

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI**

श्री जॉर्ज माथन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य के समक्ष

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER, AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.3189/Mds/2016
निर्धारण वर्ष /Assessment Year: 2013-14

The Asst. Commissioner of Income- Tax,
Circle-2,
Tirupur. **Vs.** M/s.CIBI Diamonds India-
Pvt. Ltd.,
No.23, Park Road,
Tirupur-641 604.

[PAN: AADCC 7194 F]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Smt. R. Rajeswari, JCIT
प्रत्यर्थी की ओर से /Respondent by : Shri G.Baskar, Adv.
सुनवाई की तारीख/Date of Hearing : 12.07.2017
घोषणा की तारीख /Date of Pronouncement : 12.07.2017

आदेश / ORDER

PER GEORGE MATHAN, JUDICIAL MEMBER:

ITA No.3189/Mds/2016 is an appeal filed by the Revenue against the Order of Commissioner of Income Tax (Appeals)-3, Coimbatore, in ITA No.91/16-17 dated 22.09.2016 for the AY 2013-14.

2. Smt. R. Rajeswari, JCIT represented on behalf of the Revenue and Shri G. Baskar, Adv., represented on behalf of the assessee.

3. In view of the Revenue appeal, the Revenue has raised the following grounds:

- i) Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is justified in arbitrarily adopting a Gross Profit ratio and thereby estimating the closing stock?*
- ii) Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is justified in omitting to consider the fact that the assessee could not give valid reasons for adopting the method of valuation of old gold at Rs.1,000/- per gram?*
- iii) For these and other grounds that may be adduced at the time of hearing, the order of the Ld.CIT(A) may be cancelled and that of Assessing Officer restored.*

4. It was submitted by the Ld.DR that the assessee is doing the business of Jewellery Retailing. There was a survey on the assessee's premises on 11.07.2012. In the course of the survey, it was noticed that the stock as on the date of survey as per the books were estimated at Rs.5,57,78,951/-. The stock inventory physically made showed an inventory of Rs.6,99,95,458/-. Statements were also recorded from the Managing Director of the assessee company. It was a submission that when filing the returns, the assessee had disclosed the difference between the stock as per the books and the physical inventory to the extent of Rs.1,42,16,507/- in its return. The AO noticed that in the course of the survey while valuing the total of the excess stock of the gold of 36,907.56 grams, the same had been divided into two parts namely old gold and new gold. The old gold representing nearly 62% of the excess gold which was valued at Rs.1,000/- per gram and the new gold being 38% had been

valued by adopting the rate of Rs.2,700/- per gram. The assessee was asked to explain as to on what basis the excess stock of gold jewellery was divided into old gold and new gold. As the assessee was unable to give any justifiable reason, the AO had adopted the rate of Rs.2,700/- in respect of the entire excess gold found. It was a submission that on appeal the Ld.CIT(A) had on the ground that on account of the addition, the gross profit of the assessee reaches a very high level of 48.41% had after considering the GP of the assessee for the immediately succeeding years, as also on the ground that the valuation has not been done by Registered Valuer, estimated the GP of the assessee at 20% and consequently reduced the addition made by the AO. It was submitted by the Ld.DR that the addition made was not on account of GP but it was on account of the undisclosed stock and consequently the orders of the Ld.CIT(A) was liable to be reversed.

5. In reply, Ld.AR submitted that in the course of the survey, in the statement recorded, the assessee had proved to the survey team in respect of the old gold jewellery and new gold jewellery and that is why the difference of Rs.1,42,16,507/- had been arrived at in the course of the survey itself. It was a submission that in response to the Question No.16 recorded in the course of the survey, the details were all available. It was also a submission that in Question No.20, the survey team had also accepted the disclosure of Rs.1,42,16,507/-. It was a submission that the addition made by the Ld.CIT(A) by estimating the income of the assessee

was liable to be deleted and as the assessee has already accepted and complied with his disclosure of Rs.1,42,16,507/- when filing its return no further additions was liable to be made. He placed reliance upon the decision of the Hon'ble jurisdictional High Court of Madras in the case of Smt. S. Vijaya Lakshmi to support his contention that when the facts required for examining the claim were before the Tribunal, the ends of the justice justified the Tribunal to grant the relief to the assessee even in the absence of specific appeal or cross-appeal especially if the facts available on record permit the grant of such relief and such relief in fact had been sought by the assessee before the assessing authority.

6. We have considered the rival submissions. A perusal of the Assessment Order shows that the AO has made addition by valuing the unexplained stock of gold jewellery in the course of the survey. This is not a case on estimation of GP. On this ground, the order of the Ld.CIT(A) in estimating the GP of the assessee that too without rejecting the assessee's books of accounts is liable to be reversed and we do so.

However, on the reversal of the order of the Ld.CIT(A), we come to the predicament. This has turned out to a peculiar case wherein a Revenue appeal relief becomes allowable to the assessee. A perusal of the Assessment Order shows that the AO has partly accepted the survey report and partly diverted from the same. A perusal of the statement recorded in the course of the survey shows that the survey team has

examined the gold jewellery found representing the excess jewellery also and has accepted the claim of the assessee that part of the jewellery is old jewellery and had consequently valued 62% of the excess jewellery at Rs.1,000/- per gram accepting the same as old jewellery and 38% at Rs.2,700/- on the ground that the same was new jewellery. This has resulted in a difference of Rs.1,42,16,507/- which has been specifically acceded to by the assessee. On the specific question of the survey team more so, the Dy. Commissioner of Income Tax, Circle-1, Tirupur, in Question No.20, in the statement recorded from the Managing Director of the assessee company recorded u/s.131 on 11.07.2012. The survey team having verified the jewellery and having demarcated the old jewellery and new jewellery and having valued the same at Rs.1,000/- per gram and Rs.2,700/- per gram separately to arrive at the value of the excess stock, it is not open to the AO to ask the assessee to substantiate the methodology for the adoption, more so, especially after nearly four years from the survey. Once physical examination has been done by the survey team and it has been recorded in the sworn statement in the course of the survey, though such a statement is a rebuttable statement in respect of the assessee, in respect of the Department which records such statement, the same would have been considered as having substantial evidencing value. This being so, we are of the view that the addition made by the AO by adopting the rate Rs.2,700/- per gram in respect of the entire quantity of excess gold jewellery found is held to be erroneous and the AO directed to adopt the value as has been recorded by the survey team in the course

of the survey, in the course of the statement recorded on 11.07.2012 from Shri P. Cibi Chakaravarthi u/s.131 in the course of the survey. This decision of ours though is allowing the Revenue appeal in respect of the grounds, admittedly, give relief to the assessee in respect of the addition made. This view of ours draws support from the decision of the Hon'ble jurisdictional High Court of Madras Smt. S.Vijaya Lakshmi referred to supra.

7. In the result, the appeal filed by the Revenue stands allowed.

Order pronounced in the Open Court on July 12, 2017, at Chennai.

Sd/-

(ए. मोहन अलंकामणी)

(A. MOHAN ALANKAMONY)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: July 12, 2017.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF