

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D", NEW DELHI**

**BEFORE SHRI G. D. AGRAWAL, PRESIDENT
&
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

I.T.A. No.6675/DEL/2013
Assessment Year:2011-12

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|----------------------------------------|----|---------------------------------------------------------------------------------------------------------------|
| ACIT Central Circle 12 New Delhi | v. | Rajesh Kalra Prop. M/s Rayana Graphic Machinery 89, DSIDC Sheds, Okhla Industrial Area, New Delhi |
| | | TAN/PAN:AAJPK8606M |
| (Applicant) | | (Respondent) |

| | | | |
|------------------------|----------------------------|----|------|
| Applicant by: | Shri Vijay Varma, CIT (DR) | | |
| Respondent by: | Shri P.C. Yadav, Advocate | | |
| Date of hearing: | 02 | 08 | 2017 |
| Date of pronouncement: | 25 | 10 | 2017 |

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the Revenue against impugned order dated 14/10/2013, passed by the ld. CIT (Appeals)-XXXI, New Delhi for the quantum of assessment passed u/s. 143(3) of the Income Tax Act, 1961 for assessment year 2011-12. The only ground raised by the Revenue reads as under:-

“On the facts and circumstances of the case, the ld. CIT(A) has erred in law in deleting the addition of Rs.8,38,25,960/- made by the Assessing Officer on account of unexplained unaccounted investment of the assessee.”

2. The brief facts and the background of the case are that the assessee is an individual and through his proprietorship concern, M/s Rayana Graphic Machinery, he was doing the business of trading of pre-press, printing machine and graphic art films. Beside this, he was also Managing Director in two companies namely, M/s RAS Minerals Pvt. Ltd.; and RVM Impex Pvt. Ltd., which were engaged in the business of trading in Diamonds. A search and seizure action was conducted in the case of the assessee in the wake of information received from the Airport Intelligence Unit (AIU) of the Income-tax Department, when AIU authorities had intercepted one, Mr. Sunil Bhari at Terminal 1D of IGI Airport, New Delhi, who was found to be in possession of loose Diamonds claimed to be worth Rs.19 crores. The relevant background and the facts in this regard as narrated in the assessment order read as under:-

“A search and seizure operation was conducted in the case of Sh. Rajesh Kalra Managing Director of M/s RVM Impex Pvt. Ltd. and M/s RAS Minerals Pvt. Ltd. and Sh. Sunil Bhari at Terminal 1 D of the Indira Gandhi International Airport at Delhi on 19/10/2010. Initially in the morning of 19/10/2010, information was received from the reliable sources that a person is carrying huge quantity of diamonds through Indigo flight No. 6E179 to Mumbai. The team of inspectors intercepted the said person namely Sh. Sunil Kumar Bhari at the Airport. Sh. Sunil in his statement recorded u/s 131 stated that he has made a visit to Delhi on instructions of his employer Sh. Dinesh Bhuva Prop. M/s Deep Gems, 100C, Tara Niwas, First Floor, JSS Road, Girgaun, Mumbai-400 001, India to collect diamonds from Sh. Rajesh Kalra He further state that Sh. Bhuva has

instructed him to get in touch with Sh Rajesh Kaira over phone and collect the diamonds from the person and bring the same to Mumbai.”

3. As a result of search, warrant of authorization under section 132 was issued not only in the case of the assessee but also simultaneous proceedings under section 153C were initiated in the case of the two companies, in which assessee was Managing Director, i.e., M/s RAS Minerals Pvt. Ltd.; and RVM Impex Pvt. Ltd. At the time of interception of Mr. Sunil Bhari by the AIU, who was found in possession of diamonds worth Rs.19 crores, he was also found in possession of invoices and part copy of bills of entries/ customs clearance in respect of the said diamonds. He had explained to the AIU Officers that he was an employee of Shri Dinesh Bhuva, Prop. Of M/s Deep Gems, JSS Road, Girgaun, Mumbai and on the instruction of his employer, he got in touch with the assessee over phone and stated that he had collected the said diamonds from assessee's employee/man as informed to him by the assessee that he was on his way to Mumbai. The two invoices of purchases/ import found from his possession were of M/s RAS Minerals Pvt. Ltd. and RVM Impex Pvt. Ltd. who were the importers of these diamonds and both these companies' address were mentioned in the invoices. Since the address of these two companies (as reflected in the import invoice) showed the address of Surat, therefore, the AIU Officers immediately got enquiries conducted at Surat through DDIT (Investigation-1), Surat, who informed that no business could be found functioning at the address mentioned in the invoices. Thereafter, the AIU Officers searched ROC website from where it was gathered that these two companies have their registered

office/ address at New Delhi. Immediately a team of Income-tax officials conducted enquiries at those premises in Delhi and reported that no address of the said company was found registered at that premises. However, they found that the premises belonged to the assessee and he was also the Managing Director of one another company, M/s Lipee Scan Pvt. Ltd., which was doing the business from the said premises. The AIU Officers immediately summoned the assessee to the Airport and recorded his statement and consequently, a search and seizure action as mentioned above was carried out in the case of the assessee under section 132(1). Though in the invoice the value of diamonds mentioned was Rs.19 crores, but the diamonds which were found from the possession was valued by the Departmental Valuation Officer (DVO) at Rs. 8,38,25,960/-. In the statement recorded under section 132(4), assessee was asked to provide documentary evidence in the form of any agreement with the supplier for import of diamonds or any other evidences to prove that assessee's employee had visited Hong Kong where he had met the person of the supplier company. In response, assessee submitted that there is no such written agreement with the supplier nor there was any correspondence. The assessee however stated that, since the goods were cleared only on the previous day late night, therefore, entries in the books of the importing companies were yet to be incorporated. The Investigation Officers, due to large variation in the price of the diamonds as valued by the DVO and as recorded in the invoice and also due to the fact that assessee could not produce any evidence, came to the conclusion that the diamonds which were carried to Mumbai were not the one imported against the said

invoices. Accordingly, the entire diamonds were seized as unaccounted investment. In the impugned order, the detailed chronology of events leading to search and its conclusion on 28/10/2010 has been well elaborated by the Id. CIT(A) at para 8 from pages 5 to 8 of the appellate order. Ld. CIT(A) has also summarized the enquiry conducted by the DIT (Investigation), Surat and also by the Income-tax team which has visited Delhi premises as mentioned in the ROC website of these two companies. The sum and substance of the reasoning given by the Investigation Officer while seizing diamonds which has been bodily incorporated by the Assessing Officer to arrive at his own conclusion are illustrated hereunder:-

- i) No books of accounts could be found at the business premises of M/s RAS Minerals (P) Ltd. and M/s R VM Impex (P) Ltd. at 89, DSIDC Shed, Okhla Industrial Area, Phase-1, New Delhi.
- ii) No business premise could be found functioning at 808, Parth Apartments, Opposite Big Bazar, Surat Dumas Road, Surat in the case of M/s RAS Minerals (P) Ltd. and S/122, Someshwar Enclave, Udhna Magdalla Road, Surat, M/s RVM impex (P) Ltd., as reported in the report of DDIT (Inv.)- I, Surat.
- iii) Sh. Rajesh Kalra could not throw any light on the genuineness of the entire gamut of affairs _ in his statements recorded u/s 131 and 132 nor could he produce any documentary evidence viz., travel of Sh. Charan Singh to Hong Kong. Any business correspondence with M/s Ever

Million Gold Ltd., any transfer entry of the diamonds to M/s Deep Gems.

iv) The non-recording of the receipt of diamonds in the books of account of M/s RAS Minerals (P) Ltd. and M/s RVM Impex (P) Ltd. reflects that the trade in diamond is not in the nature of stock-in-trade and is merely an investment opportunity to make a windfall in the bullion market.

v) Admissions by Sh. Mahendra Javeri and Sh. Dinesh Bhuvra that they do not maintain any 'books of accounts' nor do they file any return of income coupled with the facts that they trade entirely in cash and the sale proceeds of this transactions was to be passed onto Sh. Kalra in cash is indicative enough to suggest that the entire transaction was unaccounted and needs to be treated as unaccounted investment,.

vi) No regular mode of procedures for import of loose diamonds were adopted by the assessee such as:

(a) There should be a formal contract reduced to writing as to bind the two parties. Even though as per the Indian Contract Act, an oral contract can be entered into but to submit it as a proof for any future litigation it must be in the written form.

(b) There should exist formal documents prior to contract which may demonstrate the terms of the contract on which the parties intend to enter into contract

(c) Any overseas parties exporting to India would prefer a Bank Guarantee or a Letter of Credit to safeguard their interest.

vii) Assessing Officer lastly observed that, as there existed a variation in the valuation as stated in the import bill and that done by the DVO, it is clear beyond doubt that there are two sets of diamonds, one that was imported against the import invoice and the other one that were being carried to Mumbai and the source of these diamonds were not declared either at the time of search or till the time of finalization of the assessment order and as such is deemed to be unexplained investment in the hands of Sh. Rajesh Kalra.

4. Finally, the Assessing Officer made the addition of Rs.8,38,25,960/-, which was the value adopted by the DVO, of the diamonds found from the possession of Mr Sunil Bhari mainly on the ground that, *firstly*, these diamonds do not tally with the diamonds mentioned in the invoices found at the time of search; and *secondly*, no proper evidence could be given by the to prove the genuineness of the transaction by the assessee and show that the import were made from these companies.

5. The Id. CIT (A) has dealt with assessee's rebuttal on each and every point raised by the Assessing Officer in detail, which has been dealt and incorporated up till page 39 of the appellate order. After considering the entire gamut of material facts placed on record as well as the submissions of the assessee and finding and observations of the Assessing Officer, he held that assessee

and the two companies had made point-by-point submissions to all the issues raised in the show cause notice issued by the Assessing Officer vide letter dated 11/3/2013, which has been simply brushed aside by the Assessing Officer in a very summary manner. He observed that the Assessing Officer has not mentioned clearly as to how he has held that assessee could not substantiate or explain the transaction of import and the source of acquisition of diamonds. He has not even mentioned as to why such detailed explanations given by the assessee are not acceptable. He held that the observations of the Investigation Officers were not conclusive so far as genuineness of the transaction is concerned, as the Assessing Officer himself was required to consider all the submissions and explanations as well as the evidences which were filed before him. Ld. CIT(A) further held that there is no concrete evidence to show that no books of account could be found at the registered office premises of the two companies and there is no actual report or document showing light on what exactly was done by the Income-tax team who had visited the registered office premises of the two companies. After incorporating the relevant question and answer of the statement recorded, he observed that even in the statement recorded under section 132(4) of the assessee, no question was asked on the non-maintenance or non-availability of books of account of two companies. The only question which was confronted to the assessee was, whether the entries have been passed for import transaction in the books of account or not, but this also does not indicate that the books of account were not found at the said business premises. In any case, he held that imported diamonds had been duly cleared by the

Customs authorities on the previous night and assessee did not had enough time to pass the entry in the books of account till succeeding day when the diamonds were intercepted and seized. He held that the said omission alone cannot be conclusive evidence that the transaction is not genuine. He further observed that even at Surat also, no statement has been recorded at the time of enquiry and the concerned officials had only enquired with the neighbors and not with the owners of the premises and the enquiry in Surat seems to have been done prior to execution of warrant and thereafter, no further enquiry has been made on subsequent date when assessee had submitted rent receipts of the premises and also VAT registration taken from the said address.

6. Regarding the genuineness of the transaction as well as import made by the companies, the Id. CIT (A) has dealt with this issue in paras 4.6 to 4.10 of the appellate order, wherein he has held that non-production of correspondence with the exporting company cannot be the reason for doubting the genuineness of the transaction when on the other hand, assessee had explained that one of the employee of the company had visited Hong Kong and struck the deal.

7. So far as the receipt of handing over of the diamond of such value to M/s Deep Gems account, Ld. CIT(A) held that this factor alone cannot be held against the assessee, because it is business decision which is to be taken by the assessee. After perusal of the reply and material placed on record he held that the assessee had clearly brought out on record that assessee's

two companies had done trade in diamond even before the date of search and payment for the past imports have been done through banking channels. All the diamonds received have been treated as stock-in-trade and there is no history that assessee has been making any investment in diamonds. Since diamonds have been cleared only in the previous night, there was still time left for passing necessary entries in the books of account.

8. Regarding the doubt of the Assessing Officer that there are two set of diamonds; one which has been imported against the import invoice and the other which has been valued by the DVO, the ld. CIT(A) has dealt with this issue from para 4.11 to 4.21 of the appellate order. In this regard, the ld. CIT(A) has categorically noted that there are no evidences that there are two set of diamonds or any material has been brought on record to show that other set of diamonds, which have been mentioned in the import invoice, was sold in the market or were hidden somewhere else. The valuation of diamond at Rs.8.38 crores in place of Rs.19 crores cannot be the evidence to come to the conclusion that these are two different set of diamonds. He also dealt with the comparative chart as submitted by the assessee to show that there is no actual variation which is occurring in respect of valuation made by the DVO and the description of diamonds as shown in the invoices. On reconciliation of such chart, the ld. CIT (A) has given a finding that there is exact match between different kinds of diamonds and average pieces of quantity in carats, etc. He has also dealt and incorporated the said chart at pages 44 to 46 of the appellate order. After considering the entire gamut of facts, the ld. CIT(A) finally

accepted assessee's contention and deleted such addition after observing and holding as under:-

“4.18 Thus from the facts as mentioned in the assessment order and from the submissions of the AR, it is clear that, there is no dispute about the facts of the case as given in the assessment order and as submitted by the AR of the appellant. The only dispute is regarding the stand of the investigating officer and the assessing officer that the diamonds imported from Hong Kong and those found in the possession of Mr. Sunil Bhari were not one and the same. The reason for such dispute is the difference in the value of diamonds as valued by the departmental valuer and that as per the invoice. However, since the type of diamond, their physical quantity, weight etc completely tally (in respect of numerous diamonds in small packets), I do not consider that it is a case of Mr. Sunil Bhari carrying some other set of diamonds than what was imported against the invoices being carried by him. At the most it could be a case of over valuation of imports.

4.19 The facts disclosed/narrated by Mr. Sunil Bhari to the investigation officer at the time of interception exactly matched with the version of the appellant on being summoned to the Airport and questioned u/s 131. Mr. Sunil Bhari had stated that he was an employee of Mr. Dinesh Ghua proprietor of M/s Deep Gems, JSS Road Girgaun, Mumbai. On the instructions of his employer he got in touch with the appellant over phone, collected the diamonds from the appellant's employee as informed to him by the appellant

and that he was on his way to Mumbai. The two invoices with him and the Xerox copies of few pages of Customs Clearances had shown M/s RAS Minerals Pvt. Ltd. and RVM Impex Pvt. Ltd., where appellants is a Director, as importers of these diamonds. In the statement of the appellant recorded at the Airport, the appellant has repeated what was told by Mr. Sunil Bhari to the investigating officer. The appellant had confirmed that the diamonds belonged to M/s Ras Mineral Pvt. Ltd. and RVM Impex Pvt. Ltd. as mentioned in the invoice. He confirmed that the diamonds were given to Mr. Sunil Bhari, the employee of M/s Deep Gems, Mumbai to be shown to some clients in Mumbai for sale. He further explained that one of his employees namely Sh. Charan Singh had visited Hong Kong and finalized the detail according to which Sh. Patel of M/s Ever Million Gold Ltd. Hong Kong, exported diamonds to the said two companies belonging to the appellant on 90days-credit. In the enquiries conducted at Mumbai, it has been confirmed by the accountant of M/s Deep Gems that its proprietor sells loose diamonds in the local market through different brokers and receives a margin of 2% as his income.

4.20 Thus, the facts narrated by the 'carrier of diamonds' and the appellant do not vary at all. The AO and the investigating officer suspected the transaction on the ground of absence of LC or any correspondence (being an International Trade of such high magnitude) between the supplier and the importers and that Deep Gems sells the diamonds in cash. These un-usual procedures or the absence of normal procedure can at the best be some leads for further

investigation or enquiry. However, these un-usual procedures or absence of normal procedure of import, themselves, cannot establish that the diamonds being carried by Mr. Bhari were not imported against the invoices. In fact, the conclusion by the AO at the end that there are 2 sets of diamonds in the whole case, amounts to acceptance that import of diamonds has taken place (at least of the one set, according to the AO) through the 'unusual'/ 'abnormal' procedures.

4.21 There are no evidences to suggest that the diamonds belonged to the Appellant and not to the said companies whose names appear on the invoices. The invoices and the Customs clearances clearly mention the names of the said two companies and not the name of the Appellant as importer/buyer. The diamonds as per the valuation report match in all respects with the number, weight, name etc excepting the value assigned to them. Both the companies have filed return of income with duly audited accounts for both the periods, namely prior to date of search and after the date of search. These books of accounts have been produced before the AO for verification.

4.22 Considering all the above factors, I am of the view that no case has been made out to hold that the seized diamonds belonged to the appellant and that the same represented his unaccounted investment. Therefore an addition of Rs.8,38,25,960/- made in the hands of the appellant is hereby deleted.”

9. Before us, the ld CIT (DR) after referring to the relevant observations made by the Assessing Officer in the assessment

order as well as the enquiry conducted by the AIU, which has been referred and relied upon in the assessment order, submitted that, what needs to be seen is, whether the diamond which was found from the possession of the person at the Airport, was the same which has been mentioned in the import invoice or not; and secondly, all those enquiries conducted by the Investigation Wing as well as the Departmental Officers at various places reveals that these companies were not found doing any business from these premises. In the light of these enquiries and information, doubt has been created by the Department regarding genuineness of the entire transaction of import as well as explaining source of diamonds found at the Airport. Therefore, the addition has rightly been made in the hands of the assessee as unexplained investment, because the same could not be explained by the assessee that these transactions actually belong to the two companies. In sum and substance, he strongly relied upon the order of the Assessing Officer.

10. In oppugnation, the ld. counsel for the assessee, Shri P.C. Yadav after explaining the entire facts and background of the case, submitted that each and every observation which has been made by the Assessing Officer, had been successfully rebutted by the assessee which has been duly appreciated by the ld. CIT (A) in his detailed order and in support, he also gave specific reference to the documents and evidences which have been enclosed in the paper book before us. In sum and substance, in order to rebut various findings of the Assessing Officer, he has summarised his arguments by way of following chart which is reproduced hereunder:-

| Observations made by AO | Rebuttal appreciated by the CIT(A) | Relevant Page No of PB depicting supporting evidence |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Sh Sunil Bhari could not furnish satisfactory reply and could not furnish the details of the person who has given him the diamond</p> | <p>a) Sh Sunil Bhari Satisfactorily explained the value of Diamonds to the tune of Rs 19 Crore. Question number 4 reply</p> <p>b) Bills of entry which were issued by custom clearance authorities were handed over to search team</p> <p>c) Details of Rajesh Kalra were duly given and that is why the department would be able to search him</p> | <p>Statement of Sunil Bhari at page No-135 and relevant question is question number - 4</p> <p>Bill of Entry are at page No- 112-118 of the PB and has been referred to by the DVO at page No 107.</p> <p>Copy of Panchnama in the case of Rajesh Kalra is at page No 103-108 of the PB</p> |
| <p>No companies in the name of M/s RAS Minerals and RVM Impex found at Gujrat.</p> <p>No trace of business of these two concern at Regsitered office address of Delhi</p> <p>No entries were passed in the books of Companies</p> | <p>d) Assessee filed copies of Rent Receipt of both companies.</p> <p>e) Assessee filed Copies of Import Export Code of RAS and RVM.</p> <p>f) Assessment under section 153C was framed in the cases of RAS and RVM and hence business is proved.</p> <p>g) Assessment under section 153C/ 143(3) was framed in the cases of RAS and RVM and no adverse observations in as much as incomplete books has been made by the AO</p> | <p>Page No-197-208 of PB rent receipts of RAS and 209 to 220 of RVM.</p> <p>Page No-182-183 of RAS</p> <p>IEC code and Page No184-185 of RVM IEC Code. In these documents the Gujarat Address is mentioned.</p> <p>Copy of assessment order is at page no-309-313 and 314-318-</p> |
| <p>Shri Rajesh Kalra in his statement failed to substantiate the genuineness of the transaction of Import of diamonds as no documentary evidence such as bank guarantee, Letter of credit, Copy of the Contract, Purchase order and any form of</p> | <p>Shri Rajseh Kalra in his statement of 132 recorded at 9.00PM clarified regarding source of Diamonds, i.e the same were imported from M/s Ever Million Gold Ltd, Hong Kong under payment terms of 90 days. Relevant extract of statement is at Page No 74 of the Paper Book.</p> | <p>Statement of Rajesh Kalra u/s 132 is at page No.138-142.</p> <p>Details of trip undertaken by Sh Charan Singh in connection with Hong Kong deal is at page No.72 of PB.</p> <p>The relation was developed on faith and</p> |

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|-----------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>correspondence with Hong Kong based Company regarding the import could be furnished by him.(Page No-16 Para-11 of the AO order)</p> | <p>Shri Rajesh Kalra Explained that there was no letter of credit as the payment was to be made within 90 days from the receipt of goods</p> <p>j) Shri Kalra further explained that M/s RAS Minerals had earlier dealt with Hong Kong Party and has fulfilled the commitment and therefore, on faith and belief the deal was materialised. Detials of good imported from Hong Kong Party is mentioned at Page no- 74 of the PB. This fact has been disclosed by Sh Kalra while recording his statement under section 132 of the Act. AO accepted this factual position the cases of RAS and RVM</p> | <p>trust Page No. 74 the PB + Earlier business transactions</p> <p>Page No 152 of paper book shows that RAS has purchased Diamonds of Rs. 10.32 Crore from RAS on or before 13.09.2010, i.e. prior to the date of search. Therefore allegations of the AO that assessee has failed to do the business in conservative methods is incorrect. SA Builder 288 ITR 1. Revenue cannot sit in the Arm chair of an assessee.</p> <p>Similarly page No. 156 of the PB would show that M/s RVM has purchased diamonds of Rs 21.13 Lakhs from Hong Kong party.</p> <p>Further assessee seeks to rely on the submission made before the AO vide letter dated 11.03.2013 at page No-74 of the PB.</p> <p>Submission of the assessee regarding Charan Singh visits are at page No.72 of the PB and tickets of Airline is at page No.326 onwards.</p> |
| | <p>k) Regarding the correspondence between the Hong Kong party and assessee explained that employee of M/s RAS namely Charan Singh visited Hong Kong for business correspondence</p> | |

11. We have heard the rival submissions, perused the relevant finding given in the impugned order as well as the material referred to before us. The subject matter of dispute before us is, whether the diamonds which were found from the

possession of one, Shri Sunil Bhari at the Airport for a sum of Rs.8,38,25,960/- can be treated as unexplained investment in the hands of the assessee or not. We have already discussed the entire facts and the background of the case as to how such diamonds were intercepted by AIU at IGI Airport, New Delhi which has been sought to be explained by the assessee before the authorities below as well as before us. To put it in succinctly, the person who was found in possession of said diamonds was also carrying with him two import invoices, one mentioning the name of the company as M/s RAS Minerals Pvt. Ltd.; and the other as RVM Impex Pvt. Ltd., who had imported the diamonds from Hong Kong companies and both these companies were having address of Surat. The Revenue's case has been that, *firstly*, the address mentioned in the invoice at Surat was found from the enquiry that no business was found at the given address and Delhi office has mentioned in ROC website that no address of the said companies was stated to have been found by the Income-tax team which was sent there; *secondly*, the assessee could not provide documentary evidence in the form of any agreement with the supplier of the diamonds and also the genuineness of the transaction of import could not be established by the assessee; *thirdly*, there was a variation in the price of diamonds as valued by the Departmental Valuation Officer and as mentioned in the import invoice; and *lastly*, various other reasons have been given which has been summarized at page 14 of the assessment order (which has already been incorporated in the foregoing paragraphs). We find that the Id. CIT (A) after examining the entire explanation and details have given a very categorical finding on all these points raised by the AO and has categorically

observed that all these evidences and explanation which has been given before him, were already part of record during the course of assessment proceedings, but the Assessing Officer has either brushed aside these evidences/explanations in a summary manner or has not taken into cognizance. On a perusal of the Id. CIT (A)'s order as well as the case made out by the Assessing Officer, we are at the outset unable to appreciate the stand of the Revenue for the reason that on the one hand, it is saying that the diamonds which were found from the possession of the said person are different from the ones which are mentioned in the import invoice and at the same time the Department is questioning the transaction of import itself. When a person in whose possession diamonds have been found was also found with the import invoices of the said diamonds which were imported one day earlier and also got customs clearance on the late evening of the previous day, then non-posting of such entries in the books of account obviously cannot be the reason for doubting the genuineness of the import. As appreciated by the Id. CIT (A), if the diamonds which were imported one day prior and had got the customs clearance at late evening on 18/10/2010, then probable factors would be that either these diamonds have been sold immediately on the next day morning or some other consignment of diamond was being carried by the said person or the said diamonds were kept somewhere else. No evidence or material has been brought on record even after search carried out at all the premises of the assessee that the diamonds mentioned in the import invoices were sold very next day and diamonds which were found in possession were some different consignment. Such a dichotomy of premise of the Revenue

cannot be appreciated *sans* any corroboration by any evidence or material on record. When the diamonds which were intercepted and found from the possession of the person was also found with the corresponding import invoices and documents relating to Customs clearance, then the preponderance of probability goes in favour of the assessee that these diamonds belong to the companies who have imported the diamonds duly supported by invoices found simultaneously.

12. So far as the difference in valuation done by the DVO as well as mentioned in the import invoices, the Id. CIT(A) has clearly recorded a finding that these diamonds are exactly similar and tally not only quantity-wise but also piece-wise, for which there is not rebuttal by the Department. This fact has also been highlighted by the Id. counsel for the assessee before us. Thus, from the material placed on record and the discussion as appearing in the impugned order, it is quite clear that the diamonds which were found in possession of the person belong to two companies of the assessee namely, M/s RAS Minerals Pvt. Ltd.; and RVM Impex Pvt. Ltd., who were not only into the business of trading of diamonds but also had imported the diamonds from a party in Hong Kong for which not only import invoice was found but also was duly cleared by the Customs authorities after due verification of all the records and papers.

13. Further the factum of diamond business carried out by these companies and were actually engaged in the business of trading of diamonds also gets authenticated by the fact that these companies are not only separately assessed to tax in the earlier years but also in subsequent years on income derived

from the diamond business. One very important fact which has been brought on record by the Ld. Counsel before us is that in pursuance of same search and seizure operation, the assessments of these two companies were initiated vide separate proceedings under section 153C, wherein not only the turnover but also the trading of diamonds have been accepted. The copy of the assessment orders passed u/s 153C in the case of both the companies have been placed in the paper book on which our attention was drawn. Whence in the wake of same search, simultaneous proceedings have been initiated under section 153C in the name of these two companies to examine the genuineness of the transactions of the diamonds including the purchases made vide same invoices which were found from the possession of the person carrying the diamond have been accepted, then it cannot be held that these two companies were not doing genuine business or it should be treated as undisclosed investment in the hands of the assessee. Thus, the entire diamonds found from the possession of the person cannot be assessed as undisclosed investments in the hands of the assessee. This factum of assessment order in the case of two companies passed u/s 153C clearly vitiates the stand of the Revenue and clinches the issue in favour of the assessee. Thus, we do not find any reason to sustain the addition on account of diamonds intercepted and found from the possession of the person at the Airport in the hands of the assessee. In any case, the ld. CIT (A) has discussed this issue threadbare and have come to a definite conclusion that the addition cannot be made in the hands of the assessee and such a finding of fact cannot be deviated from unless there is some other corroborative material

to rebut each and every finding as have been incorporated by the Id. CIT (A) after appreciating the entire facts and material on record. Accordingly, the order of the Id. CIT (A) is confirmed and the grounds raised by the Revenue are dismissed.

14. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on 25th October, 2017.

Sd/-
[G.D. AGRAWAL]
PRESIDENT

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 25th October, 2017

JJ:1610

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Assistant Registrar

| | | Date |
|-----|--------------------------------------------------|------|
| 1. | Draft dictated on | |
| 2. | Draft placed before author | |
| 3. | Draft proposed & placed before the second member | |
| 4. | Draft discussed/approved by Second Member. | |
| 5. | Approved Draft comes to the Sr.PS/PS | |
| 6. | Kept for pronouncement on | |
| 7. | File comes back to PS/Sr. PS | |
| 8. | Uploaded on | |
| 9. | File sent to the Bench Clerk | |
| 10. | Date on which file goes to the AR | |
| 11. | Date on which file goes to the Head Clerk. | |
| 12. | Date of dispatch of Order. | |