

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.322/JP/2017
निर्धारण वर्ष / Assessment Year : 2013-14

Shri Jitendra Kumar Agarwal 1756, Telepada, SMS Highway, Jaipur	बनाम Vs.	The Asstt. Commissioner of Income Tax, Circle-1, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AEDPA0732L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri S. L. Poddar (Adv.)
राजस्व की ओर से / Revenue by : Shri Anup Singh (JCIT)

सुनवाई की तारीख / Date of Hearing : 12/02/2018
उदघोषणा की तारीख / Date of Pronouncement: 28/03/2018

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-01 Jaipur dated 30.03.2017 for Assessment Year 2013-14 wherein the assessee has taken following grounds of appeal:-

"1. Under the facts and Circumstances of the case, the Learned CIT(A) has erred in confirming the addition of Rs. 2,22,62,313/- on account of alleged difference in valuation of closing stock instead of addition made u/s 68 of the Income Tax Act, 1961 as unexplained investment by the Learned Assessing Officer.

2. Under the facts and circumstances of the case the Learned CIT(A) has erred in making the addition on different ground for Rs. 2,22,62,313/- without providing opportunity to the assessee for the new issue taken into the consideration.

3. Under the facts and Circumstances of the case the learned CIT(A) has erred in not providing opportunity or without issuing notice u/s 251(2) for raising new issue of valuation of closing stock when the same was not the subject matter of appeal.

4. Under the facts and Circumstances of the case, the learned CIT(A) has erred in rejecting the books of accounts u/s 145(3) of the Income Tax Act, 1961 without providing opportunity for the same and decide the issue which was not subject matter of appeal.

5. Under the facts and Circumstances of the case the learned CIT(A) has erred in giving the findings regarding manipulation of books of accounts without understanding the actual transactions and method of valuation stock.”

2. Briefly stated, the facts of the case are that during the course of assessment proceedings, the AO observed that there is closing stock of 24 ct gold weighing 8538.46 gm which has not been included in the closing stock valuation as reflected in the Profit & loss account. The AO examined the financial statements, the tax audit report as well as stock register for 24ct gold and 24ct gold as well as month wise stock summary of 22ct gold containing quantitative and valuation details as submitted by the assessee during the course of assessment proceedings. The AO on such examination observed that from the item wise stock register and the month wise stock summary, 19935.04 gm of 24ct gold was converted into 22ct. gold and 4814.68 gm of old gold was also converted into 22ct gold. It was further observed by the AO that the 24ct gold and old gold was transferred to 22ct gold at the average rate of purchase of such gold and the cost of conversion, i.e. cost of labour etc. It was further observed by the AO that in the item register for 24ct gold, it is clearly visible that there is a closing stock of

8538.46 gm in the stock. A show cause notice was issued to the assessee to explain the absence of value of 8538.46 gm of 24ct gold as closing stock and why this quantity of gold should not be considered as unaccounted stock in the business of the assessee. The assessee submitted that in the tax audit report, the closing stock of 24ct gold was wrongly reported as 8538.46 gm as against the fact that the whole of the opening stock and the purchases have been transferred to 22ct gold during the year. It was submitted that after taking into consideration the opening stock, the transfer from 24ct gold and the sales, closing stock of 22ct gold comes to 71018.06 gm valued at average cost method at Rs. 12,20,51,801/- and which forms part of the closing stock valuation of Rs. 14,86,19,560/-. However, the reply so filed by the assessee was not found acceptable to the Assessing Officer. Referring to the item wise and day wise the stock register of 24ct and 22ct gold, the AO observed that the quantitative details of both 24ct and 22ct gold has been correctly mentioned in the audit report and the assessee has failed to include 8538.46 gm of 24ct gold in the closing stock valuation of Rs 14.86 crore. It was held by the AO that once it was determined that there is under valuation of closing stock and the assessee was confronted with the same, the latter tried to refute all his earlier submissions and even the tax audit report and that too, by providing fabricated and faulty figures. However, based on the audit report and valuation of closing stock (based on the average stock method as discussed in the preceding paragraphs), it has been established that the assessee has failed to account for 8538.46 gm of 24ct gold in the closing stock valuation. Further, based on the average cost method, the AO determined the closing stock valuation of 8538.46 gm of 24ct gold at Rs. 2,49,97,878/- by applying average weighted cost of Rs. 2927.68 per gm. It was finally held by the AO that said stock of 24cr gold valued at Rs. 2,49,97,878/- has been found to be the unexplained investment which has not been recorded in the books of accounts and the same was brought to tax

in the hands of the assessee company in terms of provisions of section 69 of the Act.

3. Being aggrieved, the assessee carried the matter in appeal before the Id CIT(A) who has held that the books of accounts maintained by the assessee donot reveal the true income and the same were rejected under section 145(3) and thereafter, he examined the quantum of additions made by the AO and restricted it to Rs. 2,22,62,313/- as against Rs. 2,49,97,878/- made by the AO. Against the said findings, the assessee is in appeal before us. The Revenue has not filed any cross appeal and thus has accepted the findings of the Id CIT(A).

4. Before we examine the contentions so advanced by the Id AR, it would be relevant to refer to the findings of the Id CIT(A). The Id. CIT(A) observed that the main contention of the appellant is that 24ct gold weighing 8538.50 gm was issued for manufacturing in the last days of March, 2013 but the auditor, inadvertently, has not taken into account the corresponding 22ct gold manufactured ornaments in the audit report. The Id. CIT(A), thereafter analysed the nature and quantum of various entries in both the stock registers maintained by the assessee in respect of 24ct as well as 22ct gold. On a perusal of gold 24ct register, the Id. CIT(A) has returned a finding that on 21.03.2013, 24ct gold weighing 3025, 3513.46 gm, 3513.46 gm and 2000 gm was issued for manufacturing but the manufactured 22ct gold ornaments were not received during the F.Y and consequently, neither the balance of 24ct gold was reduced on account of 8538.46 gm of 24ct gold issued for manufacturing nor was the stock of 22ct gold ornaments increased. Further on perusal of monthly inward and outward stock summary for 22ct gold, it was observed by the Id. CIT(A) that in month of March, 2013, 13508.18 gm of manufactured items were received which tallied with 22ct gold register which was reproduced in the assessment order. Further, Id. CIT(A) observed that the closing stock of 22ct gold as on 31.03.2013 was shown at 61754.19 gm

which also tallied with the figures stated by the auditor in tax audit report. It was accordingly held by the Id. CIT(A) that 8538.46 gm of 24 carat gold still form a part of Gold 24ct stock and thus, no mistake was committed by the auditor wherein the closing stock of 24ct gold and 22ct gold was shown correctly at 8538.46 gm and 61754.190 gm respectively. It was further observed by the Id CIT(A) that a bald statement has been made by the assessee that there was mistake in the tax audit report but the assessee could not support its submissions with the certificate of the auditor to the effect that inadvertent mistake was committed while preparing the stock summary in the tax audit report ,even during the appellate proceeding. It was observed by the Id CIT(A) that the appellant has tried to take benefit of average cost of 22ct gold jewellery as there is a big difference between the average rate of 22ct gold jewellery and 24cr gold. It was further observed by the Id. CIT(A) that the assessee has valued 22cr gold jewellery at Rs. 1718.60 per gm whereas the AO has computed the same at 1932.20 per gm following the average weighted cost method which has been followed by the assessee himself and the assessee could not controvert the above findings of the AO even during the appellate proceedings. It was accordingly held by the Id CIT(A) that the books of accounts maintained by the appellant do not reveal true income of assessee and the same were rejected u/s 145(3) of the Act. The Id. CIT(A) accordingly valued 61754.91 gm of 22ct gold at Rs. 1932.20 per gram totalling to Rs. 11,93,21,445.9/- and 24ct gold of 8538.46 gm at Rs. 2927.68/- per gm totalling to Rs 2,49,97,878.57/-. And based on the same, the Id CIT(A) has returned a finding that the assessee has valued its total closing stock including 22 CT and 24 gold at Rs 14,86,19,560 as against Rs 170881873 and restricted the addition so made by the AO at Rs 2,22,62,313. The Id. CIT(A) further observed that given that the assessee is found to be indulging in manipulation of its books of accounts to avoid payment of due tax on its true income, it would be appropriate not to disturb the trading results of the subsequent three years whereby the assessee was denied the claim

towards adjusting the value of the opening stock of the succeeding years by the value of the closing stock so determined as per the impugned order.

5. Against the above stated findings of the Id. CIT(A), the assessee is in appeal before us and has raised as many as five grounds of appeal. During the course of hearing, the Id. AR submitted that in this case, the only addition is in respect of 24 ct gold weighing 8538.46 grams which according to the Assessing Officer was not disclosed by the assessee in the valuation of the closing stock despite that same was reported by the auditor in the audit report u/s 44AB. Before the Learned Assessing Officer as well as before the Learned CIT(A), the assessee vehemently argued that the reporting in the audit report by the auditor was made inadvertently. The factual position was that the 24 carat gold was issued for manufacturing and received back in the account of 22 carat gold ornaments. However both the Learned Assessing Officer and the Learned CIT(A) did not find favour with the submission of the assessee. The Learned Assessing Officer made addition on account of this 24 carat gold weighing 8535.46 grams @ Rs. 2927.68 per gram and thus addition was made of Rs. 2,49,97,8781/- whereas the Learned CIT(A) has recasted the valuation of the stock and has reduced the addition to Rs.2,22,62,313/-. The submission of the assessee is that both the Learned Assessing Officer as well as the Learned CIT(A) failed to appreciate the facts of the case. It was also pleaded before the Learned CIT(A) that in case the valuation is increased then benefit of such increase should be allowed in the valuation of the opening stock of the next year and so on so forth. But this has also been declined by the Learned CIT(A) which is against all the canons of principles of accountancy. Such direction of the Learned CIT(A) is against the established principles of law and requires to be quashed by the Hon'ble ITAT.

6. The Id AR further relied on the written submissions made before the Id CIT(A) which are reproduced as under:

"Facts of the case:

In this case the only issue involved is in respect of closing stock of 24ct gold weighing 8538.45 grams. The Learned Assessing Officer during the course of assessment proceedings noticed that in the audit report furnished u/s 44AB of the Income Tax Act, 1967 in column no. 2B(b)(A) closing stock of 24ct gold was shown of 8538.64 grams but this stock was not found included in the valuation of closing stock shown at Rs. 14,86,19,560/-. A copy of the audit report is available on paper book page number 1 to 19. In view of this the Learned Assessing Officer has made addition by working out the value of this 24ct gold 8538.64 @ 2927.68 per gram and thus has made an addition of Rs. 2,49,97,878.57/-. The Learned Assessing Officer has worked out the valuation on page 22 of the assessment order. The action of the Learned Assessing Officer is unlawful, unjustified and illegal. The addition has resulted on account of improper appreciation of facts of the case by the Learned Assessing Officer. The same are systematically discussed below:

Error in audit report

It is submitted that so far as the fact of reporting of closing stock of 24ct gold weighing 8538.46 grams in the audit report is concerned the same has occurred due to inadvertence on the part of the Chartered Accountant who carried out the audit. In fact the entire 24 carat gold purchased during the year weighing 27513.820 grams as well as the opening stock of 959.68 grams both totalling to 28473.500 grams stood transferred to manufacturing account of gold ornaments. The assessee is furnishing a statement of 24 carat gold disclosing the opening stock of 959.58 grams and purchases of 27513.820 grams and showing the entire 24 carat gold transferred to manufacturing account. Thus there was in fact no closing stock of 24 carat gold. It was a misreporting by the Chartered Accountant. The same is established by the statements available on paper book page number 20 to 24.

Manufacturing account

The assessee is furnishing another statement of manufacturing of gold ornaments which reflects the receipt of 24 carat gold 28473.500 grams, Alloy 2420.170 grams and Old Ornaments 4814.680 grams all totalling to 35708.450 grams. All this stood transferred to 22 carat gold ornament account. A copy of this statement is available on paper book page number cited supra. The receipts in the manufacturing account tally with the statement of 24 carat gold available on paper book cited supra. Assessee is also furnishing statement of Alloy from where 2020.170 grams was transferred to the manufacturing account. Assessee is also furnishing statement of Old Gold ornaments from where 4814.680 was transferred to the manufacturing account. Copy of statements of Alloy and Old Ornaments are available on paper book page number cited supra. Kindly note all these statement do cross tally.

Gold ornament stock (22 carat)

The assessee is furnishing yet one more statement of gold ornaments 22 carat. It is in this account that the disputed 24 carat stood transferred. It is submitted that the entire stock from the manufacturing account weighing 35807.450 grams which includes Alloy, Old Ornament and 24 carat gold stood transferred to this account. The account has opening balance of 52338.690 grams of ornaments and has received 35708.450 grams from the manufacturing account. The total comes to 88047.240 grams. After deducting sales of the year of 17028.630 grams there remains closing stock of 71019.820 grams as per the statement. Thus the allegation of the Learned Assessing Officer that 24 carat gold weighing 8538.46 grams was not disclosed in the closing stock is totally wrong. The Learned Assessing Officer was misled because of the error committed by the auditor in incorporating wrong figures of 24 carat gold in the audit report. As already submitted all the 24 carat gold purchased year and the opening stock of this account stood

transferred to the manufacturing account and was finally included in the gold ornaments account 22 carat. The stock of gold ornament 22 carat comes to 71019.820 grams. It is this stock which requires to be considered for the valuation of the closing stock.

Valuation of 22 carat gold ornaments

It is submitted that all the aforesaid facts were brought to the notice of the Learned Assessing Officer during the course of assessment proceedings vide letter dated 29.02.2016. A copy of this letter is available on paper book page number 25 to 27. In this letter the assessee has furnished the working of valuation of the 22 carat gold ornaments which comes to Rs. 1718.60 per gram and accordingly the value of the closing stock of 22 carat gold ornaments comes to Rs. 12,20,51,801,1(71018.06 x 1718.6).

In the aforesaid letter dated 29.02.2016 the assessee has furnished the details of valuation of closing stock of Rs. 14,86,19,560/- as disclosed in the audited accounts. The assessee has also furnished quantitative details of all the items of closing stock which are reproduced below:-

Particulars	Closing Stock		
	Weight	Rate	Amount
Diamond	180.01	2941.8	529553
Gold 22 CT	71018.06	1718.6	122051801
Silver	193031.24	49.6523	9584454
Gold 18 CT	1989.75	1664.36	3311652
Gold Diamond	1916.14	3524.63	6753684
Kundan Meena Jewellery	7374.68	753.733	5558536
Old Gold	558.87	1484.92	829880
Total	276068.75		148619560

Thus the valuation of the closing stock is in order. The entire 24 carat gold stands considered in the stock of 22 gold ornaments. The learned A.O. erred in making addition.

Books of accounts were not rejected

It is submitted that during the course of assessment proceedings written submission were made and all the details called for by the Learned Assessing Officer were submitted. The books of accounts of the assessee are audited u/s 44A8. The auditors have not adversely commented upon the maintenance of the books of accounts. The assessee produced cash book, ledger, journal, stock register and other supporting papers before the Learned Assessing Officer during the course of assessment proceedings. The Learned Assessing Officer has not disturbed the GP results disclosed by the assessee. The Learned Assessing Officer has also not rejected the books of accounts. No defect what so ever has been pointed out in the books of accounts. The Learned Assessing Officer has not applied the provision of section 145(3). Therefore the action of the Learned Assessing Officer in making addition is not justified and deserves to be deleted. No addition can be made more so in the trading account when the books of accounts stand accepted. The GP rate of the assessee has not been disturbed; therefore there was no case for disturbing the trading account by way of treating the 24 carat gold stock as not taken in the valuation of the closing stock. Therefore the addition made by the Learned Assessing Officer deserves to be deleted.

Provisions of section 69 are not applicable

It is submitted that the Learned Assessing Officer has made the addition by applying the provisions of section 69 of the Income Tax Act, 1961 which are not applicable at all in the case of the assessee. The provisions of section 69 are as under:-

Unexplained investments

69. Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.

The perusal of the aforesaid provisions of section 69 reveals that addition under this section is possible only if the investment is not recorded in the books of accounts of the assessee. In the present case of the assessee the stock of 24 carat gold is duly accounted for in the books of accounts of the assessee and forms part of the balance sheet of the assessee. Therefore the provisions of section 69 are not applicable. The Learned Assessing Officer has erred in making addition u/s 69 of the Income Tax Act, 1961.

Therefore it is submitted that the addition made by the Learned Assessing Officer may kindly be deleted.

Conclusion

In view of the aforesaid facts it is submitted that there is no discrepancy in the valuation of closing stock. The 24 carat gold weighing 8538.45 grams for which addition has been made by the Learned Assessing Officer stood included in the 22 carat gold ornament account. Specifically the following three transfers which stand reflected in the statement of 24 carat gold available on paper book page number cited supra inadvertently were not included in the manufacturing account/ 22 carat gold ornament account and hence the discrepancy:-

Date of issue	Name of party to whom issued	Weight
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21.03.2013	LS Jewelers	3025.00
21.03.2013	Ganpati Ornaments	3513.460
21.03.2013	Kamal Kumar Soni	2000.00
		8538.460

It is the aforesaid 24 carat gold which although actually was transferred to manufacturing account/22 carat gold ornament account but was not accounted accordingly in the books of account and hence the discrepancy. The small error has led to utter confusion. If the facts are considered in proper perspective there is no case left for any addition. All the charts contain quantitative details, day of purchase, date of issue for manufacturing etc. and are supported by books of accounts. Hence these deserve to be accepted. The addition made by the Learned Assessing Officer may kindly be deleted.”

7. The Id AR further submitted that notwithstanding the submissions made above wherein the case of the assessee is that the 24 carat gold weighing 8538.46 grams stood accounted for in the account of 22 gold ornaments, the assessee makes an alternative plea before the Hon'ble ITAT for kind consideration. In the facts and circumstances of the case, the 24 carat gold weighing 8538.46 grams is out of accounted purchases. The Learned Assessing Officer and the Learned CIT(A) have made addition on the ground that same was not included in the closing stock. The plea of the assessee is that the 24 carat gold weighing 8538.46 grams stood sold and the assessee failed to account for such sale in the books of accounts. In view of this, such sales which should be of the value of addition sustained by the Learned CIT(A) i.e. 2,22,62,313/- be treated as unaccounted sales and NP rate disclosed by the assessee in the year at 4.74% may kindly be applied which results in trading addition of Rs.10,55,233/-. This submission of the assessee is over and above the submissions made before the Learned CIT(A) and is

being made to give a stop to litigation and the Tribunal may kindly consider the alternative plea of the assessee sympathetically.

8. The Id DR is heard who has taken us through the findings of the AO and the Id CIT(A) and submitted that the facts are crystal clear that the assessee has failed to account for 8538.46 gram of 24 ct gold in his closing stock. He further submitted that the assessee has also not correctly applied the weighted average method of valuation of stock which has been rightly applied by the AO and the Id CIT(A). He accordingly submitted that the books of accounts have been rightly rejected by the Id CIT(A) u/s 145(3) of the Act and additions made in the hands of the assessee. He thus supported the findings of the lower authorities and submitted that there is no infirmity in the said findings and the same may kindly be confirmed.

9. We have heard the rival contentions and perused the material available on record and in particular, we have examined the financial statements of the assessee, the tax audit report, stock register statements for 24ct gold and 22ct gold, manufacturing statement and alloy statement for the period under consideration. The Id CIT(A) has returned a finding that on 21.03.2013, 24 ct gold weighing 3025, 3513.46 gm, 3513.46 gm and 2000 gm was issued for manufacturing but the manufactured 22ct gold ornaments were not received during the F.Y and consequently, neither the balance of 24ct gold was reduced on account of 8538.46 gm of 24ct gold issued for manufacturing nor was the stock of 22ct gold ornaments increased. In this regard, the Id AR during the course of hearing has submitted that 24 ct gold weighing 8538.46 gms was sent to job workers for manufacture of gold ornaments and the same were received back from the job workers during the year itself. In support, our reference was drawn to job worker issue and return vouchers and TDS statements reflecting TDS done on such job work making charges. It was submitted that the aforesaid 24 carat gold was thus actually transferred to manufacturing account/22 carat gold ornament account but the

same was inadvertently not accounted in the books of account by the auditors. We are however unable to accept the said contentions so raised by the Id AR. Firstly, these are fresh factual assertions which are raised for the first time before the Tribunal and the same were not made before or brought to the notice of the lower authorities. It is the assessee who has to account for these transactions for sending 24ct gold for job work (making gold ornaments) and return thereof assuming these return transactions have happened during the financial year as claimed by the Id AR. The role of the auditor is to review the correctness of these transactions as actually happened and reported as per well accepted accounting standards. If the assessee has failed to account for these transactions in the books of accounts and there is nothing on record which raises any doubts or suspicion in the minds of the auditors, then in such circumstances, blaming the auditors solely for wrong reporting in the tax audit report may not be correct. Further, we find that the tax audit report has been signed on 29.08.2013 and the job work return vouchers issued by the job workers as claimed by the Id AR are dated 23.03.2013 and 31.03.2013 respectively. If these stock return transactions do exist and were brought to the notice of the auditors, we find that there is no way the auditors would not have insisted on reporting these transactions in the books of accounts for the year under consideration. In light of the same, we agree with the findings of the lower authorities that there was a closing stock of 22 ct gold weighing 8538.46 gms which was not accounted for while valuing the closing stock in the financial statements. The question that arises for consideration is what happened to this stock. There is nothing on record to show that this stock of 22 ct gold has been returned and accounted for even in the subsequent years either in form of 22 ct gold or 24 ct gold ornaments. In such a scenario, only scenario which can be visualised is that the assessee has sold this 22 ct gold out of books and has not accounted for the same in his books of accounts. Even the Id AR in his alternate contentions, which has been made with due instructions and consent from the assessee, has pleaded

that where other contentions are not accepted, such 8538.46 gms of gold should be treated as unaccounted sales of the assessee amounting to Rs 2,22,62,313. Further, we find that there are discrepancies in the valuation of 22 ct and 24 ct gold which has been closely examined and rightly determined by the lower authorities at the weighted average cost method. In light of above discussions, we agree with the contentions of the Id DR that where there are glaring discrepancies in the stock movement and valuation thereof, the books of accounts have been rightly rejected by the Id CIT(A) under section 145(3) of the Act as the same cannot help determine the true and correct income in the hands of the assessee. Our view is fortified by the decision of the **Hon'ble Rajasthan High Court in case of CIT vs Mangilal Choudhary reported in 54 Taxmann.com 320** wherein it was held as under:

*"9. Under Section 145(3) of the Act of 1961 the requirement is that the Assessing Officer must be satisfied about correctness and completeness of the accounts of the assessee. Mere submission of vouchers is not sufficient to arrive at the conclusion that the trading result shown by the assessee are true. **The Assessing Officer while making assessment of return can reject the same as unreliable, if important transactions are omitted therefrom or if proper particulars in vouchers are not forth coming or if they do not include entries relating to several relevant facts necessary to compute income.** The rejection of accounts would always be justified when the accounts books are found unreliable, incorrect or incomplete for valid reasons."*

10. Now, when the books of accounts have been rejected, then a fair estimate of income is required to be made in the instant case. It is a settled legal proposition that in a best judgment assessment, there is always a certain degree of guess work involved and though arbitrariness cannot be avoided in such estimates, the same must not be capricious but should have a

reasonable nexus to the available material and the circumstances of the case. It is with reference to these principles that the question raised before us will have to be considered and looking at it from that point of view, the real question is what should be reasonable rate of profit which assessee would have earned on the total turnover - declared turnover of Rs 5,07,13,609 as well as unaccounted turnover as represented by 8538.46 gm of 24 ct gold valued at Rs 2,49,97,878/-. The Hon'ble Rajasthan High Court in similar cases have held that the best guide in case of fair estimation is past history of the assessee and directed to apply last five years average for the purposes of determination of fair estimation of profits. Applying the same in the instant case, average of last five years G.P rate and which has attained finality, being indicative of the manufacturing results, should be considered for determining the average G.P rate. The matter is accordingly set-aside to the file of the AO for the limited purposes of determination of average G.P of last five years, compare it with declared G.P and determine the adjustment taking into consideration the above discussions.

In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 28/03/2018.

Sd/-

(विजय पॉल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

Jaipur

Dated:- 28/03/2018

*Ganesh Kr

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

1. अपीलार्थी / The Appellant- Shri Jitendra Kumar Agarwal, Jaipur

2. प्रत्यर्थी / The Respondent- ACIT, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 322/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar.