

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पॉल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 46,47, 363 & 478/JP/2015
निर्धारण वर्ष/Assessment Years : 2006-07,2007-08,2008-09 & 2010-11

M/s Gem Mart India Pvt. Ltd., 1, Ganpati Building, Shopping Centre, Shastri Nagar, Jaipur	बनाम Vs.	Asstt. Commissioner of Income Tax, Circle Circle-1, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCG3303P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S. L. Poddar &
Miss Isha Kanoongo (Adv.)
राजस्व की ओर से / Revenue by : Shri Varinder Mehta (CIT)

सुनवाई की तारीख / Date of Hearing : 23/01/2018
उदघोषणा की तारीख / Date of Pronouncement : 16/02/2018

आदेश / ORDER

PER BENCH:

These are four appeals filed by the assessee against the order of Id. CIT (A)-4, Jaipur dated 09.12.2014 for A.Y. 2006-07 and dated, 10.12.2014 for A.Y 2007-08 & Id. CIT(A)-22, Alwar dated 24.03.2015 for A.Y 2008-09, and dated 07.04.2015 for A.Y 2010-11 wherein the respective grounds of the appeal are as under:-

Assessee's grounds of appeal (ITA No. 46/JP/15) :

"1. Under the facts and circumstances of the case the Learned CIT(A) has erred in upheld the action of the Learned Assessing Officer in rejecting the books of accounts u/s 145(3) of the Income Tax Act, 1961 and confirming the addition of Rs. 12,08,014/- on different footings without providing opportunity to the assessee.

2. Under the facts and circumstances of the case the Learned CIT(A) has erred in comparing the case of the assessee with the combined order dated 22.10.2014 in the case of Shri Anuj Kumar Varshney and Others decided by Hon'ble ITAT which is for the different issue.

3. Under the facts and circumstances of the case the Learned CIT(A) has erred in not following the decision of Clarity Gold Pvt Ltd. on the basis of which additions were made in the case of the assessee company and which is a group company."

Assessee's grounds of appeal (ITA No. 47/JP/15)

"1. Under the facts and circumstances of the case the Learned CIT(A) has erred in upheld the action of the Learned Assessing Officer in rejecting the books of accounts u/s 145(3) of the Income Tax Act, 1961 and confirming the addition of Rs. 12,22,212/- on different footings without providing opportunity to the assessee.

2. Under the facts and circumstances of the case the Learned CIT(A) has erred in comparing the case of the assessee with the combined order dated 22.10.2014 in the case of Shri Anuj Kumar Varshney and Others decided by Hon'ble ITAT which is for the different issue.

3. Under the facts and circumstances of the case the Learned CIT(A) has erred in not following the decision of Clarity Gold Pvt. Ltd. on the basis of which additions were made in the case of the assessee company and which is a group company."

Assessee's grounds of appeal (ITA No. 363/JP/15)

"1. That the order passed by the Learned Assessing officer u/s 143(3)/153A is void ab-initio.

2. *The Learned Assessing Officer has erred in initiating proceeding u/s 153A despite that no material was found during the search.*

3. *In the facts and circumstances of the case the Learned CIT(A) has erred in upheld the action of the Learned Assessing Officer in rejecting the books of accounts u/s 145(3) of the Income Tax Act, 1961.*

4. *In the facts and circumstances of the case the Learned CIT(A) has erred in enhancing the trading addition of Rs. 15,69,904/- by adding 15% of alleged unverifiable purchases."*

Assessee's grounds of appeal (ITA No. 478/JP/15)

"1. *That the order passed by the Learned Assessing Officer u/s 153A/143(3) is void ab-initio.*

2. *In the facts and circumstances of the case the Learned Assessing Officer as well as Learned CIT(A) has erred in rejecting the books of accounts u/s 145 (3) of the Income Tax Act, 1961 and the learned CIT(A) was wrong in confirming the addition of Rs. 18,093/- out of total addition Rs. 4,70,375/-*

3. *In the facts and circumstances of the case the Learned CIT(A) has erred in enhancing the addition by Rs. 63,53,428/- (15% of Rs. 4,23,56,186/-) on the basis of alleged bogus purchases without considering the actual facts of the case."*

ITA No. 46/JP/15

2. Briefly stated, the facts of the case are that a search & seizure operation under section 132(1) of the I.T. Act, 1961 was carried out on 20.05.2009 at the business and residence premises of the assessee group. The background of search action was survey conducted on the M/s Clarity Gold Pvt. Ltd. u/s 133(A) during the F.Y 2007-08 by BCTT Wing of Investigation Directorate at Jaipur which revealed that the assessee company and its sister concerns had obtained bogus purchase bills from various and entry providers who provided tax sales bills

without supplying the goods mentioned in the bills. During the course of search, statement of Sh. Khushi Kumar Ameriya, one of the Directors of the assessee company was recorded u/s 132(4) of the Act. After search operation, the case of the assessee company was centralized with ACIT, Central-Circle, Jaipur who issued notice u/s 153A on 23.09.2009 and in response to the notice, a return of income was filed on 14.03.2011 declaring income of Rs. 4,13,580/- same as the income as per the original return filed on 30.11.2006. The assessment was completed u/s 143(3) read with 153A of the Act wherein based on the statement recorded during the course of search, the findings and the evidences recovered during the search, the trading results were not found properly verifiable and the accounts books were held to be not correct and the books of accounts were rejected invoking provisions of section 145(3) of Act. Regarding estimation of profit, the AO followed the order of main group company M/s Clarity Gold Pvt. Ltd. wherein gross profit rate of 17% has been applied. After giving detail reasons, it was held by the AO that since the nature of business and modus operandi of the assessee company is similar to that of M/s Clarity Gold Pvt. Ltd., gross profit applied therein shall equal apply in the case of assessee company. Accordingly, GP rate was estimated at 17% as against 12.14% declared by the assessee on the declared turnover of Rs. 3,46,36,300/- and an addition of Rs. 16,81,765/- was made in the hands of the assessee company.

3. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) who has confirmed the invocation the provisions of section 145(3) in view of bogus purchases and the admission of the assessee through its Director Sh. K.K.Ameriya in his statement u/s

132(4) that the company was obtained bogus purchase bill. Regarding estimation of profits, the Id. CIT(A) applied 15% of the bogus purchases amounting to Rs.80,53,424/- and confirmed an addition of Rs. 12,08,014/- as against addition of Rs. 16,81,765/- made by the Assessing Officer. Against the said findings of the Id CIT(A), the assessee is in appeal before us.

4. At the outset, the Id. AR filed an application requesting for admission of additional grounds of appeal wherein the order passed by the AO u/s 153A was challenged in the absence of any incriminating material found during the course of search. It was further submitted by the Id AR that on merits, the issue is fairly covered by the decision of Hon'ble Rajasthan High Court in case of M/s Clarity Gold Pvt. Ltd. in DB Appeal No. 125/14 and others dated 19.09.2017 wherein the Hon'ble High Court has confirmed the addition by applying the average GP rate of 12%. It was submitted that since the AO has invoked the GP rate as applied in the case of M/s Clarity Gold Pvt. Ltd. and that matter has since been decided by the Hon'ble Rajasthan High Court, the findings of the Rajasthan High Court are clearly applicable in the case of assessee company as well. It was further submitted that since the assessee has itself declared the GP rate of 12.14%, there should not be any further addition in the hands of the assessee company.

5. Per contra, the Id. DR drawn our reference to the decision of the Co-ordinate Bench in assessee's own case in ITA No. 250/JP/2013 dated 11.03.2014 for AY 2009-10 wherein the Co-ordinate Bench has upheld the rejection of books of accounts and has directed to apply the GP rate of 13.85%. Regarding the decision of the Hon'ble Rajasthan

High Court in case of M/s Clarity Gold Pvt. Ltd., the Id DR fairly submitted that regarding rejection of books of accounts and estimation of GP rate @ 12%, the matter stands fairly covered by the decision of Hon'ble Rajasthan High Court in case of M/s Clarity Gold Pvt. Ltd.

6. We have heard the rival contentions and perused the material available on record. As we have noted above, the AO in his findings has held that since the nature of business and modus operandi of the assessee company is similar to that of M/s Clarity Gold Pvt. Ltd., gross profit applied therein shall equal apply in the case of assessee company. Accordingly, GP rate was estimated at 17% as against 12.14% declared by the assessee on the declared turnover of Rs. 3,46,36,300/-. Similarity of business of both these entities are thus not in dispute and as submitted by both the parties, the matter is squarely covered by the decision of Hon'ble Rajasthan High Court in DB Appeal No. 125/14 dated 19.09.2017 which has been rendered subsequent to the decision of the Co-ordinate Bench in assessee's own case in ITA No. 250/JP/2013 dated 11.03.2014.

7. The findings of the Hon'ble Rajasthan High Court in DB Appeal No. 125/14 & others dated 19.09.2017 reads as under:

"7. Taking into account the average GP rate which will be applied in the present case will be 12 per cent. It is made clear that where ever the profit is more than 12 per cent, the same will not be refunded to the assessee but where it is less than 12 per cent, the income will be assessed on the basis of 12 per cent GP.

8. In view of above, all the appeals stand allowed to the aforesaid extent."

8. Respectively following the decision of the Hon'ble Rajasthan High Court (supra), we upheld the rejection of books of accounts u/s 145(3) of the Act and given that the assessee has already declared G.P of 12.14% which is more than 12%, no further addition would be made in the hands of the assessee company. At the same time, the taxes so paid by the assessee company while offering its income to tax shall not be refunded to the assessee company.

9. In view of above, we do not think it would be necessary for us to examine the additional ground so raised by the assessee company challenging the legality of the order passed by the AO u/s 143(3) read with 153A. The same becomes infructuous and is hereby dismissed.

10. In the result, assessee's appeal is allowed.

ITA No. 47/JP/15

11. Briefly the facts of the case are that pursuant to the search action carried out on 20.05.2009 at the business and residential premises of the assessee group, notice u/s 153A was issued on 23.09.2009 and in response to the same, return of income was filed on 14.03.2011 declaring income of Rs. 503,850/- which is the same as the original return of income filed on 30.01.2007. The Assessing Officer applying the same reasoning as given in AY 2006-07 rejected the books of accounts and estimated the gross profit rate at 17% as against 12.22% declared by the assessee company and applying the same on the declared turnover of Rs 3,40,13,830, made a trading addition of Rs. 16,26,465/-. The Id. CIT(A) following the same reasoning as given in

the earlier year upheld the rejection of books of accounts and determined 15% of the bogus purchases of Rs. 81,48,078/- amounting to Rs. 12,22,212/- and the addition to that extent was confirmed as against Rs. 16,26,465/- made by the AO. Against the said findings, the assessee company is in appeal before us and has also raised an additional ground of appeal challenging the legality of the order passed by the AO u/s 143(3) read with 153A of the Act.

12. Undisputedly, there are no changes in the facts and circumstances of the case as compared to AY 2006-07. In the instant case, the assessee company has declared GP rate of 12.22% on declared turnover Rs. 3,40,13,830/- as against 12% upheld by the Hon'ble Rajasthan High Court in case of M/s Clarity Gold (supra). Respectively following the decision of the Hon'ble Rajasthan High Court, we upheld the rejection of books of accounts u/s 145(3) of the Act and given that the assessee has already declared G.P of 12.22% which is more than 12%, no further addition would be made in the hands of the assessee company. At the same time, the taxes so paid by the assessee company while offering its income to tax shall not be refunded to the assessee company.

13. In view of above, we do not think it would be necessary for us to examine the additional ground so raised by the assessee company challenging the legality of the order passed by the AO u/s 143(3) read with 153A. The same becomes infructuous and is hereby dismissed.

14. In the result, assessee's appeal is allowed.

ITA No. 363/JP/15

15. Briefly stated, the facts of the case are that a search & seizure operation under section 132(1) of the I.T. Act, 1961 was carried out on 20.05.2009 at the business and residence premises of the assessee group. The background of search action was survey conducted on the M/s Clarity Gold Pvt. Ltd. u/s 133(A) during the F.Y 2008-09 by BCTT Wing of Investigation Directorate at Jaipur which revealed that the assessee company and its sister concern had obtained bogus purchase bills from various and entry providers who provided tax sales bills without supplying the goods mentioned in the bills. During the course of search, statement of Sh. Khushi Kumar Ameriya one of the Director of the assessee company was recorded u/s 132(4) of the Act. After search operation, the case of the assessee company was centralized with ACIT, Central-Circle, Jaipur who issued notice u/s 153A on 23.09.2009 and in response to the notice, a return of income was filed on 14.03.2011 declaring income of Rs. 92,840/- same as the income as per the original return filed on 28.09.2008. The assessment was completed u/s 143 (3) read with 153A of the Act wherein based on the statement recorded during the course of search, the findings and the evidences found during the search, the trading results were not found properly verifiable and the accounts books were held to be not correct and the books of accounts were rejected invoking provisions of section 145(3) regarding estimation of profit. The AO followed the order of flagship company of the group M/s Clarity Gold Pvt. Ltd. wherein gross profit rate of 17% has been applied. After giving detail reasons, it was held by the AO that since the nature of business and modus operandi of the assessee company is similar to that of M/s Clarity Gold Pvt. Ltd., gross profit

applied therein shall equal apply in the case of assessee company. Accordingly, GP rate was estimated on 17% as against 13.85% declared by the assessee on the declared turnover of Rs. 3,06,23,295/- and an addition of Rs. 965,079/- was made in the hands of the assessee company

16. The Id. CIT(A) upheld the rejection of books of accounts and upheld the GP rate of 15% on the declared turnover by the assessee as against the GP rate of 17% applied by the AO. The Id. CIT(A) further enhanced the income by Rs. 15,69,904 on account of unaccounted profit on bogus purchases and in this regard, his findings contained at para 5.16 and 5.17 of this order are reproduced as under:-

"5.16 However, as regards the issue of enhancing the income of the appellant after applying a GP rate of 15% on bogus purchases of Rs. 1,04,66,026 is concerned, the appellant has stated that no further addition on this account is required to be made as the GP rate applied by the AO on sales would also include the figure of purchases.

5.17 I have carefully examined the submissions made in this regard and find that the GP rate on bogus purchases has to be applied over & above the GP rate applied by the AO. The issue of bogus purchases to the extent these purchases have been identified in a particular case would need to be considered separately as it is presumed that the actual profits have been suppressed to the extent of bogus purchases debited in the trading account. Therefore, I hold that the income of the appellant would stand enhanced by Rs. 15,69,904 (15% of Rs. 1,04,66,026) on account of unaccounted profit on bogus purchases."

17. Against the abovesaid findings of the Id CIT(A), the assessee is in appeal before us and also sought permission to raise the following additional grounds of appeal which reads as under:-

"Under the facts and circumstances of the case the learned CIT(A) has erred in sustaining the addition of Rs. 3,52,613/- out of total addition of Rs. 9,65,079/- by reducing the GP rate from 17% to 15% against declared GP rate of 13.85% by the assessee."

18. It was submitted that the said ground could not be taken earlier inadvertently at the time of filing the appeal and since the same goes to the root of the matter, the same may kindly be admitted. After hearing both the parties, since all the facts are on record and the same arise out of the order of the Id CIT(A), the additional ground is admitted.

19. It was further submitted by the Id AR that on merits, the issue is fairly covered by the decision of Hon'ble Rajasthan High Court in case of M/s Clarity Gold Pvt. Ltd. in DB Appeal No. 125/14 and others dated 19.09.2017 wherein the Hon'ble High Court has confirmed the addition by applying the average GP rate of 12%. It was submitted that since the AO has invoked the GP rate as applied in the case of M/s Clarity Gold Pvt. Ltd. and that matter has since been decided by the Hon'ble Rajasthan High Court, the findings of the Rajasthan High Court are clearly applicable in the case of assessee company as well. It was further submitted that since the assessee has itself declared the GP rate of 13.85%, there should not be any further addition in the hands of the assessee company. Regarding enhancement of income by the Id CIT(A), the Id AR submitted that once books of accounts have been rejected and G.P rate has been estimated by the AO, there cannot be any

further trading addition on account of bogus purchases as has been done by the Id CIT(A).

20. Per contra, the Id. DR fairly submitted that regarding rejection of books of accounts and estimation of GP rate @ 12%, the matter stands fairly covered by the decision of Hon'ble Rajasthan High Court in case of M/s Clarity Gold Pvt. Ltd. Regarding enhancement of income by the Id CIT(A), he relied on the order of the Id CIT(A).

21. Respectively following the decision of the Hon'ble Rajasthan High Court (supra), we upheld the rejection of books of accounts u/s 145(3) of the Act and given that the assessee has already declared G.P of 13.85% which is more than 12%, no further addition would be made in the hands of the assessee company. Further, regarding enhancement of income by the Id CIT(A), we find that it is not a case of unaccounted turnover rather a case where the AO has doubted the genuineness of the purchases and basis that the books results have been rejected u/s 145(3) of the Act and gross profit estimated. Therefore, there cannot be any separate addition on account of bogus purchases as done by the Id CIT(A). At the same time, the taxes so paid by the assessee company while offering its income to tax shall not be refunded to the assessee company.

22. In view of above, we do not think it would be necessary for us to examine the ground so raised by the assessee company challenging the legality of the order passed by the AO u/s 143(3) read with 153A. The same becomes infructuous and is hereby dismissed.

23. In the result, assessee's appeal is allowed.

ITA No. 478/JP/15

24. Briefly, the facts of the case are that pursuant to the search action carried out on 20.05.2009 at the business premises of the assessee group, notice u/s 142(1) was issued on 11.05.2011 and in compliance to the same, the assessee filed its return of income declaring total income of Rs. 17,296/-. The AO, following the same reasoning, as given in the earlier years, rejected the books of accounts and estimated GP rate of 17% as against GP rate of 14.91% on declared turnover of Rs 2,26,14,121/- and an amount of Rs. 473,075/- was brought to tax in the hands of the assessee company.

25. The Id. CIT(A) upheld the rejection of books of accounts and directed to apply the GP rate of 15% as against 17% applied by the AO and addition of Rs. 18,093/- was confirmed as against the addition of Rs. 470,375/- made by the AO. Further, the Id. CIT(A) enhanced the income of the assessee by computing 15% of Rs. 4,23,56,186/- on account of undisclosed turnover which has not been recorded in the books of accounts.

26. It was submitted by the Id AR that on merits, the issue is fairly covered by the decision of Hon'ble Rajasthan High Court in case of M/s Clarity Gold Pvt. Ltd. in DB Appeal No. 125/14 and others dated 19.09.2017 wherein the Hon'ble High Court has confirmed the addition by applying the average GP rate of 12%. It was submitted that since the AO has invoked the GP rate as applied in the case of M/s Clarity

Gold Pvt. Ltd. and that matter has since been decided by the Hon'ble Rajasthan High Court, the findings of the Rajasthan High Court are clearly applicable in the case of assessee company as well. It was further submitted that since the assessee has itself declared the GP rate of 14.91%, there should not be any further addition in the hands of the assessee company. Regarding enhancement of income by the Id CIT(A) on accounted of unaccounted turnover, the Id AR submitted that statement recorded during the course of survey of Shri Chandra Gopal Goyala on 20.5.2009 stating that the computer was not reflecting the correct position of stock was ignored by the Id CIT(A). It was further submitted that once books of accounts have been rejected and G.P rate has been estimated by the AO, there cannot be any further trading addition on account of unaccounted turnover as has been done by the Id CIT(A). It was further submitted that fact of bogus purchases was ignored by the Id CIT(A) and further, no unaccounted sale vouchers were found during the course of search.

27. Per contra, the Id. DR fairly submitted that regarding rejection of books of accounts and estimation of GP rate @ 12%, the matter stands fairly covered by the decision of Hon'ble Rajasthan High Court in case of M/s Clarity Gold Pvt. Ltd. Regarding enhancement of income as done by the Id. CIT(A), he took us through the findings of the Assessing Officer as well as of the Id. CIT(A) and submitted that even though the Assessing Officer has given a clear finding regarding the unreconciled and unaccounted stock found physically at time of search and as per the books of accounts maintained on tally, however, the AO failed to consider the same while applying the GP rate. It was submitted that Id. CIT(A) has rightly appreciated the said fact of unreconciled stock which

has resulted in unaccounted sale by the assessee company and the same has been rightly brought to tax in the hands of the assessee company by applying the GP rate of 15% which may now be reduced to 12% as decided by the Hon'ble Rajasthan High Court.

28. Firstly regarding rejection of books of accounts and estimation of G.P rate, respectively following the decision of the Hon'ble Rajasthan High Court (supra), we upheld the rejection of books of accounts u/s 145(3) of the Act and given that the assessee has already declared G.P of 14.91% which is more than 12%, no further addition would be made in the hands of the assessee company in respect of declared turnover of Rs 2,26,14,121. At the same time, the taxes so paid by the assessee company while offering its income to tax shall not to be refunded to the assessee company.

29. Regarding enhancement of income by the Id CIT(A) by applying G.P rate on unaccounted sales of Rs. 4,23,56,186, we refer to the relevant findings of the Id CIT(A) which are contained at para 5.7, 5.8, 5.9, 5.10 and 5.16 of his order which are reproduced as under:-

"5.7 AO has accordingly rejected the book results declared by the appellant and relied upon a number of other comparable cases before applying a GP rate of 17% on the declared turnover. It was noted from the order of the AO that books of account were found to be not complete on the date of search and as per the books the value of stock on the date of search was Rs. 5.02 crores and as against this the actual stock found at the time of search was Rs. 78,43,814.

5.8 The appellant has reiterated the submissions filed before the AO and has justified the GP rate declared. It is submitted that books of accounts have been regularly maintained and are duly audited. The appellant has further stated that the case laws are distinguished on facts.

5.9 Having carefully perused the material available on record, I find that an opportunity had been duly given to the appellant at the stage of assessment to reconcile the differences in the value of stock found at the time of search and the value of stock as per the books. The appellant has clearly failed to justify the differences in the value of stock even in the course of appellate proceedings and has merely reiterated the submissions filed earlier and justified the results declared in the return of income.

5.10 I find that in the absence of any credible evidence being filed by the appellant, the only logical and rational course of action available would be to treat the difference in the value of stock of Rs. 4,23,56,186/- as the turnover, which has not been accounted for in the regular books of accounts. This explanation is also in sync with the statement given by the appellant at the time of search and with the documents (in the form of unaudited financial statements found alongwith the audited financial statement of the company) found at the time of search relating to concealment of turnover, purchases, expenses, etc.

5.16 Besides, I hold that rate of profit of 15% should also be applied on unaccounted sales of Rs. 4,23,56,186 as computed above. Thus, the income as stated above, would stand enhanced by Rs. 63,53,428/-

(15% of Rs. 4,23,56,186) on account of unaccounted profit on sales which has not been recorded in the books of accounts."

30. An identical issue in respect of unaccounted turnover has been examined and dealt by us recently in case of assessee's group company **M/s Clarity Gold Pvt Ltd in ITA no. 479/JP/15 dated 15.02.2018 for AY 2010-11** wherein the relevant findings are reproduced as under:

"19. We have heard the rival contentions and perused the material available on record. The Id. CIT(A) noted that during the course of search conducted at the premises of the assessee company, a number of incriminating documents were found pertaining to unaccounted sales, purchases and expenses of the business. It was further noted by the Id. CIT(A) that the assessee has admitted in the course of statement recorded during the course of search that total sales of all the units during FY 2008-09 was around Rs. 107 crores and the declared turnover was only around Rs. 10.36 crores. Further, Id. CIT(A) refers to the order of the AO and stated that the appellant has suppressed the turnover of the business substantially as may be seen from para 22 of the assessment order. It was further noted by the Id. CIT(A) that AO has accordingly rejected the book results declared by the appellant. It was further noted from the order of the AO that books of accounts were found to be not complete on the date of search and as per the stock statement as on 30.04.2009 filed by the appellant with the State Bank of Indore, the value of stock as on 30.04.2009 was Rs. 29,55,67,819/- and as against this, the actual stock found at the time of search on 20.05.2009 was Rs. 14,52,24,834/-. A specific show cause notice was issued to the assessee as to why the GP rate of 15% as held by the

Tribunal in case of Anuj Kumar Varshney and others should not be applied on the above undisclosed turnover of Rs. 15,03,42,985/-. It was held by the Id. CIT(A) that inspite of appropriate opportunity given to the assessee at the stage of assessment and even during the course of appellate proceedings, the assessee has failed to reconcile the differences in the value of stock found at the time of search and the stock as per books a copy of which had been filed with the bank. It was further held by the Id. CIT(A) in the absence of any tangible evidence being filed by the assessee, the only logical and rational course of action available would be to treat the differences in the value of stock of Rs. 15,03,42,985/- as turnover which has not been accounted for in the regular books of accounts. It was held by the Id. CIT(A) that the said position would be consistent with the statement given by the appellant at the time of search and also with the documents found at the time of search relating to concealment of turnover, purchases etc. It was further held by the Id. CIT(A) that where the explanation of the assessee is accepted that the stock found at the time of search was correct and was in accordance with the books of accounts, then it means that the statement of stock filed with the bank was not correct. It also leads to believe the value of stock shown in the statement was inflated and the appellant become liable for perpetrating a financial fraud on the bank. Accordingly, it was held by the Id CIT(A) that the only conclusion which emerges out of the above discussion is that the unaccounted turnover of Rs. 15,03,42,985/- has been made by the assessee during the period under consideration. The Id. CIT(A) thereafter applied GP rate of 15% on such unaccounted turnover

following the decision of the Co-ordinate Bench in case of Anuj Kumar Varshney and others.

20. It is not in dispute that the assessee is found involved in accounting for both bogus purchases and bogus sales as well as there are unaccounted purchases and unaccounted sales as per the documents found and seized during the course of search. In the statement recorded during the course of search, the director of the assessee company has admitted that during the FY 2008-09, total sales are of Rs. 107/- crores as against recorded sales of Rs. 10.36 crores in its books of accounts and the fact that the said amount of Rs. 107/- crores has been brought to tax during the FY 2008-09 relevant to assessment year 2009-10. For the year under consideration, the quantification of undisclosed turnover has been determined by comparing the value of the physical stock as on the date of search i.e, 20.05.2009 and as per the stock statement submitted by the assessee with the State Bank of Indore on 30.04.2009. Given that the books of accounts were not complete as on the date of search, exact stock as per books on the date of search could not be worked out neither in terms of value nor quantitative tally. In post search proceedings and during the assessment and appellate proceedings as well, the assessee has failed to reconcile the same and offer any satisfactory explanation. Regarding valuation of such stock at the time of search, the AO has held that "the valuation was done by the experts, in the presence of assessee's employees dealing/managing the affairs on the date of search/seizure and no objection of any nature were raised by the employees at the time of search or just after the search. Now

challenging the valuation on frivolous grounds is only an afterthought and just too devoid the investigation. Even the assessee has not been able to produce correct quantification and valuation after search, if it was of the view that valuation made by the search party was faulty or incorrect." The said findings of the AO remain uncontroverted before us and we donot see any justifiable reason to interfere with the same. Hence, it was held by the AO that there was deficiency of stock of Rs. 15.03 crores. As per Assessing Officer, deficiency of stock so found clearly proved that either fake purchase bills are introduced so as to increase stock or the sales are reduced. The AO also referred to the statement of Shri K. K. Ameriya wherein he has stated that stock statements are inflated by way of showing bogus purchases, debtors and turnover. As per the Assessing Officer, it is conclusive proof of incorrectness of books of accounts and trading results of company. Hence the books of accounts and trading results were rejected by the AO. The AO thereafter applied G.P rate of 17% on declared turnover of Rs 15,40,38,479. It is here that the Id CIT(A) has stepped in and in our view, rightly so, where he figured out a seemingly apparent mistake in the final determination of quantum of turnover by the AO for the purposes of estimating the gross profits. As per Id. CIT(A), in absence of necessary reconciliation and any credible evidence filed by the assessee, the only logical and rational course of action would be treat the difference in the value of stock as unaccounted turnover which has not been accounted in the regular books of accounts. Based on material available on record, we agree with the findings of the Id CIT(A) that there is an unaccounted turnover which has not been disclosed by the assessee. However, we find that the Id CIT(A) has determined the

unaccounted turnover by comparing the stock statement as on 30.04.2009 filed by the appellant company with the State Bank of Indore which discloses the value of Rs. 29,55,67,819 and the actual stock of Rs. 14,52,24,834/- found at the time of search on 20.05.2009. For the period April 2009 to March 2010 which includes the period starting 30.04.2009 and ending 20.5.2009, the assessee has disclosed a turnover of Rs 15,40,38,479. Accordingly, the assessee shall be eligible for credit of disclosed turnover for the period starting 30.04.2009 and ending 20.5.2009 which comes to Rs 88,62,487 by evenly distributing the declared turnover over a period of 12 months. Accordingly, the undisclosed turnover in the hands of the assessee company comes to Rs 14,14,80,498 (Rs 15,03,42,985 less 88,62,487).

22. Regarding the estimation of GP rate, the matter stand covered by the decision of Hon'ble Rajasthan High Court in assessee's own case in earlier years wherein GP rate of 12% has been upheld by the Hon'ble High Court. Hence, the same will apply with the equal force in the present case.

23. Regarding the contention of the Id AR that the difference in the stock has already been considered by the Assessing Officer while rejecting the book results of the assessee company and there cannot be any separate addition on that account. It was submitted that G.P rate so determined should be applied only the declared turnover only and not on unaccounted turnover as so determined. In our view, once the books of accounts have been rejected by giving cogent reasons, the AO has to make best judgement assessment. It is well-settled that in a

best judgment assessment, there is always a certain degree of guess work. No doubt the authorities concerned should try to make an honest and fair estimate of the income even in a best judgment assessment, and should not act totally arbitrarily, but there is necessarily some amount of guess work involved in a best judgment assessment, and such guess work should have link with tangible evidence which in the present case is the stock statements which is prepared and submitted by the assessee itself to its bankers. If the stock statement shows certain value of stock which is at variance to physical stock, it is clearly a tangible piece of evidence which belongs to the assessee and found from the possession of the assessee during the course of search. Unless the assessee come forward and explain why the said stock statement is not correct and should not be relied upon, the Revenue cannot be precluded in taking the same into consideration or expected to shut its eyes ignoring the same. It is the assessee itself who is to blame as he did not submit proper accounts and there are unaccounted turnover which is so determined and which should be taking into consideration while estimating the profits in the hands of the assessee company. In our view, there was no arbitrariness in the present case where the AO has determined the unaccounted turnover of Rs 15,03,42,985/-, but failed to take the same into consideration while estimating the profits in the hands of the assessee company and which the Id CIT(A) has rightly appreciated and considered the same along with the declared turnover. We accordingly upheld the action of the Id CIT(A) of determining the unaccounted turnover which we have reduced to Rs 14,14,80,498 and the profit on such unaccounted turnover of Rs 14,14,80,498 should be determined by applying G.P rate

of 12% as against 15% applied by the Id CIT(A). The ground no. 4 of the assessee's appeal is thus partly allowed."

31. Following our above decision in case of M/s Clarity Gold, in our view, there was no arbitrariness in the present case where the AO has determined the unaccounted turnover of Rs 4,23,56,186/-, but failed to take the same into consideration while estimating the profits in the hands of the assessee company and which the Id CIT(A) has rightly appreciated and considered the same along with the declared turnover. We accordingly upheld the action of the Id CIT(A) of determining the unaccounted turnover of Rs 4,23,56,186/- and the gross profit on such unaccounted turnover should be determined by applying G.P rate of 14.91% as declared in the return of income which would be The ground no. 4 of the assessee's appeal is thus partly allowed.

32. Regarding ground no 1 raised by the assessee company challenging the legality of the order passed by the AO u/s 143(3) read with 153A, the same was not pressed during the course of hearing. Hence, the same is dismissed as not pressed.

33. In the result, assessee's appeal is partly allowed.

In the result, all the appeals filed by the assessee are disposed off with above directions.

Order pronounced in the open Court on 16/02/2018

Sd/-

(विजय पॉल राव)

(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 16/02/2018.

*Ganesh Kr.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Gem Mart India Pvt. Ltd., Jaipur
2. प्रत्यर्थी / The Respondent- ACIT, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA. No. 46,47,363 & 478/JP/2015 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar