



ITA.No.989/Mum/2016  
Suvidhi Jewel Impex Private Limited  
Assessment Year-2010-11

**आयकर अपीलीय अधिकरण “ई” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“E” BENCH, MUMBAI**

जोगिन्दर सिंह ,न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।  
**BEFORE SHRI JOGINDER SINGH, JM AND**  
**SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./I.T.A. No.989/Mum/2016  
(निर्धारण वर्ष / Assessment Year: 2010-11)

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| <b>Income Tax Officer, Ward 5(3)(4)</b><br>Room No.565<br>Aaykar Bhavan, M.K.Road<br>Mumbai-400 020 | <b>बनाम/</b><br>Vs. | <b>Suvidhi Jewel Impex Private Ltd.</b><br>28/30, Krupal Hemraj Building<br>H.G.Road, R.No.16, 2 <sup>nd</sup> Floor<br>Gamdevi, Mumbai -400 004 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. <b>AAMCS-1502-J</b>  |                     |  |
| (पीलार्थी / <b>Appellant</b> )  | :                   | (प्रत्यर्थी / <b>Respondent</b> )  |

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|--------------------|---|---------------------|
| <b>Assessee by</b> | : | J.P.Purohit ,Ld. AR |
| <b>Revenue by</b>  | : | V.Justin, Ld. DR    |

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| सुनवाई की तारीख /<br><b>Date of Hearing</b>      | : | 16/05/2018 |
| घोषणा की तारीख /<br><b>Date of Pronouncement</b> | : | 20/06/2018 |

**आदेश / O R D E R**

**Per Manoj Kumar Aggarwal (Accountant Member)**

1. The captioned appeal by revenue for Assessment Year [AY] 2010-11 assails the order of the Ld. Commissioner of Income-Tax (Appeals)-10 [CIT(A)], Mumbai, *Appeal No. CIT(A)-10/ITO-5(3)(4)/42/2013-14* dated 18/11/2015 *qua* certain relief provided to the assessee. The assessment for impugned AY was framed by *Ld. Income Tax Officer,*



*Ward-5(3)(4), Mumbai [AO] u/s 143(3) of the Income Tax Act,1961 on 08/03/2013. The grounds raised in the appeal reads as under: -*

1(a). *“On the facts and in the circumstances of the case, the Ld. CIT(A) erred in directing to adopt the GP of 0.05% in place of the 4.39% adopted by the Assessing Officer.*

1(b). *“On the facts and in the circumstances of the case, the Ld. CIT(A) failed to appreciate that the assessee failed to furnish the details in the course of the assessment proceedings to establish the correctness of the purchase & sale transactions and the valuation of the closing stock.”*

1(c). *“On the facts and in the circumstances of the case, the Ld. CIT(A) erred in relying on the five comparable cases furnish by the assessee without appreciating that the assessee had not furnished any details of how the cases are squarely comparable.”*

1(d). *“On the facts and in the circumstances of the case, the Ld. CIT(A) erred in allowing relief to the assessee against the finding communicated by the AO in his remand report that the assessee had made sales amounting to Rs.79,68,06,818/- to related parties and also made purchases from related parties amounting to Rs.9,09,80,797/- which fact has been mentioned in the Auditors Report in Para v(b) and the assessee avoided disclosure of the true facts of the transactions by not furnishing the details in respect of these transactions.”*

2. *The appellant prays that the order of the Ld. CIT(A) be set aside and the order of the AO be restored.*

2. Briefly stated, the assessee being *resident corporate assessee* engaged in *trading of diamonds* was assessed u/s 143(3) at Rs.922.60 Lacs after certain *Gross Profit* additions as against returned income of Rs.2.97 Lacs filed by the assessee on 01/10/2010. The assessee reflected turnover of Rs.210.83 Crores with Gross Profit / Net Profit rate of 0.03% / 0.01% respectively. Not satisfied with the *Profit Rate* reflected by the assessee, the assessee was asked to furnish quantitative details of the opening stock, purchase, sale and closing stock of diamonds such as *weight (cartage), colour and quality (clarity & cut)* and valuation thereof. The assessee submitted that keeping in view the fact that diamonds were being dealt by the assessee on the basis of weight in carats, these details could not be obtained. However, Ld. AO noted that such qualitative details were available in majority of purchase invoices



and therefore, the submissions were not *bona fide*. It was further noted that the purchase price of imported diamonds ranged from \$28 to \$9400 which clearly reveal that diamonds of varied quality were being dealt by the assessee and therefore, the assessee was required to maintain adequate qualitative as well as quantitative details thereof so as to arrive at the correct profit figures. The aforesaid factual matrix led the Ld. AO to reject the books of accounts u/s 145 and at the same time, the Gross profit of the assessee was estimated @4.39%, being average of profit reflected by five comparable entities as extracted on *Para 4.4* of the quantum assessment order. The said estimation resulted into an addition of Rs.919.62 Lacs in the hands of the assessee.

3. Aggrieved, the assessee contested the same with partial success before Ld. CIT(A) vide impugned order dated 18/11/2015 where the matter was concluded in the following manner:-

*4.2 I have gone through the facts and circumstances of the case. I have also gone through the details submitted by the appellant to substantiate his claim and the rulings relied on. From the facts it is seen that the AO has collected five comparables and found the average GP at 4.39% and applied that average to the appellant's case. The appellant on the other hand has taken five other comparables and found his average GP, more or less tallying with the average GP declared by the appellant. It is to be noted here that GP of one business cannot be compared with that of the other in straitjacket manner. The GP of each assessee depends on various factors peculiar to it. Therefore, estimation of GP solely depending on the average GPs of others is not proper especially without rejecting the books on proper ground like finding of glaring mistakes in the entries of the books. Further, the observation of the AO that when there is an increase in turnover the gross profit also increases is also not correct as seen from the chart of her own comparables.*

*4.2.1 Coming to the rejection of books the sole observation of the AO is that quantitative and qualitative details were not given. The learned AR has submitted that quantity details were already submitted during assessment proceedings on 28.01.2013 in the form of stock register extracts. With regard to quality the appellant's objection was that it is not possible to maintain quality details in their line of trade and no other traders also maintained such details. When the books are audited under section 44AB and no defects were found in the books, the rejection of books only because of non-maintenance of quality details is not proper. The Honourable ITAT Ahmedabad in the case of Nevil Gems(supra) has come to the*



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*conclusion that books cannot be simply rejected because the quality details were not supplied. While dealing this case the Ahmedabad bench has also relied on its earlier decision in the case Dharani Brothers in ITA NO.2309/2008 dated 06.08.2010. It is also pertinent to note in the instant case that book results were accepted for AY 2009-10 and AY 2012-13 by concluding the assessment under section 143(3) and the method of accounting was never questioned therein.*

*4.2.2 In the remand report the AO has suggested to reject the comparables given by the appellant and requested to adopt the average GP arrived at by the AO. The AO has also noticed that the details with regard to sale and purchase from related parties, as pointed out in the audit report was not furnished by the appellant thereby avoiding the disclosure of true facts by the appellant. With regard to application of averages based on comparables relied on by both the sides it is not possible to apply such averages in a straitjacket manner without verifying the financials of the comparable cases in both the sides. The details of comparables adopted by each party was not made available to the other party. Therefore, commenting of each party on the comparables of other party is unappreciated. With regard to purchase and sale made by the appellant to the related parties, the AO should have come to a specific conclusion with regard to financial implications of such trade with the related parties. When there is a sale/purchase with the related parties that does not mean that there is suppression of profit unless it is proved that the purchases were made at a higher rate or sales were made at a lower rate than the market rates. Since AO has not noticed any such irregularity the objection of the AO is unacceptable in the present context.*

*4.2.3 Keeping in view all the facts in mind and respectfully following the above decisions and the legal position I hold that the rejection of books under section 145 is not proper. However, since the appellant while submitting the average working of GP on the basis of its five comparables it has arrived at an average GP of 0.05% and it is seen that the GP declared by the appellant at 0.03% is still less. In true spirit, I hereby direct the AO to rework the GP and adopt the average GP of 0.05% for assessment purpose in place of 4.39% adopted by the AO. The ground is partly allowed.*

Aggrieved, the revenue is in further appeal before us.

4. The Ld. Departmental Representative [DR], pointed out that Ld. CIT(A) erred in providing relief to the assessee since the assessee could not produce adequate stock details before Ld. AO to justify the profitability. It was further submitted that the assessee undertook majority of the transactions with related party and therefore, the profit reflected by the assessee was not reliable. Per *Contra*, Ld. Authorized Representative for assessee [AR], drawing our attention to the documents placed in the *paper-book*, submitted that the stock details



have been maintained by the assessee as per the practice of the trade and all details in this respect as maintained by the assessee were furnished to lower authorities and therefore, Ld. CIT(A) was fair and justified in providing relief to the assessee with due application of mind. It was further submitted that details of related party transactions were never called for by the Ld. AO. Our attention has been drawn to similar profit rates reflected by the assessee in other years to justify the *profit rate* reflected in the impugned AY.

5. We have carefully heard the rival contentions and perused relevant material on record. So far as the rejection of books of accounts is concerned, we find that the assessee is a *corporate assessee* and it was statutorily required to maintain books of accounts and adequate records under various laws. The books were subjected to Audit under *Income Tax Act* as well as under *The Companies Act*. These audit reports are available on record and the same do not contain any serious adverse observations on the part of the auditors. The Tax Audit Report furnishes the quantitative details of the *opening stock, purchases and closing stock*. Therefore, Ld. AO, in our opinion, without pointing out any specific defects / deficiencies in the books, was not justified in rejecting the same merely because the assessee reflected low *Gross Profit*. Proceeding on the same analogy, estimating the profit merely on the basis of profit reflected by the comparables was not justified and therefore, the action of Ld. AO, to that extent, could not be sustained.

6. At the same time, it is also noted that the assessee was dealing in varied quality of diamonds, the price of which ranged from \$28 to \$9400 which necessitate the assessee to maintain adequate quantitative as



well as qualitative details of stock so as to arrive at the true profits for the impugned AY. The assessee has apparently not maintained these qualitative details and merely harping on the point that furnishing of quantitative details was sufficient enough to discharge the obligation casted on him in this regard. We are not convinced with the same particularly in view of the fact that the assessee has undertaken majority of the transactions with the related party. Further, we find that the *month-wise* quantitative details as given in *summary of stock for the period 2009-2010* as placed on *page number 62* of the *paper book* do not matches with ledger extract of *monthly summary of cut & polished diamonds* as placed on *page number 83* of the *paper book*. Further, the perusal of *batch-wise* purchase and sale transactions, as placed on *page numbers 63 to 74* reveal that the assessee has incurred heavy losses in number of transactions for which no justification has been placed on record. This is despite the fact that the material purchased by the assessee in a particular month has been sold in the same very month, which is evident from *month-wise* details of stock as placed on *page number 62*. The above factual matrix leads us to form an opinion that the assessee's conduct is also not clean.

7. Therefore, keeping in view the totality of facts, we deem it fit to restore the matter back to the file of Ld. AO for re-appreciation of the books of accounts of the assessee and profitability reflected therein. The assessee, in turn, is directed to substantiate his stand in this regard failing which Ld. AO shall be at liberty to adjudicate the same on the basis of material available on record.



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8. Resultantly, the revenue's appeal stands allowed for statistical purposes in terms of our above order.

*Order pronounced in the open court on 20<sup>th</sup> June,2018*

Sd/-  
**(Joginder Singh)**  
न्यायिक सदस्य / **Judicial Member**

Sd/-  
**(Manoj Kumar Aggarwal)**  
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 20.06.2018  
Sr.PS:- Thirumalesh

**आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai