

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH “F”, MUMBAI  
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND  
SHRI PAWAN SINGH, JUDICIAL MEMBER**

ITA No.4758/Mum/2015 (Assessment Year- 2012-13)

DCIT, Central Circle-(1) (3) Room No. 905, 9 <sup>th</sup> Floor, Old CGO Building, M.K. Road, Church Gate, Mumbai-20.	<b>Vs.</b>	M/s Fancy Diamonds India Pvt. Ltd. 111, Prasad Chambers, Opera House, Mumbai-400004 <b>PAN:AAACF3325J</b>
(Appellant)		(Respondent)

Revenue by : Ms. Pooja Swaroop (DR)

Assessee by : Shri Reepal Tralshawala (AR)

Date of hearing : 20.03.2018

Date of Pronouncement : 27.04.2018

**Order Under Section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by Revenue under section 253 of Income Tax Act (‘the Act’) is directed against the order of Ld. Commissioner of Income-Tax (Appeals)-47, Mumbai, [for short the ld. CIT(A)] dated 10.06.2015 for Assessment Year 2012-2013, which in turn arises from the assessment order passed by Assessing Officer under section 143(3) of the Act dated 27.03.2014. The Revenue has raised the following grounds of appeal:

“Whether on the facts and in the circumstances of the case and in Law, the learned CIT(A) is justified in deleting addition of Rs. 99,29,600/- being unexplained investment u/s. 69 of the I.T. Act, without appreciating the fact that during search u/s. 132 the assessee could not explain the excess stock found and Director of the company admitted the same as unaccounted stock.”

2. Brief facts of the case are that the assessee-company is engaged in the business of manufacturing and sales of diamond studded gold jewellery. On 13.12.2011 Prateek Mehta and Apoorva Shah, marketing representative of the assessee

were intercepted, who were travelling from Delhi to Kochi. A search action under section 132 was conducted by DDIT (Investigation)-II, Wing, Kochi after intercepting Shri Pratik Mehta and Shri Apurva Shah on 13.12.2011 and 14.12.2011. From Shri Pratik Mehta and Shri Apurva Shah, who were marketing representatives of the assessee-company, jewellery of gold of 599.6 grams and diamond at 916.45 carets was seized by Investigation Wing. In the follow up enquiries under section 131(1A) by Investigation Wing at Mumbai at the premises of the assessee on 14.12.2011 and the statement of Directors of the assessee company were recorded. Notice under section 153C was issued to the assessee for Assessment Year 2006-07 to 2011-12. The assessee filed its objection in response to the said notice. The return of income for the Assessment Year under consideration was selected for scrutiny. The assessment for the year under consideration was completed on 27.03.2014 under section 143(3) of the Act. The Assessing Officer while passing the assessment order made the addition of Rs. 99,29,660/- on account of unexplained investment in the form of excess stock of diamond and added as undisclosed income for the year. On appeal before the Id. CIT(A), the entire addition was deleted. Thus, aggrieved by the order of Id. CIT(A), the Revenue has filed the present appeal before us.

3. We have heard the Id. DR for the revenue and Id. AR of the assessee and have gone through the orders of authorities below. The Id. DR for the Revenue supported the order of Assessing Officer. The Id. DR submits that the

Assessing Officer made the addition on the basis of difference in the unaccounted stock found on 25.11.2011 for 389.91 Caret of diamond, which were valued at the cost/rate adopted on the basis of report of government valuer at the time of search. The Assessing Officer also relied upon the statement of Director of the assessee-company recorded on 14.12.2011. At the time of search, the rate of diamond was Rs. 26,000/- per caret. On the other hand, the Id. AR of the assessee supported the order of Id. CIT(A). The Id. AR submits that the stock register which was not updated on 13.12.2011 was hurriedly sent to Kochi by Investigation Officer in the late night. This fact was categorically informed to the official at Kochi as well as to the investigation wing at Bombay, that some bills of sales and purchase were not accounted. The stock register showed the different weight of diamonds. However, the authorization memo which was found at the time of intercepting the persons of the assessee in authorization memo dated 12.12.2011 shown the weight of 916.54 carets in jewellery. Therefore, there was a difference of 381.91 carets. , It is a common practice to purchase diamond on approval basis. In this practice, authorisation memo with the material (diamond ) is sent to the customer by the supplier. The approval period ranges from 30 to 60 days or more. If diamond so received on approval are found suitable, the same are retained and balances are returned back along with the approval memo/ jangad to the supplier. The supplier thereafter, wages bill for the accepted quantity and in the payment are made depending upon the term of credit either by cheque or

by RTGS. Therefore, in this process and practice of business, the stock in hand i.e. physically stock and the stock register will always have some reconciliation, which has to be updated from time to time. The ld. AR for the assessee submits that The Assessing Officer treated the difference as unexplained investment in the form of excess stock. No weightage was given to the books of account, documents, record and the data submitted. The addition was made on the basis of presumption without considering the fact and figures submitted during the assessment.

4. We have considered the rival submission of the parties and have gone through the orders of authorities below. We have noted that during the hearing on 09.08.2017, the ld. DR for the Revenue was directed to produce the record of investigation carried out at Mumbai. The ld. DR for the Revenue vide letter dated 17.08.2017, filed on 18.08.2017 informed that the Appraisal Report is not available in his record. Therefore, she has requested the erstwhile Assessing Officer to furnish the Appraisal Report. We have seen that despite specific direction and on seeking time, the revenue failed to produce the report of investigation. The case was adjourned for 04.10.2017. Again on 04.10.2017, the ld. DR for the revenue requested for adjournment that Appraisal Report is yet to be received in her office. On 04.10.2017, the Revenue was directed to file the record related to investigation and the case was adjourned for 16.11.2017. The ld. DR was directed to file report on 16.11.2017 or to file the affidavit of CIT concerned/ in charge indicating unavailability of concerned

documents. Despite repeated direction, the Revenue/ld. DR has not complied the order. Thus, we left no option except to proceed on the basis of material available on record.

5. Before us the assessee has filed copy of acknowledgement of return of income along with computation of total income, balance-sheet with schedules and tax Audit report. Statement of Pratik Mehta recorded under section 132(4) at Kochi Airport. Copy of un updated stock statement. Updated stock statement for the financial year ended on 31 March 2012. Copy of the statement of Anil Shah, Directors recorded under section 131 on December 14, 2011. Copy of the statement of Samkit Sahghvi recorded under section 131 on December 14, 2011. Copy of submission furnished to DDIT (investigation) on the December 16, 2011 at Mumbai. Copy of purchase invoices of Infinity Gems and Nagina Gems Private limited, with confirmation and ledger accounts of assessee in their books of account. And the other letters /correspondence furnished to the assessing officer during the assessment.
6. We have noted that the assessing officer made the addition after taking his view that there is difference in the stock, which is claimed as unaccounted stock and on the basis of statement of Director of the assessee, Sh. Anil Shah and Samkit Sighvi recorded on 14.12.2011. The assessing officer concluded that there is difference as per the statement of Sampkit Sighvi and in weight of diamond seized. The seized stock is 916.54 carats and as per statement of Samkit the stock is 534.63 carats. Thus, the difference of 381.91 carats is

unaccounted stock. The assessing officer valued this unaccounted stock for Rs.99,29,660/-. The cost was worked out on the basis of valuation adopted by Government valuer @ Rs.26,000/- per carats. During the appellate proceeding the assessee explained the fact and contended that the assessing officer on the basis of extract of certain statement concluded that there is discrepancy in the stock of diamond. It was contended that the stock register was hurriedly called and sent by fax to the Kochi official in the late-night on 13.12.2011. It was categorically stated that some of the bill of purchase and sale were to be accounted for. The stock register showed the weight of diamonds as 534.63 caret, however, the authorisation memo dated 12.12.2011 stated the weight of diamonds as 916.54 caret. Thus, the pendency of recording the entries, there was a difference of 381.91 caret in the stock register and the authorisation memo. The Id CIT(A) observed that the assessee time and again explained the concept of receipts of diamond on approval basis. The concept of receipt of diamonds along with jangad is an established practice in the diamond market, the account of the diamond stock was explained in detail. It was further observed that the stock register updated only when actual purchase of diamond is finalised and purchase invoices is received. Till the time diamonds received on approval/ jangad remains in the possession of prospective purchaser. On the basis of his observation the Id CIT(A) concluded that there is no need to account for uncertain or unapproved purchases in the book keeping, it is implied that books keeping and thus, it is implied that the stock lying

physically at office is not necessary fully accounted in the stock register at the same is waiting for the final decisive approval from the buyer. Therefore, the statement of the person, which is not concerned with the maintenance of stock restrict or the books of account, should not, per se be on the basis of making the addition. Moreover, the assessing officer has not given any consideration to the statement of Director of the assessee, who was handling purchases, accounts and finance of the assessee company from its Opera house office. The Id CIT(A) further took the view that assessing officer ignored the detail explanation furnished by assessee on 16.12.2011 to DDIT(investigation), Mumbai.

7. The assessee company explain to the assessee officer that the stock Reston which was referred, was provisional one and not be updated registrar as on 25.11,2011, as the same was submitted to DDIT(investigation) Kochi, at their instance on the late-night of December 13, 2011, at the time, when the marketing personal of the assessee was intercepted at Kochi airport. The landed CIT appeals also took the exception that assessing officer did not bring anything on record to prove the claim of the assessee being incorrect. The assessing officer simply stated that there is discrepancy is prevailing between the diamond stock as per the stock register as on 25 November 2011 and the diamond contents in the sample jewellery is not enough to prove the discrepancy. The assessing officer has not made any effort to pay attention to the contention of the assessee that updating of the stock register is done only

when the purchases is finalised and not when the stock was received on approval basis pending for the approval.

8. The Directors of the assessee while making a statement on December 14, 2011 had categorically stated that there were 3 bills of purchases and sales remain to be entered in the stock register, this fact was again retreated in the written submission dated December 16, 2011 to the DDIT (investigation) Mumbai. The assessing officer considered the statement of Samkit Sanghvi and updated stock register in isolation, instead of considering the corroborative statement of Mr Anil Shah about the updated the stock register furnished on December 16, 2011. The Id. CIT(A) further concluded that from the explanation furnished by assessee , it is clear that for relevant day, the assessee was having the stock of 1241carat of polished diamonds out of which 916 carat were embedded in the jewellery samples carried by marketing personal of the assessee, there was no excess or unaccounted stock lying with the assessee. The addition was made by assessing officer on the basis of un-updated stock register and only on the basis of isolated statement of Samkit, who was not involved in the maintenance of accountant inventory. Therefore, the Id. CIT(A) concluded that the addition was made on the basis of non-updated stock register. The assessing officer valued the alleged excess diamond, not as per the market value, but as per Government approved valuer, the stock is to be valued at cost or net unrealised value whichever is lower. The assessing officer has not considered the methodology of inventory valuation. On the basis of his conclusion the entire

addition was deleted. We have gone through the statement of Anil Shah, Director of the assessee ( page 44 to 49 of PB). In reply to question No.7, Sh. Anil Shah has clearly stated that accounting entry of last 15 to 20 days are pending. In reply to question No.10, Mr. Anil Shah again stated that the statement faxed by him in the night of 13 12.2011 was provisional statement. He again stated that certain bills of purchases and sales were pending for making entries in the stock register and that he was told that he should fax the details available immediately, which were available with them, hence, they faxed the available data. He again explained that final statement was made on 14<sup>th</sup> December 2011 and the final diamond stock as on 14.12.2011 was 1241.28 carats (including 916.54 carats included in the approval memo). We have also gone through the statement of Sh. Sampkit Singhvi, Director of the assessee recorded on 14.12.2011 under section 131 (page 50 to 55 of PB). He has also corroborated the statement of Ail Shah and stated that stock available as on 14.12.2011 is 1241.28 carats, except in reply to question No.10 that there is difference in stock and he is not able to substantiate at that time. We have noted that the assessing officer relied the statement Sampkit Singhvi in isolation. The assessing officer has not refereed the considered the entire testimony of the persons. As we have noted that the Id CIT(A) has already discarded the finding of assessing officer in considering the statement of persons/ Directors in isolation. Before, us no contrary material is brought, nor any contrary law is shown to us to reverse the finding of Id CIT(A). As we

have already mentioned above that despite direction and taking endless efforts by the ld. DR, the assessing officer has not filed any report of investigation wing, Mumbai and Kochi for the reasons best known to him. We have noted that the order of ld CIT(A) is based on proper appreciation of facts, in our view the order does not require any interference at our end. In the result the grounds of appeal raised by revenue are not acceptable.

9. In the result, appeal filed by revenue is dismissed.

Order pronounced in the open court on 27<sup>th</sup> day of April 2018.

Sd/-  
(SHAMIM YAHYA)  
**ACCOUNTANT MEMBER**

Mumbai; Dated 27/04/2018

S.K.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

Sd/-  
(PAWAN SINGH)  
**JUDICIAL MEMBER**

BY ORDER

(Asstt.Registrar)  
**ITAT, Mumbai**