



ITA No.2458/Mum/2017  
Vishal Ashok Bhansali  
Assessment Year-2012-13

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

श्री शक्तिजीत दे, न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।  
**BEFORE SHRI SAKTIJIT DEY, JM AND**  
**SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./I.T.A. No.2458/Mum/2017  
(निर्धारण वर्ष / Assessment Year: 2012-13)

<b>Assistant Commissioner of Income Tax-19(3)</b> Room No.206, 2 <sup>nd</sup> Floor Tardeo Road Mumbai-400 007	<b>बनाम/</b> Vs.	<b>Vishal Ashok Bhansali</b> C-112, Grand Paradi A.K.Marg, Kemp's Corner Mumbai-400 036
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. <b>AEIPB-9981-P</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Written Submissions dated 01/08/2018
<b>Revenue by</b>	:	Rajeev Gubangotra, Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	01/08/2018
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	12/08/2018

**आदेश / ORDER**

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

1. Aforesaid appeal by revenue for Assessment Year [AY] 2012-13 contest the order of the Ld. Commissioner of Income-Tax (Appeals)-30 [CIT(A)], Mumbai, Appeal No.CIT(A)-30/19(3)/318/15-16 dated 23/01/2017 by raising the following effective grounds of appeal:-

1. “Whether on the facts and circumstances of the case and in Law, the Ld. CIT(A) has erred in deleting the addition Rs.2,06,97,863/- on account of



ITA No.2458/Mum/2017  
Vishal Ashok Bhansali  
Assessment Year-2012-13

*difference of GP declared by the assessee and adopted by the AO without considering the facts that the books of account did not reflect true and correct picture of its profit, on analysis of it's labour charges, stock valuation and loss incurred during the jewellery manufacturing and same were rejected u/s 145(3) of the IT Act by the AO?"*

2. *"Whether on the facts and circumstances of the case and in Law, the Ld. CIT(A) has erred in deleting the addition of Rs.14,76,000/- and Rs.5,55,991/- on account of commission expenses and foreign travel expenses respectively without considering the facts that the assessee failed to submit any justification of the purpose and basis of commission payment and whether travel foreign expenses were incurred for the purpose of business?"*

The assessment for impugned AY was framed by Ld. Assistant Commissioner of Income Tax-Circle 19(3) u/s 143(3) on 31/03/2015 wherein the income of the assessee has been determined at Rs.354.81 Lacs after certain additions as against returned income of Rs.127.52 Lacs filed by the assessee on 13/09/2012. None has appeared for assessee. However, the assessee has filed return submissions dated 01/08/2018 in support of his claim. As evident from grounds of appeal, the following additions, as made by Ld. AO but deleted / partially allowed by Ld. CIT(A) are the subject matter of this appeal:-

<b>No.</b>	<b>Nature of Addition</b>	<b>Amount (Rs.)</b>
1.	<i>Estimated Gross profit Additions</i>	<i>206.97 Lacs</i>
2.	<i>Unjustified Commission</i>	<i>14.76 Lacs</i>
3.	<i>Expenses on foreign Travel</i>	<i>5.55 Lacs</i>
	<b>Total</b>	<b>227.28 Lacs</b>

2.1 The assessee being *resident individual* was engaged in the business of *jewellery* under proprietorship concern namely *Diavisz Jewel Corporation* reflected turnover of Rs.46.29 crores which was 1.57 times of the turnover of Rs.29.46 crores reflected by the assessee in the immediately preceding AY. However, there was steep increase in various expenditure, particularly *labour charges*, the comparative chart of



which has been extracted in the quantum assessment order, which led the Ld. AO to conclude that the assessee had inflated the expenditure. It was noted that the labor charges increased from Rs.11.44 Lacs to Rs.76.38 Lacs during impugned AY and the payments were in cash and the self made vouchers did not bear adequate details. All these factors put the genuineness of the same under doubt. It was further noted that the assessee followed *Last in first out [LIFO]* method of accounting to value the closing stock and accordingly, rate at which the closing stock was valued was much less than the average rate of purchase made by the assessee during the impugned AY. It was further noted that the assessee claimed *high wastage / loss of stock @9.56%* during the manufacturing process of diamond jewellery as against normal rate of 3-4% prevailing in the industry. Further, the stock loss was valued at much higher rates. The totality of above factors led the Ld. AO to conclude that the books of accounts were not reliable and therefore the same were rejected u/s 145(3). Accordingly, the *Gross Profit [GP] rate* was adopted @15% as against rate of 10.53% reflected by the assessee which resulted into impugned additions of Rs.206.97 Lacs in the hands of the assessee.

2.2 The second addition is out of commission expenses of Rs.56.94 Lacs claimed by the assessee. Out of this amount, Rs.30.95 Lacs was paid by the assessee to two family members i.e. his wife and mother. Accordingly, summons were issued to the spouse of the assessee and her statement was recorded, the relevant extract of which have been reproduced in the quantum assessment order. Finally, not convinced, Ld. AO disallowed commission expenses of Rs.14.76 Lacs, being expenses



claimed by the two payees against commission stated to be received from the assessee.

2.3 The third addition pertains to expenses incurred by assessee on account of foreign travelling expenses for visit to *London / Italy & Bangkok* stated to be made to remain competitive in the business environment. However, the same could not favor of Ld. AO and accordingly disallowed and added to the income of the assessee.

3. Aggrieved, the assessee contested the same with success before Ld. CIT(A) wherein the matter was concluded in the following manner:-

*7.3.3.2 I have carefully considered the above contentions on the issue. Though the AO, in the assessment order, stated that the appellant could not furnish comparison of manufacturing loss with similar industry of the similar locality, at the same time AO also could not bring anything on record about such comparison with other industries and simply by stating that the average loss incurred in the industry is in the range of 3 to 4% and concluded that the appellant booked excessive loss AO has not cited any case in support for the percentage mentioned and as such there is no basis for the conclusion arrived at by the AO. Apart from that, AO's observation that all the gold loss is booked on Diwali day, is also not correct and the appellant could able to show by giving the entire stock details with monthly summary in which loss of gold for each month is separately determined and for the month of October is 626.34 gms and figure adopted by the AO is not correct. AO adopted the opening stock valuation instead of average purchase price. In view of the above, even this discrepancy pointed out by the AO for rejecting the books is also not fully satisfactory and is rejected.*

*7.4 By mentioning the above discrepancies AO arrived at the conclusion that the books of the appellant cannot be relied upon and do not reflect the true and correct picture and rejected the books of account as per the provisions of section 145(3) of the Act and estimated the GP @15% and reduced the GP margin shown of 10.53% and added the difference of Rs.2,06,97,863/- to the total income. Section 145 of the Act does not lay down any specific method of valuation of closing stock. According to section 145 of the Act, the business income shall be income normally computed in accordance with the method of accounting regularly employed- The appellant has adopted the same method of valuation in the year under consideration as has been adapted in the preceding year Hon'ble Supreme Court in the case of Chainrup Sampatram vs. CIT 24 ITR 481 and in the case of Kika Bhai Prern Chand vs. CIT 24 ITR 506 has held that if any accounting principle is recognized and has been accepted then the stock valued according to that method is to be accepted- Option to adopt any system of accounting clearly lies with the appellant. Hon'ble Supreme Court in the case of investment Ltd. vs. CIT 77 ITR 533 has held "A tax payer is free to employ for the purpose of his trade his own method of keeping accounts and for*



*that purpose to value his stock in trade either at cost or market price. A method of accounting adopted by the trader consistently and regularly cannot be disturbed by the Departmental Authorities on the view that he should have adopted a different method of keeping account or of valuation".*

7.5 In view of the factual and legal position discussed as above, I am not in a position to agree with the reasons mentioned in the assessment order by the Ld. AO reject the books of accounts of the appellant u/s 145(3) of the Act and estimating the GP margin @15% and adding the difference amount of Rs.2,06,97,863/- between the GP declared of 10.53% and GP estimated of 15%. Accordingly, the addition made of Rs.2,06,97,863/- on this count, is deleted. Appellant succeeds on Ground Nos. 2, 3 & 4 of the appeal.

8. In Ground No. 5, the appellant raised the issue of disallowing the expenses incurred by the recipient towards commission paid. In the ground, which is subdivided into three parts, it is stated that AO has erred in disallowing the expenses incurred by the recipient of commission, which is out of context and beyond jurisdiction. It is also stated that in the scrutiny assessment completed in the case of one recipient the expenses incurred for earning commission are duly allowed.

8.1 AO considered the addition after observing that the amount of commission paid is Rs.56,94,926/- is higher by 1.62 times over the previous year and out of the commission an amount of Rs.30,95,419/- was paid to the family members of the appellant. During the assessment proceedings, summons were issued to Smt. Kalpana Bhansali, wife of the appellant, who has received commission of Rs.17,01,319/-. By reproducing the relevant extract of the statement recorded from her, AO concluded that purpose and basis of commission payment is not reflected and such payment is always to be linked to purchase/ sale on certain percentage, thereby certain purpose and basis for the quantum of commission payment. AO also mentioned that on similar issue in the earlier year AO disallowed 1% of the commission paid to the relative as excess when it is paid on percentage basis. This year there is no basis attached, therefore the AO held that such commission payment is not justified. Moreover, AO noticed that, against the commission payment of Rs.17.01 lakhs, an amount of 9 lakhs is debited as expenses incurred, by Smt Kalpana Bansali and Rs.5.76 lakh expenses claimed against the commission payment of Rs.13.94 lakh by Smt. Rekha Bansali. In view of the same, total amount of Rs.14.76 lakh (9 lakh + 5.76 lakh) expenses claimed in their returns of income, AO disallowed the same in the appellant's hand, treating the same as not being incurred for the business purpose and added to the total income.

8.2 Per Contra, against the addition, the appellant in the written submission stated that the addition made on this count is peculiar which is outside the scope-of jurisdiction of the Ld. AO, who has acted beyond his jurisdiction in as much as he finds fault with the expenses claimed by the recipient of commission namely Smt Kalpana A Bhansali. By attaching the copy of the assessment order of Snit. Kalpana it is stated that her case was under scrutiny for the AY 2012-13 and her assessing officer do not find any fault with the expenses claimed by her and income returned was accepted. It is also stated that similar issue was also crept up during the immediate preceding year and same was taken up for appeal before the CIT(A)-27 who was pleased to allow the same in favour of your appellant vide his Appellate Order dated 01-05-2014 in ITA No. 473/2013-14 on page no. 29 & 30. Therefore, it



*is prayed that the addition on this account made by the Ld. AO is not maintainable and same is requires to be deleted to render the justice.*

*8.3 I have carefully considered the rival contentions on this issue and also the evidences furnished by the appellant in the form of assessment order of Smt. Kalpana Bansali and the appellate order passed for the A.Y. 2011-12. The total amount of commission paid for the year is 56,94,926/-, and out of that an amount of Rs. 30,95,419/- was paid to two of the appellant's family members. AO noticed that the recipients claimed certain expenses in the returns of income filed by them against such commission income. As there is no basis for the commission payment, AO disallowed the expenses claimed by the recipients to the extent of Rs. 14.76 lakhs which is equivalent to the expenses claimed by the recipients against the commission income offered in the returns. As seen from the evidences furnished the commission paid is duly offered as income by the recipients and in one case the assessment was completed u/s 143(3) by her AO. Correctness of the expenses incurred by the recipients and its allowability is to be considered in their respective hands. Moreover, as stated by my Ld. Predecessor CIT(A), that Ld. AO cannot step into the appellant's shoes as far as reasonability of the commission income is concerned. AO in this case has wrongly considered the expenditure incurred by the in the hands of the appellant. In view of the same, there is no justification to sustain the addition and accordingly the addition of Rs.14,76,000/- is deleted. Ground No. 5 is treated as **'Allowed'**.*

*9. In Ground No. 6, the appellant raised the issue of disallowance considered towards the expenses incurred under the head 'Foreign Travel Expenses'. In the ground it is stated that the AO erred in disallowing the foreign travel expenses without appreciating the fact that designing of jewellery plays pivotal and integral role in its marketing and unless designs are maintained at par with international level one will be out of business. It is further stated that in this business unless personally viewed and examined the designs the business cannot be done as per the modern and present day requirement.*

*9.1 During the assessment proceedings, AO asked to justify the expenses on tours to London, Italy and Bangkok, incurred for the business purpose. In response, the appellant has stated that they are involved in manufacturing of innovative designer jewellery and London and Italy are trendsetters of new designs. Hence visit to these places to remain updated and be competitive in the business is all the more essential and it will not be possible to stand in the present day market where innovative designs are the order of the day. With regard to Bangkok trip it is stated that to examine various ruby, emerald, pearls for which Bangkok is the centre and the items are used along with the diamond jewellery, to drive added attraction to designs. After considering the submissions, AO stated that nowhere the appellant explained how the tours actually lead to increase in the sales and profit margins and the explanation to substantiate the claim is vague and is not tenable and is not acceptable. In view of the same, AO disallowed the total amount of 'foreign travel expenses' amounting to Rs.5,55,991/-, and added to the total income.*

*9.2 I have carefully considered the rival submissions on the issue on hand. When asked to justify the expenses incurred are for the business purpose, the appellant stated that the places visited are centres of innovative designs in the jewellery, the appellant is dealing with and to keep updated and be competitive in the business the visits are essential. However, AO is not satisfied with the explanation and added the*



ITA No.2458/Mum/2017  
Vishal Ashok Bhansali  
Assessment Year-2012-13

*expenses incurred towards foreign travel on the ground that the appellant failed to explain how the tours actually lead to increase the sales and profit margins. In the present case, the appellant-is. into the business of manufacturing of jewellery made from gold, silver, cut and polished diamonds and on perusal of the explanation submitted, the nature of expenditure incurred is for the business purpose as the visits are said to be made to know the latest trends in designing and the places where the appellant visited are the trendsetters for new designs. However, at the same time one cannot ignore the element of the personal expenses in such tours. In view of the same, entire amount cannot be treated as incurred for the purpose of business. To rule out the personal nature of expenses, in my considered opinion, out of the total expenditure incurred towards foreign travel, if 25% of the expenses are treated as personal in nature and is disallowed that will meet the ends of justice. Accordingly, Ld. AO is directed to restrict the disallowance to 25% of the 'Foreign Travel Expenses' of Rs.5,55,991/-. The ground raised against the 'Foreign Travel Expenses' is treated as **'Partly Allowed.'***

10. *In the result, for the statistical purposes, the appeal filed for the A.Y 2012-13, is treated as **'Partly Allowed'**.*

Aggrieved the revenue is in further appeal before us.

4. The Ld. Departmental Representative [DR], *Shri Rajeev Gubangotra*, submitted that the books were rightly rejected since the assessee miserably failed to reconcile the discrepancies as pointed out by Ld. AO and therefore, Ld. CIT(A) erred in providing relief to the assessee. The assessee, in written submissions, has predominantly placed reliance on the submissions made to Ld. CIT(A) during appellate proceedings. It has been submitted that books have wrongly been rejected since the assessee received labor charges of Rs.1.60 crores in the impugned AY as against Rs.1.43 Crores in immediately preceding AY and therefore, there was corresponding increase in the labor expenditure. As per submissions, the assessee is consistently following *LIFO method of accounting* which is general system being followed in the trade. Further, the stock loss has occurred evenly throughout the year which was evident from monthly summary of stock details filed by



the assessee before lower authorities. Similarly, the other additions of commission expenses & foreign travelling expenses have been agitated.

5. We have carefully gone through the oral submissions as made by Ld. DR as well as written submissions of the assessee and perused relevant material on record. We find the matter to be a factual one. Secondly, besides written submissions of the assessee and orders of lower authorities, we have no material on record to verify the respective submissions and therefore, we proceed to dispose-off the matter only with a view to put an end to litigation.

6. So far as the rejection of books are concerned, we find that the keeping in view the assessee's turnover, the books were subjected to Tax Audit and the same could not be rejected in a light manner without pointing out grave discrepancies therein. However, at the same time, it is also a matter of fact that the assessee's expenditure registered steep increase which was not commensurate with the growth in sales turnover. As per assessee's submissions, the labor charges registered marginal increase of Rs.17 Lacs during impugned AY, however, the expenditure increased by more than Rs.64.94 Lacs for which no suitable justification is available on record. The Ld. AO noted that all the labor payments were in cash and supported by self-made vouchers only. Nothing on record suggest that the assessee was consistently following *LIFO* method of accounting to value the stock. Further, the ratio of stock wastage of earlier years as claimed by the assessee is also not available on record. So far as the commission payments are concerned, we find that more than 54% of aggregate commission has been paid by the assessee to two of the family members. However, the details of specific



sales against which the commission was paid, basis of payment etc. could not be demonstrated by the assessee. So far as deduction of foreign travelling expenses is concerned, no plausible explanation / evidences has been furnished by the assessee to demonstrate that the same were incurred for business purposes of the assessee and thus fulfilled the basic condition of Section 37(1) to claim these expenditures. Hence, the prime onus as casted on the assessee to substantiate the claim has remained *un-discharged* and the stand of Ld. first appellate authority in providing substantial relief to the assessee was not justified.

7. After considering the above factual matrix, we are of the view that the *GP estimation of 15%* as made by Ld. AO was slightly on the higher side and therefore we propose a net addition of 0.5% on sales turnover of Rs.46.29 crores to take care of stock discrepancies, stock-loss and high labor charges.

8. At the same time, the disallowance of commission expenses of Rs.14.76 Lacs as estimated by Ld. AO, in our opinion, was fair in the circumstances and therefore, the stand of Ld. CIT(A), in this regard, stand reversed. Lastly, the stand of Ld. CIT(A) in estimating the disallowance of 25% against foreign travelling expenses was just and fair under the circumstances and therefore, the same do not require any interference on our part.

9. The Ld. AO is directed to re-compute the income of the assessee in terms of our above order.

10. The appeal stand partly allowed in terms of our above order.



ITA No.2458/Mum/2017  
Vishal Ashok Bhansali  
Assessment Year-2012-13

*Order pronounced in the open court on 12<sup>th</sup> September, 2018*

Sd/-  
**(Saktijit Dey)**  
न्यायिक सदस्य / **Judicial Member**

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

मुंबई Mumbai; दिनांक Dated : 12.09.2018  
Sr.PS:-Thirumalesh

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)**  
**आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai**