

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**MUMBAI "B" BENCH, MUMBAI**

**BEFORE SHRI G.S. PANNU, PRESIDENT AND**  
**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.1428/Mum./2021**  
**(Assessment Year : 2015-16)**

Seven Jewels  
7<sup>th</sup> Floor, Aman Chambers  
Opera House, Mumbai 400 004  
PAN – ABJFS8874J

..... Appellant

v/s

Asstt. Commissioner of Income Tax  
Circle-19(3)(3), Mumbai

..... Respondent

Assessee by : Shri Nitesh Joshi, Advocate &  
Shri P.P. Bhandari, CA  
Revenue by : Shri C.T. Mathew, Sr. AR

Date of Hearing – 16.02.2022

Date of Order – 10.03.2022

**ORDER**

**PER BENCH**

The present appeal has been preferred by the assessee challenging the order dated 30<sup>th</sup> July 2021, passed under section 250(6) of the Income Tax Act, 1961 (hereinafter referred to as "*the Act*") by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (hereinafter referred to as "*the CIT(A)*") for the assessment year 2015-16.

2. In this appeal, the assessee has raised the following grounds:-

"1. *The learned Commissioner of Income-tax (Appeals) erred in*

*upholding the addition of Rs. 87,26,922/- under section 69C of the Act.*

*It is submitted that the appellant had made payment through account payee cheques from its regular bank account of the business. The appellant had discharged its onus of proving the genuineness of the transactions together with source of the expenditure as such addition made under Section 69C of the Act is bad in law and ought to be deleted.*

2. *The learned Commissioner of Income-tax (Appeals) erred in upholding the additions of Rs.87,26,922/- made on account of purchase from M/s. Artview Gems Private Limited holding its as "accommodation entry."*

3. *It is submitted that appellant had purchased cut and polished diamonds from the aforesaid party in normal course of its business. Appellant had furnished full and complete details of purchases. M/s. Artview Gems Private Limited had also confirmed the genuineness of transaction in response to Notice under Section 133(6) of the Act. The additions are based on presumptions and surmises and is bad in law and ought to be deleted."*

3. The only issue to be decided in this appeal is with regard to the addition of Rs.87,26,922, under section 69C of the Act.

4. The brief facts of the case pertaining to this issue as emanating from the record are: The assessee is a firm engaged in the business of manufacturing of jewellery. During the year under consideration, the assessee purchased diamonds from various entities for manufacturing of jewellery. During the course of assessment proceedings, the Assessing Officer (hereinafter referred to as "the AO"), in order to verify the sundry creditors, issued summons and commission under section 131 of the Act in respect of certain entities. Out of these entities, one M/s. Artview Gems Pvt. Ltd., was based out of Surat. Accordingly, commission under section 131 of the Act was issued to the AO of the said entity in Surat. The AO of the said entity informed that the concerned officer was unable to serve the summons

to M/s. Artview Gems Pvt. Ltd. as the said entity had left the place some two to three years back. In view of the above, the AO, vide order dated 29<sup>th</sup> December 2017, passed under section 143(3) of the Act, observed that income tax authorities at Surat could not locate the office of the said entity at both the addresses i.e., the address provided by the assessee and the address mentioned on the return of income filed by the entity. The AO, doubting the existence of the said entity, noted that despite being untraceable at Surat, the entity filed the required details in the office of the AO at Mumbai. The AO further noted that the purchase bills regarding sale of cut and polished diamonds did not have any description about – (i) caratage along with the size of diamonds; (ii) clarity and (iii) colour of diamond; necessary to arrive at the price of the diamonds. Further, these factors were also not mentioned in the stock register maintained by the assessee to verify the fact of purchase of cut and polished diamonds from M/s. Artview Gems Pvt. Ltd. Thus, having regard to the untraceability of the address of M/s. Artview Gems Pvt. Ltd., the A.O. concluded that the assessee was indulged in reducing its taxable profit by inflating the quantum of purchases on the basis of bogus purchase bills. Accordingly, the AO added an amount of Rs. 87,26,922 to the total income of the assessee under section 69C of the Act being unexplained expenditure.

5. In appeal, the CIT(A), affirmed the order passed by the A.O.

6. During the course of hearing, Shri Nitish Joshi, learned counsel, appearing for the assessee, by referring to the documents forming part of

the paper book, submitted that the pre-condition for application of provisions of section 69C of the Act is not satisfied in the present case, as the assessee had sufficient funds for incurring the expenditure while purchasing the diamonds from M/s. Artview Gems Pvt. Ltd. The learned counsel further submitted that the AO did not consider various documents filed by M/s. Artview Gems Pvt. Ltd., sufficiently proving the existence of the said entity and the genuineness of transaction with the assessee. The learned counsel also submitted that the AO has not objected to similar purchase transactions from other entities.

7. On the other hand, Shri C.D. Mathews, learned Departmental Representative (hereinafter referred to as "*learned DR*"), appearing for the Revenue, vehemently relied upon the orders passed by the AO and the CIT(A).

8. We have considered the rival submissions and perused the material available on record. In the present case, the assessee being in the business of manufacturing of jewellery required cut and polished diamonds as an essential material. The assessee purchased the diamonds from various entities as is evident from extracts of stock register of the assessee forming part of the paper book. The A.O doubting the existence of only one entity, i.e. M/s. Artview Gems Pvt. Ltd., held that the purchase of cut and polished diamonds by the assessee to be a bogus transaction and added the entire expenditure pertaining to the said transaction, i.e. Rs.87,26,922, under section 69C of the Act. In order to decide the issue arising in this appeal, it

is relevant to analyze the provisions of section 69C of the Act. Section 69C of the Act reads as under:–

*"Unexplained expenditure, etc.*

*69C. Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year :*

*Provided that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income."*

9. Thus, as per the provisions of section 69C of the Act, in case the assessee fails to explain the source of expenditure or part thereof to the satisfaction of the AO, such expenditure shall be considered as unexplained expenditure and be deemed to be income of the assessee. In the present case, the assessee made the payments of Rs.43,97,377, on 10<sup>th</sup> March 2015 and Rs. 43,29,549, on 18<sup>th</sup> March 2015, to M/s. Artview Gems Pvt. Ltd. in respect of the diamonds purchased by the assessee. From the statement of account of the assessee issued by the HDFC Bank, a copy of which is placed at Page–27 of the paper book, it is evident that the assessee availed loans of Rs. 45,00,000 on 10<sup>th</sup> March 2015 and Rs. 60,50,000 on 18<sup>th</sup> March 2015. The documents of loans sanctioned by Merrill Lynch Wealth Management to the assessee are placed at Pages–41 & 45 of the paper book. From the aforesaid factual details forming part of the paper book, which have also not been denied by the learned DR, it is evident that sufficient funds were available with the assessee for making the payment to M/s. Artview Gems

Pvt. Ltd. for the purchase of diamonds. Thus, we are of the view that provisions of section 69C of the Act are not applicable to the facts of the present case.

10. Further regarding the apprehension / allegation of the AO that M/s. Artview Gems Pvt. Ltd., is not a genuine entity, the AO neither discussed nor denied the submission dated 24<sup>th</sup> November 2017, filed by the entity before the AO at Mumbai, wherein the return of income for the assessment year 2015-16 of the said entity, copy of ledger account of the assessee as well as PAN details of the entity were furnished. It is pertinent to note that the AO on one hand doubted the existence of M/s. Artview Gems Pvt. Ltd. while on the other hand in its show cause notice dated 20<sup>th</sup> December 2017, which is extracted in the assessment order, notes that *"the said party has left the place some 2-3 years back"*. Thus, from the above, it is evident that the AO also has not denied the existence of said entity during the assessment year under consideration. Another basis of the AO to disallow the expenditure that caratage, clarity and colour were not mentioned in the invoice raised by M/s. Artview Gems Pvt. Ltd. also appears to be mere presumption, as the AO has not referred to any document of third-party having mention of such factors in transaction of purchase of diamonds. In view of the above findings, we find no reason to sustain the addition of Rs. 87,26,922, made by the AO and confirmed by the CIT(A), and least under section 69C of the Act. Accordingly, the grounds raised by the assessee are allowed.

11. In the result, the appeal by the assessee is allowed in terms of our aforesaid findings.

Order pronounced in the open court on 10/03/2022.

**SD/-  
SANDEEP SINGH KARHAIL  
JUDICIAL MEMBER**

**SD/-  
G.S. PANNU  
PRESIDENT**

**MUMBAI, DATED: 10/03/2022**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury  
Sr. Private Secretary*

By Order

Assistant Registrar  
ITAT, Mumbai