

**IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI**  
**BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAM LAL NEGI, JM**

ITA No.1318/Mum/2016  
(Assessment Year: 2011-12)

ITO-24(1)(5) 523, Piramal Chambers, Lalbaug, Mumbai-400 012	Vs.	M/s. Eternity Jewels G-11, Gems Jewellery, Complex-II, SEEPZ, Andheri (E), Mumbai-400 096
PAN/GIR No. AAAFE 7145 E		
<b>(Appellant)</b>	:	<b>(Respondent)</b>
<b>Appellant by</b>	:	Shri D. G. Pansari
<b>Respondent by</b>	:	Shri Reepal Tralshawala
<b>Date of Hearing</b>	:	28.11.2018
<b>Date of Pronouncement</b>	:	04.02.2019

**ORDER**

Per Shamim Yahya, A. M.:

This appeal by the Revenue is directed against the order of the learned Commissioner of Income Tax (Appeals)-39, Mumbai (‘Id.CIT(A) for short) dated 08.12.2015 and pertains to the assessment year (A.Y.) 2011-12.

2. The grounds of appeal read as under:

1. On the facts and circumstances of the case and in law, whether the Id.CIT(A) is justified in holding that the Assessing Officer did not find any specific fault with the books of the assessee while rejecting the books of accounts.
2. On the facts and circumstances of the case and in law, whether the Id.CIT(A) is justified in holding that rejection of books of accounts by the Assessing Officer is not correct without considering the specific fault mentioned by the Assessing Officer in the assessment order.

3. The assessee is engaged in the business of manufacturing in export of diamond studded jewellery. Analyzing the profit and loss account of the assessee, the Assessing Officer (A.O.) noted that in the current Assessment Year, the assessee has 10%

increase in the sales. Further, he observed that the consumption of the gold remained almost the same, while there is around 6 to 7% increase in the diamond consumption. Thereafter, he further observed that on perusal of the consumption details (amount wise) it came to light that there is around 54% increase in the cost of the goods consumed. He further found that the manufacturing expenses have shown an increase of around 250%. He observed that it seems likely that the assessee is not disclosing its true income in the books of account and that of the transaction made by the assessee firm were not being properly recorded in the books of accounts. Hence, he inferred that the books of account do not reflect the income of the assessee. The A.O. proceeded to reject the books as per the provision of section 145 of the Act. He proceeded to make the estimated addition as under:

Analysis of prevailing rates of gold were done on year to year basis and prevailing rates as on 31.03.2010 was 16315 per 10 gram and on 31.03.2011 were 20600 per 10 gram. This gives a picture that there is rise in gold price of approximately 26% and assuming a similar trend in diamond price as well it is most likely to assume on a higher side that there is a 30% increase in cost of goods sold on year to year basis as against 54% as reflected in audit accounts. Thus despite the fact that material used in this year would include opening inventory which infact would be at a lower rate as it has been procured in 2010.

The consumption of material as seen above is more or less the same so the cost of goods sold for the year under consideration is being worked out at

Cost for F.Y. 2009-10	=	5,97,13,866/-
Add: 30% price	=	<u>1,79,14,160/-</u>
		<u>7,76,28,026/-</u>

Inflation of cost has led to lowering of Gross Profit and in turn lowering of taxable profits accordingly the sum of Rs.(9,18,81,666 - 7,76,28,026) = 1,42,53,640/- is being added back to the gross profit to align it with the prevailing rates and is recomputed accordingly.

5. Considering the facts and materials available on record, the total income of the assessee is computed as under:

Income from business / profession			
Net profit as per P&L Account		33,40,850	

Add: As discussed in para 4		<u>1,42,53,640</u>	
TOTAL INCOME			1,75,94,490/-

4. Upon the assessee's appeal, the Id. CIT(A) noted that it is argued on behalf of the assessee that AO erred in rejecting books of accounts without finding any specific faults in the books. That it was stated that there is fall of G.P. of approximately 11% during the year due to increased manufacturing activity, increased manufacturing expenses and also due to outsourcing of job work which is because of strategic shift in assessee's manufacturing activities by modernisation. That it was contended that AO did not find any specific defects in the books and merely based on assumption rejected book results. That there is no finding by the AO that either purchases or expenses are unsubstantiated. That all the required details were provided to AO in which no specific discrepancies were found by him. That the assessee vide letter dated 28.03.2014 provided explanation to all the queries raised by AO. That it was further stated by assessee that in the immediate previous year Rs.65 lakhs was earned as Foreign Exchange gain and also Rs. 11 lakhs was earned as labour charges which was the reason for increased profits in that year. That if those extraordinary items are removed, the profit ratio of current year would be comparable to that of last year. That in view of the above, assessee took strong objection to rejection of books.

5. Before the Id. CIT(A), the assessee further argued that once AO rejected books u/s. 145, he should have resorted to best judgement assessment whereas the AO resorted to addition of Rs.1.45 crorese based on the same books he rejected u/s. 143(3). Assessee in support of his arguments relied on the following decisions :-

- a. Reliable Surface Coatings 7 ITR (Trib.) 183 (Ahd.)
- b. SRJ Peety Steels (P) Ltd. 137 TTJ(Pune) 627

- c. Budhalal & Co. 47 SOT 27
- d. Vishal Jewellers 46 SOT 306.

6. Considering the above, the Id. CIT(A) opined that the A.O. has not found any specific fault in the books of the assessee. That he has neither analyzed the increase in the consumption nor given any reason for rejecting the assessee's explanation in this regard. The Id. CIT(A) concluded as under:

7.1 Merely based on the above assumption, he rejected the books without pointing out any specific discrepancies in the books. The issues raised by AO are mere indicators that there may be problem with the books of accounts. At the same time, it cannot be denied that there can be proper and sound reasons for increased expenses and material consumption. Only because there is increase in the expenses, books cannot be rejected, I am of the considered opinion that AO, without proper reasons jumped to the conclusion that the books of assessee are not correct and complete based on mere assumptions. Further, AO, based on the same books which he rejected went on to draw his own material consumption based on 30% increase in cost of material. AO is not permitted by law to do that, unless and until he established specific deficiencies in the books of the assessee. As pointed out by assessee AO cannot rely on the same book results, which he rejected, to make an addition. In view of the above, I hold that AO has wrongly resorted to rejection of books of accounts. As the rejection of books itself is held to be not correct, consequent disallowance based on above assumption is also held to be wrong. Therefore, I direct AO to delete the addition made.

7. Against the above order, the Revenue is in appeal before us.

8. We have heard both the counsel and perused the records. The Id. Departmental Representative (Id. DR for short) relied upon the orders of the orders of the A.O. He further submitted that if further enquiry was required, the matter can be remitted to the file of the A.O.

9. Per contra, the Id. Counsel of the assessee reiterated that no specific defect has been found by the A.O. in this regard. The assessee has duly explained the reason for the variation in the gross profit. The explanation is duly recorded in the aforesaid order of the Id. CIT(A). The explanation given is that there is fall of G.P. of approximately 11% during the year due to increased manufacturing activity, increased

manufacturing expenses and also due to outsourcing of job work which is because of strategic shift in assessee's manufacturing activities by modernisation. That it was further stated by assessee that in the immediate previous year Rs.65 lakhs was earned as Foreign Exchange gain and also Rs. 11 lakhs was earned as labour charges which was the reason for increased profits in that year. That if those extraordinary items are removed, the profit ratio of current year would be comparable to that of last year. That all the explanations were also before the A.O. who has never rejected the explanations and has made the addition only on the basis of the conjecture and surmises. Accordingly, the Id. Counsel of the assessee pleaded that the Id. CIT(A) is correct in deleting the addition.

10. Upon careful consideration, we find ourselves in agreement with the submissions of the Id. Counsel of the assessee and the order of the Id. CIT(A). There is no presumption that the gross profit rate of earlier year will be the same in mathematical precision. The A.O. has rejected the books of account only on the basis of surmises and conjecture. He has not found any defect in the books of accounts. He has also not rejected the explanation given by the assessee for the variation as compared to the previous year.

In these circumstances *de hors* any cogent reason, the rejection of the books of account and estimated addition on conjecture and surmise have rightly been deleted by the Id. CIT(A).

Accordingly, in the background of the aforesaid discussion and precedent, we do not find any infirmity in the order of the Id. CIT(A) and, hence, we uphold the same.

11. In the result, this appeal by the Revenue stands dismissed.  
*Order pronounced in the open court on 04.02.2019*

Sd/-

(Ram Lal Negi)  
Judicial Member

Mumbai; Dated : 04.02.2019  
Roshani, Sr. PS

Sd/-

(Shamim Yahya)  
Accountant Member

**Copy of the Order forwarded to :**

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

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai