadias or carrier sent by concern in 'Box C'
6. Issues cheques/RTGS to concerns which raises invoice i.e. concerns Box "C"

**BOX "D"
CARRIER/Angadias ?**

22. From the aforesaid pictorial chart the activities of persons/concerns in each Box is as stated and the numerical numbers are step by step activities in serial number of concerns in Box 'C' Rajendra Jain's concerns place first the order (1) with foreign Belgium concerns for diamonds. The Box 'B' concerns, (2) takes the order and ships the diamond to Box 'C', then (3) the concern in Box 'C' collects the diamond sent by Box 'B', then (4) the diamonds are sent to concerns like assessee in Box 'E' and the (5) the concerns in Box 'E' purchases the diamonds and the (6) issues the cheques/RTGS in the name of the concerns shown in the invoice of sale i.e. concerns named in Box 'C'. Thereafter (7) step, the Box 'C' concerns after receiving the cheque/RTGS from Box 'E' concerns (assessee), deposit it in their bank account. Thereafter (8) step concern in Box 'C' converts the amount deposited in their accounts into foreign exchange and transfer it to Box 'B'. (9th) step, the Belgium concern in Box 'B' gets the sale consideration of diamonds sold to Box 'C' concern. When the aforesaid transaction is seen in the light of the statement of assessee that in the diamond business, the Angadias bring the diamond to their show room and the assessee selects some diamonds from them, which are invoiced in the name of concerns in Box 'C' and the cheques/RTGS are deposited in their bank accounts (Box 'C') concerns means the assessee cannot be said to be doing business as suggested by concerns in Box 'C'.

23. From the aforesaid entire transaction the only inference in respect to the role of persons named in Box 'D' can only be that of carriers of diamond to people like assessee. This inference from the aforesaid analysis can only be changed by bringing cogent evidence or at least by bringing on record the statements of the nine persons named in Box 'D' to the effect that they corroborate the version given by Shri Rajendra Jain as correct.

24. For the reasons stated in para 19 supra, and other reasons cited above, we are of the considered opinion that the additions saddled on the assessee for AYs. 2008-09, 2010-11, 2011-12, 2012-13 and 2014-15 should be deleted and we order accordingly.

25. In the result, all the appeals of assessee are allowed."

8. As stated earlier, it is noted that the assessee has discharged her onus by producing the documents to substantiate the purchase made by her of diamonds worth Rs.21,79,400/- from M/s. Vitrag Jewels. It is noted that in this case AO had drawn adverse inference against the assessee only on the basis of third party information

gathered by the Investigation Wing of the department which have not been independently subjected to further verification by the AO; and has erred by neither providing the statement to the appellant/assessee and thus denied opportunity of cross examination to the assessee of Shri Rajendra Jain and Shri Surendra Jain. The assessee, in my opinion, has discharged the initial burden to substantiate the purchase by filing the purchase bills with full address, current contact nos. and the money was transferred by demand draft details of which were also filed and the AO has not found any infirmities in the documents. Further, in this case, the assessee had purchased the jewellery as investment ; and has shown that the source of the purchase was from her savings bank account and has not claimed any deduction of expenses. It is noted that in a similar case the Hon'ble Supreme Court decision in CIT, New Delhi Vs. M/s. Oden Builders P. Ltd. [Review Petition (C) Diary No. 22394 of 2019 in Civil Appeal Nos. 9604-9605 of 2018], wherein the Hon'ble Apex Court upheld the action of ld. CIT(A)/Tribunal/ Hon'ble High court wherein they upheld the deletion of addition made by the AO on similar 3rd party statements. The Apex Court held as under:-

ORDER

Delay condoned.

We have perused the review petition and find that the tax effect in this case is above RS.1 crore, that is, RS.6,59,27,298/-. Ordinarily, therefore, we would have recalled our order dated 17th September, 2018, since the order was passed only on the basis that the tax effect in this case is less than Rs.1crore.

However, on going through the judgments of the CIT, ITAT and the High Court, we find that on merits a disallowance of Rs.19,39,60,866/- was based solely on third party information, which was not subjected to any further scrutiny. Thus, the CIT (Appeals) allowed the appeal of the assessee stating:

"Thus, the entire disallowance in this case is based on third party information gathered by the Investigation Wing of the Department, which have not been independently subjected to further verification by the AO who has not provided the copy of such statements to the appellant, thus denying opportunity of cross examination to the appellant, who has prima facie discharged the initial burden of substantiating the purchases through various documentation including purchase bills, transportation bills, confirmed copy of accounts and the fact of payment through cheques, & VAT Registration of the sellers & their Income Tax Return. In view Of the above discussion in totality, the purchases made by the appellant from M/s Pad mesh Realtors Pvt. Ltd. is found to be acceptable and the consequent disallowance resulting in addition to income made for RS.19,39,60,866/-, is directed to be deleted."

The ITAT by its judgment dated 16th May, 2014 relied on the self- same reasoning and dismissed the appeal of the revenue. Likewise, the High Court by the impugned judgment dated 5th July, 2017, affirmed the judgments of the CIT and ITAT as concurrent factual findings, which have not been shown to be perverse and, therefore, dismissed the appeal stating that no substantial question of law arises from the impugned order of the ITAT.

In these circumstances, the Review Petitions are dismissed.”

9. In view of the above order of Hon'ble Supreme Court in the case of M/s. Oden Builders P. Ltd. (supra), I find that in the present case since the entire addition has been made based on an information gathered from the Investigation Wing of the Department and admittedly since the statements were recorded behind back of the assessee and the AO has made the addition without giving any opportunity to cross examine, according to me cannot be the basis of an addition, when the fact is that assessee has produced all the relevant documents like purchase bills, GST & CST and registration of the sellers, bank transaction details etc., which are available in the paper book, therefore the addition was not warranted and cannot be sustained. Therefore, I allow the appeal of assessee and direct the AO to delete the addition made by the AO and confirmed by the Ld. CIT(A).

10. Since on merits the addition has been deleted, the legal ground raised by the assessee is not adjudicated being academic in nature.

11. In the result, the appeal of assessee is allowed.

Order is pronounced in the open court on 19th February, 2021.

Sd/-

(Aby. T. Varkey)
Judicial Member

Dated : 19th February, 2021

JD(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Smt. Yamuna Mundhra, 126, Southern Avenue, Kolkata-700 029.
2. Respondent – ITO, Ward-30(4), Kolkata.
3. CIT(A)-8, Kolkata (sent through e-mal)
4. CIT , Kolkata
5. DR, ITAT, Kolkata. (sent through e-mal)

/True Copy,

By order,

Assistant Registrar