

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHE-B, JAIPUR

श्री विजय पाल 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. 140/JP/2018
निर्धारण वर्ष/Assessment Year :2015-16

Kushal Kumar Lunawat Jaipur	बनाम Vs.	The ACIT, Central Circle-1, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AATPL2105L		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri G. M. Mehta (CA)
राजस्व की ओर से/ Revenue by : Shri Kalika Singh (CIT)

सुनवाई की तारीख/ Date of Hearing : 31/10/2018
उदघोषणा की तारीख/ Date of Pronouncement: 30/01/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-4, Jaipur dated 01.12.2017 wherein the assessee has taken the following grounds of appeal:-

"(1) *Without finding any incriminating material or other evidence during course of search in respect of purchase of any goods out of books, Id. CIT(A) was not justified in sustaining addition of Rs. 2,00,24,661/- on the basis of very high valuation of existing brought forward stock of precious and semi-precious stones (valued by an inexperienced valuer of the Department having negligible knowledge about the nature and type of stones), though the total stock was found recorded in stock registers in terms of quantity as brought forward balances of earlier years and the same was regularly disclosed as such in trading account submitted as part of return of income in preceding more than eight years.*

(2) Without prejudice to ground No. (1) Id. CIT(A) was not justified in ignoring the law laid down by Hon'ble Apex Court in various judgments that stock is to be valued at cost or market whichever is lower and one cannot make profit from himself."

2. Briefly stated, the facts of the case are that the assessee through his proprietorship concern M/s S K International was engaged in trading activities of precious/semi-precious stones and gold jewellery. A search & seizure operation was carried out at various premises of Coral Group on 17.12.2014 and business/residential premises of the assessee were also covered in the said search and seizure operation. During the course of search, the Department's Registered valuer has valued the stock of precious/semi precious stones at Rs. 2,24,97,496/- as against stock of Rs. 24,72,835/- as per the books of assessee. Thus, excess undisclosed stock of precious/ semi precious stones of Rs. 2,00,24,661/- was found during the course of search.

3. The assessee subsequently filed his return of income declaring total income of Rs. 1,93,730 wherein undisclosed stock of precious /semi precious stones was not disclosed. During the course of assessment proceedings, a show cause notice was issued to the assessee as to why the excess undisclosed stock of Rs. 2,00,24,661/- should not be treated as undisclosed income for the impugned assessment year. In response, the assessee submitted that he maintains day to day stock register of the goods traded as well as regular books of accounts and these were produced before the search team which was also examined by them. It was submitted that in terms of quantity, the stock found during the course of search was perfectly as per stock register. However, the Registered valuer engaged by the search team was not even conversant with the nature and type of precious and semi-precious stones lying as stock-in-trade with the assessee and has valued the stock at his own choice. It was

submitted that the Registered valuer had avoided the stock register in which the same stock of goods was found recorded, he had avoided the purchase price as per the purchase invoices of the goods and he had violated the law laid down by Hon'ble Supreme Court wherein it has been well laid down that the stock is to be valued at cost or market whichever is lower. In support of his contentions, an example of valuation of semi-precious beads was given which as per purchase/import price was of Rs. 4,68,000/- but the same was valued by the Registered valuer at Rs. 1,37,06,225/-.

4. It was further submitted that the assessee in his statement recorded during the course of search u/s 132(4) has raised strong objections for the high valuation by the Registered Valuer engaged by the search team and that the assessee even requested the search team to get the stock revalued at his cost by another valuer but in vain. It was further submitted that the search was completed on 19th December, 2014 and on the very next day of search, vide his letter dated 20th December, 2014 sent through e-mail to Chairman CBDT and on next working day vide, letter 22nd December, 2014 to DGIT, Jaipur, the assessee had requested to appoint another valuer to value his stock in trade as the valuation of the stock by the Registered valuer of the Department was not correct as he had no knowledge about the precious and semi precious stones and the valuation thereof. It was further submitted that on 2nd January, 2015, the assessee has got the stock valued by another valuer approved by the Govt. of India who has valued the same stock of semi-precious beads with gross weight of 401.933 Kgs at Rs. 4,86,545/- as against Rs. 1,37,06,225/- valued by the Registered valuer at the time of search.

5. The submissions of the assessee were considered but not found acceptable to the Assessing Officer. Regarding the claim of the assessee that the stock of precious and semi-precious beads, the net weight of which is

368.582 kgs found as per the books of accounts is the same as gross weight of 401.933 Kgs as per valuation report, the Assessing Officer observed that the valuation report of the Department's valuer mentions the stock of semi-precious stones at various pages of his valuation report and therefore it is not discernable from the valuation report which are the semi precious stones which are contained in 368.582 Kgs of mix semi-precious beads as per the stock register maintained by the assessee and therefore, it is not at all verifiable. It was further observed by the Assessing Officer that where semi precious stones would have been exclusively valued by the registered valuer, only then these arguments would have been valid and only then the opening stock of mix semi precious beads as per page 14 of stock register could have been considered to be the same stock as mix semi precious stones as found during the course of search but the fact of the matter is that mix semi precious stones are covered in the entire valuation report and the quantity of stock of mix semi precious stones as per the valuation report of the Department is much higher than 401.933 Kgs. Therefore, the two quantities 401.333 kg and 368.582 kg of mix semi-precious stones/beads as per the stock register of the assessee cannot be compared. It was further observed by the Assessing Officer that the bills furnished by the assessee are only of stock categorized as mix semi precious beads and in the stock register of the assessee, there are overlaps as well with the other items of the stock. Regarding the valuation done by some other registered valuer after 14 days of search, the Assessing Officer observed that it is practically no way to ascertain that exactly the same stock would have been valued on 02.01.2015 and it cannot be denied that the stock at the time of search would have been tampered with and the valuation would have been done after 14 days to suit the assessee's own requirements. The said valuation was done by the assessee's valuer at the back of the department and therefore in the absence of the department, the said valuation cannot be verified. Regarding assessee's claim that Registered valuer of the Department was not

conversant with the nature and type of stones, the same was not found acceptable as the valuer was the Registered valuer approved by the Government of India and therefore, he cannot be questioned and both the parties, the assessee, the department and two independent witnesses were present at the time of valuation by the registered valuer at the time of search.

6. Further, the assessee claim, on the basis of the second valuation report furnished after valuation by another registered valuer (Kankariya Jewellers) that the gross weights of stones valued by the registered valuer of the department included the weight of boxes and packing material, was also not found acceptable to the Assessing officer. As per the Assessing officer, the Registered valuer has mentioned the weights of stones as gross weight only for the reason that stones do not need to be quantified on a net basis. If it would have been gold jewellery studded with Polki, or Kundan Meena, then the net weight would have been relevant. Since the item being discussed is only precious and semi-precious stones, the question of net weight does not arise. The weights were taken on a gross basis not because they included the weight of boxes, but only because of the above reason. Even otherwise, the claim by the assessee of inclusion of boxes and packing material in the gross weights by the registered valuer of the department is not verifiable.

7. It was further held by the Assessing officer that it cannot be verified in any way whether the stones whose bills have been furnished by the assessee are the same semi-precious stones which were found at the time of search. Since, there are so many overlaps between the bills, stock register and the valuation report of the department, it cannot be said that the stock found during the search, recorded on page nos. 6 to 8 of the valuation report of the department, is the same stock as per the purchase bills furnished by the assessee. The linkage between the bills produced and stock found, thus,

cannot be established. Based on the above discussion, the excess undisclosed stock of precious/semi precious stones of Rs. 2,00,24,661/- was added and brought to tax as the unexplained investment in the hands of the assessee.

8. Being aggrieved, the assessee carried the matter in appeal before the Id CIT(A) and reiterated the submissions made before the Assessing Officer. Further, the assessee furnished detail reconciliation of stock of precious and semi precious stones as per the approved valuer engaged by the Department at the time of search, as per the approved valuer engaged by the assessee subsequent to the search, and the stock and the corresponding value in the books of accounts. It was submitted that there is no difference in quantity of the stock recorded in the books of accounts and found during the course of search and only on the basis of higher valuation made by the Approved valuer engaged by the department, the AO has made addition of Rs. 2,00,24,661/-. The Id. CIT(A) held that the appellant has not able to match the items of precious and semi precious stones from the inventory drawn by the department valuer with the stock register which appellant claims that these contain all the item inventorized by the department valuer. In other words, it is essential to match the items on one to one basis in departmental valuation report with the stock register maintained by the appellant. The appellant on the other hand has passed unsubstantiated value judgments on the competency of departmental valuer and has put across his own valuation report done by his valuer even at the appellate proceedings, the discrepancies pointed out by the AO has not been rebutted by the assessee. Accordingly, the Id. CIT(A) was of the view that the stock found during the course of search does not tally with the stock found in the books of accounts and accordingly, addition made by the Assessing Officer was confirmed. Now the assessee is in appeal against the said finding of the Id. CIT(A).

9. During the course of hearing, the Id. AR submitted that the assessee as proprietor of M/s. S.K. International was dealing in precious/semi precious stones and gold mounting at a very small scale level. Search and seizure operation u/s. 132 of I.T. Act 1961 took place on 17th December 2014. During the course of search, no incriminating material or other evidence either of purchase or sale of goods or other transactions out of books was found. The major stock in trade was brought forward balances from earlier years (quality and quantitative-wise stock maintained). When nothing incriminating was found, the Search Team, by engaging an inexperienced Valuer to value the stock in trade (precious and semi precious stones) got it valued at exorbitant high value which was more than 15 times of even sale price. Since the Valuer had negligible knowledge even in respect of names of different type of precious/semi precious stones, assessee raised his strong objection for valuation in his statement dated 19.12.2014 u/s. 132(4) of IT Act and requested search team for revaluation of stock in trade by any other experienced Valuer. For such an arbitrary high valuation of existing stock in trade, when assessee's protest remained in vain, after conclusion of search in the evening on Friday, 19th December 2014, assessee expressed his resentment and protest of such high valuation to Higher authorities of Department, which he did as per following details:

Date & day	Submitted to	Remarks	P.B. page
20.12.2014, Saturday	Chairman, CBDT, N.Delhi	Through e.mail	13 A & B
22.12.2014, Monday	D.G.I.T. (Investigation), Jpr	Thr. Receipt	14

For about 10 days after request for revaluation of the stock in trade, assessee waited for the response but when nothing was heard from Department,

assessee himself got the stock revalued through an experienced Valuer who was also engaged by the search team to value personal jewellery of the assessee and his family in assessee's search proceedings.

10. It was further submitted that both the lower authorities have made/sustained the additions ignoring the following:

- (1) The stock is to be valued at cost or market whichever is lower.
- (2) No incriminating material was found during the course of search evidencing purchase/sale of goods out of books;
- (3) Stock registers in terms of quantity for last ten years are being maintained and found during the search. Quantity & quality of available stock was as per stock register;
- (4) Through over-valuing existing unsold stock no addition could have been made ;
- (5) Addition was made in avoidance of assessee's request of revaluation in his statement u/s. 132(4) and thereafter to Chairperson, CBDT and again to DGIT, Jaipur;
- (6) No mistake was noticed/found in the valuation report of independent Valuer (Kankaria Jewellers);
- (7) It is settled law that in search cases, the addition, if any, can only be made only on the basis of incriminating material found during the course of search. It is relevant to refer the following judicial pronouncements (head notes):
 - (i) CIT Vs. Dr. Ratan Kumar Singh (2014) 265 CTR (All) 103: Undisclosed income of the block period has to be determined on the basis of evidence found as result of search or requisition of books of accounts or other documents and such other material or information as are available with the AO and relatable to such evidence. It is not open for the AO to compute income on the basis of his best judgment.

- (ii) Pr. CIT Vs Saumya Construction P. Ltd (2016) 387 ITR 529 (Guj):Application of section 153A. Condition precedent. Discovery of incriminating material during search. Assessment on basis of statement of third person- not valid (here third person is the Valuer engaged by Search team to value the stock available with the appellant).
- (iii) CIT Vs. Pinaki Mishra (2017) 392 ITR 347 (Del): Undisclosed income to be determined on the basis of material found during course of search. Addition made on the basis of evidence gathered from extraneous source and on basis of statement or documents received subsequent to search. Not forming part of undisclosed for block period. AO has no jurisdiction to make additions.
- (iv) CIT Vs. Smt. S. Jayalakshmi Ammal (2017) 390 ITR 189 (Mad): Block assessment. Corroborative evidence needed in case of statement. Finding that additions were not sustainable- justified.
- (v) Pr. CIT Vs. Devangi Alias Rupa (2017) 394 ITR 184 (Guj): Assessment of undisclosed income- condition precedent- assessment must be on basis of discovery of incriminating material during search.

- (8) Net weight of the goods was to be considered for valuation exclusive of boxes and other packing material whereas Department Valuer (Kamal Kant Parekh) had adopted gross weight valuation of precious and semi precious stones (including of boxes and other packing material)

- (9) The Department had been accepting the trading results of the Appellant up to the A.Y. 2014-15 but after action u/s. 132 of IT Act, both the lower authorities did not agree to the b/f. value of preceding year's stock of semi precious/precious stones including mixed beads whereas the quantitative figures of different stones were supported by the stock register . On the

basis of such faulty high valuation by the Valuer engaged by the Search Team, unjustified additions of Rs.2,00,24,661/- was made.

- (10) Summary of valuation of individual precious & Semi precious stones as per report of Kankaria Jeweller (the Approved Valuer engaged by the assessee), Shri Kamal Kant Pareek (the Approved Valuer engaged by the search team) and value (at cost) appearing in the books of accounts is compared hereunder:

Weight and Valuation of Precious stones:

(1) Emerald					
As per Approved Valuer's Report (Kankaria)				As per books of accounts	
S.No. as per valuation Report	Gross weight	Weight (ctrs) Net weight	Value (Rs.)	Net Weight (ctrs)	Value (Rs.)
14.	900.00	635.18	7,628.00		
15.	2,650.00	1,715.10	68,604.00		
20.	2,160.00	1,415.30	11,312.00		
33.	1,175.00	615.67	52,332.00		
34. (part)	955.00	602.95	12,059.00		
34. (part)	(both)	9.37	27,173.00		
35.	2,417.00	1,558.07	93,484.00		
36.	415.00	309.45	15,472.00		
37.	245.00	180.73	6,325.00	7,039.03	2,81,766.35
Total	10,917.00	7,041.82	2,94,399.00	7,039.03	2,81,766.35
Weight/value by Sh. K.K Pareek	10,917.50	Not provided	18,44,050.00	-	-

(2) Ruby					
As per Approved Valuer's Report (Kankaria)				As per books of accounts	
S.No. as per valuation Report	Gross weight (ctrs)	Net weight (ctrs)	Value (Rs.)	Net weight (ctrs)	Value (Rs.)
12. (part)	1,052.50	897.02	16,146.00	1,612.05	63,408.46
12. (part)	281.50	1.28	20,480.00		
21.	(both)	151.70	14,411.00		
32.		840.00	561.60		
Total	2,174.00	1,611.60	65,077.00		
Weight/value by Sh. Pareek	2,174.00	Not provided	1,77,137.00		

(3) Sapphire					
As per Approved Valuer's Report (Kankaria)				As per books of accounts	
S.No. as Valuation Report	Gross Weight (ctrs)	Net Weight (ctrs)	Value (Rs.)	Net Weight (ctrs)	Value (Rs.)
21	891	550.90	11,569.00	550.93	10,942.04
Total	891	550.90	11,569.00	550.93	10,942.04
Weight/value by Sh. K. K. Pareek	891	Not shown	1,78,200.00		

Summary of weight and value of total precious stones (as above)						
As per report of K.K. Pareek			As per Kankaria		As per books of accounts	
Precious stones	Gross Weight (ctrs)	Value (Rs.)	Gross Weight (ctrs)	Value (Rs.)	Net Weight (Ctrs)	Value (Rs.)

Emerald	10,917.50	18,44,050.00	10,917.00	2,94,399.00	7,039.03	2,81,766.35
Ruby	2,174.00	1,77,137.00	2,174.00	65,077.00	1,612.05	63,408.46
Sapphire	891.00	1,78,200.00	891.00	11,569.00	550.93	10,942.04
	13,892.50	21,99,387.00	13,892.00	3,71,045.00	9,202.01	3,56,116.85

Weight, valuation & book value of semi-precious stones:

(1) Garnet					
As per Approved Valuer's Report (Kankaria)				As per books of accounts	
S.No. as per valuation Report	Gross Weight (ctrs)	Net Weight (ctrs)	Value (Rs.)	Net Weight (Ctrs)	Value (Rs.)
13.	10,705.00	10,231.03	20,462.00		
16.	6,900.00	6,083.10	60,831.00	16,314.10	77,155.83
Totals	17,605.00	16,314.13	81,293.00	16,314.10	77,155.83
Weight/value by Sh. Pareek	17,605.00	Not Provided	6,00,700.00		

(2) Peridot					
As per Approved Valuer's Report (Kankaria)				As per books of accounts	
S.No. as per valuation Report	Gross Weight (ctrs)	Net Weight (ctrs)	Value (Rs.)	Net Weight (Ctrs)	Value (Rs.)
19.	3,190.00	3,138.60	25,109.00		
38.	405.80	405.80	36,522.00	3,544.39	59,768.33
Totals	3,595.80	3,544.40	61,631.00	3,544.39	59,768.33

Weight/value by Sh.K.K. Pareek	3,595.80	Not Provided	1,16,554.00		
--------------------------------	----------	--------------	-------------	--	--

(3) Amethyst					
As per Approved Valuer's Report (Kankaria)				As per books of accounts	
S.No. as per valuation Report	Gross weight (ctrs)	Net Weight (ctrs)	Value (Rs.)	Net weight (Ctrs)	Value (Rs.)
08.	4,567.50	4,435.95	17,744.00	24,459.71	2,05,273.00
18.	7,450.00	6,934.02	1,52,548.00		
18.	(both)	8.47	1,058.00		
23.	14,580.00	13,082.57	39,248.00		
Totals	26,597.50	24,461.01	2,10,598.00		
Weight/value by Sh. K.K. Pareek	26,578.55	Not Provided	24,19,409.00		

(4) Amethyst (Cit) - mix					
As per Approved Valuer's Report (Kankaria)				As per books of accounts	
S.No. as per valuation Report	Gross weight (ctrs)	Net Weight (ctrs)	Value (Rs.)	Net Weight (Ctrs)	Value (Rs.)
23.	18.95	18.95	852.00	18.95	852.75
Totals	18.95	18.95	852.00	18.95	852.75
Weight/value by Sh.K.K. Pareek	18.95	Not Provided	1,516.00		

(5) Iolite	
As per Approved Valuer's Report (Kankaria)	As per books of

				accounts	
S.No. as per valuation Report	Gross weight (Ctrs)	Net Weight (ctrs)	Value (Rs.)	Net Weight (Ctrs)	Value (Rs.)
03.	77.50	77.50	775.00	1,514.53	29,437.47
09.	1,477.50	1,437.03	28,740.00		
Totals	1,555.00	1,514.53	29,515.00	1,514.53	29,437.47
Weight/value by Sh. K.K. Pareek	1,555.00	Not Provided	43,307.00		

(6) Citrine					
As per Approved Valuer's Report (Kankaria)				As per books of accounts	
S.No. as per valuation Report	Gross weight (Ctrs)	Net Weight (ctrs)	Value (Rs.)	Net Weight (Ctrs)	Value (Rs.)
17.	6,880.00	6,880.00	1,16,960.00	11,977.92	1,80,501.26
38.	879.20	848.40	46,662.00		
11. (part)	4,252.08	4,252.08	15,960.00		
Totals	12,011.28	11,980.48	1,79,582.00	11,977.92	1,80,501.26
Weight/value by Sh. K.K. Pareek	12,011.28	Not Provided	4,48,258.40		

(7) Topaz					
As per Approved Valuer's Report (Kankaria)				As per books of accounts	
S.No. as per valuation Report	Gross weight	Net Weight	Value (Rs.)	Net Weight	Value (Rs.)

valuation Report	(Ctrs)	(ctrs)		(Ctrs)	
11 (part)	835.42	835.42	4,390.00	835.42	4,918.16
Total	835.42	835.42	4,390.00	835.42	4,918.16
Weight/value by Sh. K.K. Pareek	835.42	Not Provided	25,062.60		

(8) Moonstone					
As per Approved Valuer's Report (Kankaria)				As per books of accounts	
S.No. as per valuation Report	Gross weight (Ctrs)	Net Weight (ctrs)	Value (Rs.)	Net Weight (Ctrs)	Value (Rs.)
10 (part)	224.65	224.65	56,162.00	11,192.95	1,05,345.81
22.	8,827.50	8,827.50	44,137.00		
10 (part)	2,140.80	2,140.80	3,000.00		
Totals	11,192.95	11,192.95	1,03,299.00	11,192.95	1,05,345.81
Weight/value by Sh. K.K.Pareek	11,192.95	Not provided	3,35,788.50		
(9) Cubic Zirkonia:					
As per Approved Valuer's Report (Kankaria)				As per books of accounts	
S.No. as per valuation Report	Gross weight (ctrs)	Net Weight (ctrs)	Value (Rs.)	Net Weight (ctrs)	Value (Rs.)
10 (part)	373.48	373.48	800.00	373.43	1,120,29
Total	373.48	373.48	800.00	373.43	1,120,29
Weight/value by Sh. K.K.Pareek	373.43	Not Provided	11,202.90		

(10) Miscellaneous:					
As per Approved Valuer's Report (Kankaria)				As per books of accounts	
S.No. as per valuation Report	Gross weight (ctrs)	Net Weight (ctrs)	Value (Rs.)	Net Weight (ctrs)	Value (Rs.)
10 (Part)	5,010.00	5,010.00	1,500.00	5,010.00	2,104.20
Total	5,010.00	5,010.00	1,500.00	5,010.00	2,104.20
Weight/value by Sh. K.K.Pareek	5,010.00	Not provided	1,50,300.00		

(11) Black Star:					
As per Approved Valuer's Report (Kankaria)				As per books of accounts	
S.No. as per valuation Report	Gross weight (ctrs)	Net Weight (ctrs)	Value (Rs.)	Net Weight (ctrs)	Value (Rs.)
10 (Part)	814.86	814.86	1,100.00	814.86	1,629.72
Total	814.86	814.86	1,100.00	814.86	1,629.72
Weight/value by Sh. K.K. Pareek	814.86	Not provided but same	24,445.80		

(12) Tanzanite:					
As per Approved Valuer's Report (Kankaria)				As per books of accounts	
S.No. as per valuation Report	Gross weight (ctrs)	Net Weight (ctrs)	Value (Rs.)	Net Weight (ctrs)	Value (Rs.)
10 (part)	9.15	9.15	3,500.00	9.15	4,950.96
Total	9.15	9.15	3,500.00	9.15	4,950.96

Weight/value by Sh.K.K. Pareek	9.15	Not provided but same	274.50		
-----------------------------------	------	--------------------------	--------	--	--

(13) Crome Diopside:					
As per Approved Valuer's Report (Kankaria)				As per books of accounts	
S.No. as per valuation Report	Gross weight (ctrs)	Net Weight (ctrs)	Value (Rs.)	Net Weight (Ctrs)	Value (Rs.)
10 (part)	649.20	649.20	16,464.00	649.20	22,825.87
Total	649.20	649.20	16,464.00	649.20	22,825.87
Weight/value by Sh.K.K.Pareek	649.20	Not provided but Same	19,476.00		

(14) Rose Quartz:					
As per Approved Valuer's Report (Kankaria)				As per books of accounts	
S.No. as per valuation Report	Gross weight (ctrs)	Net Weight (ctrs)	Value (Rs.)	Net Weight (Ctrs)	Value (Rs.)
01.	447.50	447.50	8,055.00	828.17	11,595.38
04.	290.00	290.00	5,220.00		
10 (part)	90.41	90.41	900.00		
Total	827.91	827.91	14,175.00	828.17	11,594.38
Weight/value by Sh. K.K. Pareek	827.91	Not provided but Same	24,837.30		

(15) Cats Eye:					
As per Approved Valuer's Report (Kankaria)				As per books of accounts	
S.No. as per valuation Report	Gross weight (ctrs)	Net Weight (ctrs)	Value (Rs.)	Net Weight (Ctrs)	Value (Rs.)

27.	13.89	13.89	50,004.00	291.00	1,76,867.30
28.	8.00	8.00	13,600.00		
29.	22.41	21.08	35,836.00		
30.	8.47	7.70	11,550.00		
31.	74.84	74.84	67,356.00		
02 (part)	165.49	165.49	3,300.00		
Total	293.01	291.00	1,81,646.00	291.00	1,76,867.30
Weight/value by Sh. K.K. Pareek	293.01	Not provided	5,86,822.70		

(16) Apatite:					
As per Approved Valuer's Report (Kankaria)				As per books of accounts	
S.No. as per valuation Report	Gross weight (ctrs)	Net Weight (ctrs)	Value (Rs.)	Net Weight (Ctrs)	Value (Rs.)
02 (Part)	94.51	94.51	1,900.00	388.10	20,016.74
05	225.00	225.00	4,500.00		
31 (part)	68.85	68.85	15,491.00		
Totals	388.36	388.36	21,891.00	388.10	20,016.74
Weight/value by Sh. K.K. Pareek	388.36	Not provided but same	23,355.30		

(17) Mother Pearl:					
As per Approved Valuer's Report (Kankaria)				As per books of accounts	
S.No. as per valuation Report	Gross weight (ctrs)	Net Weight (ctrs)	Value (Rs.)	Net Weight (ctrs)	Value (Rs.)
06 (Part)	120.48	120.48	600.00	120.48	794.17
Total	120.48	120.48	600.00	120.48	794.17
Weight/value by Sh. K.K. Pareek	120.48	Not provided but same	3,012.00		

(18) Tourmaline:					
As per Approved Valuer's Report (Kankaria)				As per books of accounts	
S.No. as per valuation Report	Gross weight (ctrs)	Net Weight (ctrs)	Value (Rs.)	Net Weight (Ctrs)	Value (Rs.)
07	837.50	835.93	12,539.00	4,082.66	3,99,923.56
31 (Part)	3,246.73	3,246.73	3,85,461.00		
Totals	4,084.23	4,082.66	3,98,000.00	4,082.66	3,99,923.56
Weight/value by Sh. K.K. Pareek	4,084.23	Not provided	6,74,468.00		

(19) Aquamarine:					
As per Approved Valuer's Report (Kankaria)				As per books of accounts	
S.No. as per valuation Report	Gross weight (ctrs)	Net Weight (ctrs)	Value (Rs.)	Net Weight (Ctrs)	Value (Rs.)
06 (Part)	627,02	610.83			

			12,564.00		3,43,305.70
24	6,100.00	6,100.00	2,44,000.00	9,221.25	
31 (Part)	2,534.58	2,510.42	1,03,897.00		
Totals	9,261.60	9,221.25	3,60,461.00	9,221.25	3,43,305.70
Weight/value by Sh. K.K. Pareek	9,261.60	Not provided	8,88,594.00		

(20) Semi Precious Beads:					
As per Approved Valuer's Report (Kankaria)				As per books of accounts	
S.No. as per valuation Report	Gross weight (Kgs)	Net Weight (Kgs)	Value (Rs.)	Net Weight (kgs)	Value (Rs.)
1 to 33 (I)	401.933	353.648	4,86,545.00	368.582	4,68,423.00
25	2.300	2.300	2,875.00		
26	8.000	8.000	10,000.00		
Totals	412.233	363.948	4,99,420.00	368.582	4,68,423.00
Weight/value by Sh. K.K.Pareek	412.233	Not provided	1,39,00,725.00		

(* Rs. 137,06,225 + 34,500 + 1,60,000 – S. No. 25 & 26 at P. B page 60 which are also semi-precious beads but shown separately by Shri Pareek in his valuation report)

Summary of gross/net weight and value of total Semi-precious stones & Beads (as above)								
(Kankaria)		K.K.Pareek(Search Team)		Kankaria Jewellers (Regd. Valuer)			As per books of accounts	
S.No.	Semi-Prec. Stones	Gross weight (ctrs)	Value (Rs.)	Gr. weight (ctrs)	Net Weight (Ctrs)	Value (Rs.)	Net Weight (Ctrs)	Value (Rs.)
1.	Garnet	17,605.00	6,00,700.00	17,605.00	16,314.13	81,293.00	16,314.10	77,155.83
2.	Peridot	3,595.80	1,16,554.00	3,595.80	3,544.40	61,631.00	3,544.39	59,768.33
3.	Amethyst	26,578.55	24,19,409.00	26,597.50	24,461.01	2,10,598.00	24,459.71	2,05,273.00
4.	Ameth. Citmix	18.95	1,516.00	18.95	18.95	852.00	18.95	852.75
5.	Iolite	1,555.00	43,307.00	1,555.00	1,514.53	29,515.00	1,514.53	29,437.47
6.	Citrine	12,011.28	4,48,258.40	12,011.28	11,980.48	1,79,582.00	11,977.92	1,80,501.26
7.	Topaz	835.42	25,062.60	835.42	835.42	4,390.00	835.42	4,918.16
8.	Moonstone	11,192.95	3,35,788.50	11,192.95	11,192.95	1,03,299.00	11,192.95	1,05,345.81
9.	Cubic Zirkonia	373.43	11,202.90	373.48	373.43	800.00	373.43	1,120.29
10.	Miscellaneous	5,010.00	1,50,300.00	5,010.00	5,010.00	1,500.00	5,010.00	2,104.20
11.	Black Star	814.86	24,445.80	814.86	814.86	1,100.00	814.86	1,629.72
12.	Tanzanite	9.15	274.50	9.15	9.15	3,500.00	9.15	4,950.96
13.	Crome Diopsid	649.20	19,476.00	649.20	649.20	16,464.00	649.20	22,825.87
14.	Rose Quartz	827.91	24,837.30	827.91	827.91	14,175.00	828.17	11,594.38
15.	Cats Eye	293.01	5,86,822.70	293.01	291.00	1,81,646.00	291.00	1,76,867.30

16.	Apatite	388.36	23,355.00	388.36	388.36	21,891.00	388.10	20,016.74
17.	Mother Pearl	120.48	3,012.00	120.48	120.48	600.00	120.48	794.17
18.	Tourmaline	4,084.23	6,74,468.00	4,084.23	4,082.66	3,98,000.00	4,082.66	3,99,923.56
19.	Aquamarine	9,261.60	8,88,594.00	9,261.60	9,221.25	3,60,461.00	9,221.25	3,43,305.70
Totals from (1) to (19)		95,225.18	63,97,384.00	95,244.18	91,650.17	16,71,297.00	91,646.27	16,48,385.50

(Difference of 19 ctrs in gross weight in items at S. No. (3) (18.95 ctrs) and item No. (9) (0.05 ctrs) in gross weight noticed by Shri K.K. Pareek and valuation of M/s. Kankaria Jewellers. Difference of 3.9 ctrs in net weight of M/s. Kankaria Jewellers and as per stock register of the assessee)..

Summary of valuation of stock by both valuers & book value of semi precious stones, semi precious beads & precious stones:

S.No.	Nature of goods	Mr. Kamal Kant	Mr. Kankaria	As per books
1.	Semi Prec. Stones	63,97,384.00	16,71,297.00	16,48,385.50
2.	Semi Prec. Beads	1,39,00,725.00	4,99,420.00	4,68,423.00
3.	Prec. Stones	21,99,387.00	3,71,045.00	3,56,116.85
Totals		2,24,97,496.00	25,41,762.00	24,72,925.35

Addition made/sustained:

S.No.	Valuation/book value	Amount
1	Valuation of stock by K.K. Pareek	2,24,97,496
2.	Book value of available stock	24,72,925
3.	Addition made/sustained	2,00,24,571*

(*There was calculation mistake of Rs.90/- in actual addition of Rs.2,00,24,661/- made by Id. AO) "

11. Without prejudice to above, it was submitted that both the lower authorities have refuse to accept the submissions of the assessee and follow the judgments of the Hon'ble Supreme Court of India that stock is to be valued

at cost or market whichever is lower so also that no one can make profit from himself, however these were not applied by them. In assessee's case virtually, each and every precious and semi-precious stone was valued at very high value by the Valuer engaged by the Department at the time of search. It is also established law that no addition can be made when there is no difference in quantity of the stock. Reliance is placed on the following judicial pronouncements:

- (1) CIT Vs. Lalsons Enterprises (2010) 324 ITR 426 (Del): No addition can be made when there is no difference in quantitative terms. (in appellant's case there is no difference in quantity of stock as per net weight i.e. without packing material)
- (2) Voltamp Transformers Ltd. Vs. CIT (2010)327 ITR 360 (Guj), AO has limited power to change valuation of closing stock more so when there is no evidence that valuation is not correct.
- (3) CIT Vs. Indian Sugar and General Industry Export Import (2012) 349 ITR38 (Del): Valuation of closing stock to be made at cost or market price whichever is lower;
- (4) Shakti Trading Co. Vs. CIT (2001) 250 ITR 871 (SC): Valuation of stock- proper practice- To value closing stock at cost or market whichever is lower.
- (5) Sanjeev Woolen Mills Vs. CIT (2005) 279 ITR (SC): Choice of method regularly adopted by assessee. Real income, profit and gains should be deductible. Discretion to be exercised judicially and reasonably. Closing stock cannot be valued at market price- higher than cost price. General principles- A firm cannot make profit out of itself. It is the real income that is taxable.
- (6) CIT Vs. Hindustan Zinc Ltd. (2007) 291 ITR 392 (SC): (reconfirmed in Hindustan Zinc Ltd. Vs. CIT (2007) 295 ITR 453 (SC): Closing stock –

valuation- established principle- to value at cost or market price whichever was lower.

It was submitted that avoiding the law laid down by the Hon'ble Apex Court, both the lower authorities were not justified in making/sustaining addition of Rs.2,00,24,661/- on the basis of high valuation of existing stock in the business of the appellant. It was accordingly submitted that the addition so made by the AO and confirmed by the Id CIT(A) be deleted.

12. The Id DR is heard who has vehemently argued the matter. He took us through the findings of the lower authorities and submitted that it is a clear case of excess undisclosed stock found during the source of search and thus there is no basis in various contentions so raised by the Id AR and the additions so made by the AO has been rightly confirmed by the Id CIT(A) and accordingly, the order of the Id CIT(A) should be confirmed.

13. We have heard the rival contentions and perused the material available on record. In this case, search was conducted at the premises of the assessee on 17.12.2014 and his statement u/s 132(4) was recorded and the relevant part thereof reads as under:

"प्रश्न 5 प्रश्न 2 में बताए गए अनुसार बताए कि आप मै.एस.के.इन्टरनेशनल में किस प्रकार के जवाहरात का कार्य करते हो? पूर्ण विस्तार से बताएँ?"

उत्तर मैं इसमें अधिकतम कार्य लोकल जयपुर बाजार से तैयार Precious & Semi Precious Stone खरीद कर विदेश से प्राप्त मांग अनुसार उन्हें बेचता था वर्तमान में इसमें नहीं के बराबर ही लाभ होता है। कभी-कभार लोकल बाजार में माल बेच दिया हो तो मुझे याद नहीं है। इस concern में पूर्व में ज्वैलरी का कार्य भी करते रहे है। आयात व निर्यात का कार्य होता है।

प्रश्न 6 आज तलाशी के दौरान आपके इस प्रतिष्ठान 451-452 ठाकुर पचेतर की गली, रामगंज जयपुर में स्टॉक का मूल्यांकन लिया गया जिसमें आपको दिखा रहा है जिसमें मैं एस.के. इण्टरनेशनल का स्टॉक का मूल्यांकन हमारे विभागीय अधिकृत मूल्यांकनकर्ता द्वारा किया गया जिसकी valuation report के अनुसार precious एवं semi precious stone का मूल्य रूपये 2,24,97,496/- पाया गया जबकि आपकी लेखा पुस्तकों के अनुसार precious एवं semi Precious stones का मूल्य रूपये 24,72,835/- बताया गया है। इस प्रकार precious एवं semi precious stones का excess stock Rs.2,00,24,662/- आता है/मिला है। इस बारे में आपका क्या कहना है?

उत्तर जी हों, मैंने आपके मूल्यांकन कर्ता श्री कमलकान्त पारीख की मूल्यांकन रिपोर्ट दिनांक 18.12.14 को जो मेरे प्रतिष्ठान 451-452, ठाकुर पचेतर का रास्ता रामगंज, जयपुर पर की गई उसे देख लिया है। यह मूल्यांकन मेरे परिसर में किया गया है तथा इस स्टॉक का वजन मेरे समक्ष किया गया है मैं जवाहरात का व्यवसाय पिछले 39 वर्ष से करता आ रहा हूँ। विभाग द्वारा Approved valuer ने हमारे माल का जो मूल्यांकन किया है, उससे मैं कतई सहमत नहीं हूँ। मान्यवर मूल्यांकनकर्ता ने बिना किसी आधार के काल्पनिक मूल्यांकन करा है। मूल्यांकनकर्ता को precious and semi precious stones को पूरी तरह से परखने पहचानने कोई ज्ञान नहीं है, न तो पत्थर के बारे में ज्ञान है, और ना ही उसके वास्तविक मूल्य के बारे में, अपनी मनमर्जी से मूल्यांकन किया है। जो किसी भी प्रकार से उचित नहीं है Semi precious stones (Mix Stone) की beads जो कि पूर्व में हमने IMPORT करी थी उसकी cost price Rs.4,68,423/- की आती, सम्बन्धीत पेपर सभी मौजूद है, उसका मूल्यांकनकर्ता ने रूपये 1,37,06,225/- (एक करोड़ सैतीस लाख छ हजार दो सौ पच्चीस) की कीमत आंकी है, वह बिल्कुल गलत निराधार, बेबुनियाद है। मेरा आपसे विनम्र निवेदन है कि किसी अन्य अनुभवी मूल्यांकनकर्ता से हमारे माल का पूनः मूल्यांकन कराये।

प्रश्न 7 जैसा कि आपने उत्तर प्रश्न संख्या 6 के में बताया कि मूल्यांकन कर्ता को precious एवं semi precious stones को पूरी तरह से परखने व पहचानने का कोई ज्ञान नहीं है न पत्थर के बारे में ज्ञान है न ही उसके वास्तविक मूल्य के बारे में ज्ञान है। कृपया मूल्यांकन कर्ता की रिपोर्ट को पुनः देखकर बताएँ कि मूल्यांकन कर्ता ने कौन से पत्थर को पहचानने में गलती की है, बताएँ?

उत्तर लिस्ट को देखकर नहीं बताया जा सकता, माल के Box को देखकर बता सकता हूँ।

14. We therefore find that the assessee has disputed the valuation of stock at the time of search stating that the Valuer so appointed by the Department doesn't have the requisite knowledge and understanding of precious and semi-

precious stones and there is no rationale valuation methodology which has been adopted by him. Further, the assessee has requested to get the valuation to be carried out by another Valuer. Therefore, it is a case where the valuation of stock found during the course of search has been disputed by the assessee at the time of search itself. Therefore, it is not a case where the assessee has admitted the undisclosed stock at the time of search and subsequently, has not disclosed the same filing his return of income. From perusal of records, we also find that immediately after the search, the assessee has reached out to higher authorities in the department and has again disputed the valuation so done at the time of search and has requested to carry out the valuation as per another approved valuer. However, we find that there are no steps taken by the Revenue to address the concerns so raised by the assessee. On his part, the assessee has carried out the valuation through another approved valuer and through such valuation has submitted that there is a minor difference in valuation of stock which the approved valuer has valued the stock at Rs 25,41,762 as against stock as per books of accounts of Rs 24,72,925. However, the fact of the matter is that even the said valuation is being disputed by the Revenue holding that the same has been carried out after 14 days of search and to suit the interest of the assessee and in absence of any departmental's representative. Therefore, only realistic way in which the present dispute can be analysed is firstly to examine the physical stock as per books of accounts and as found during the course of search and determining the excess stock, if any. Secondly, the valuation of such excess stock is required to determine the investment which has been made in such excess stock and which has remained undisclosed to the Revenue authorities. The investment in stock is thus the function of price or cost at which stock has been purchased by the assessee and therefore, what is to be determined is the cost price of such stock and not the market price. Where such stock is ultimately sold, any profit arising therefrom would be brought to tax in regular course and

the determination of market price would be relevant at that point in time. However, for the present purposes, the value of undisclosed physical stock is the value at which such stock has been purchased by the assessee. On perusal of records, we find that there is stock of precious stones in form of emerald, ruby, sapphire, stock of semi-precious stones in form of Garnet, Peridot, Amethyst, Topaz, etc, and stock of semi-precious beads which is found at the time of search and which has also been recorded in the books of accounts of the assessee. The assessee has carried out extensive reconciliation of such stock as per the valuation report and as per his books of accounts and the position which emerges is as under:

Particulars	Ctrs /kgs	Value (Rs.)
Precious stones		
Stock as per Books of A/cs (Net weight)	9202.01	3,56,116.85
Stock as per report of K.K.Pareek (Gross Weight)	13892.50	21,99,387.00
Difference in stock (a) (valued at cost)	4690.49	1,81,521.49
Semi-Precious stones		
Stock as per Books of A/cs (Net weight)	91646.27	16,48,385.50
Stock as per report of K.K. Pareek (Gross weight)	95225.18	63,97,384.00
Difference in stock (b) (valued at cost)	3578.91	64,371.67
Semi-Precious Beads		
Stock as per Books of A/cs (Net weight)	368.582	4,68,423.00
Stock as per report of K.K.Pareek (Gross weight)	453.433	1,39,00,725.00
Difference in stock (c) (valued at cost)	84.851	1,07,835.33

Total (a+b+c)	8354.25	3,53,728.49
----------------------	---------	-------------

15. As per above analysis, there is an excess stock of 4690.49 ctrs of precious stones, 3578.91 ctrs of semi-precious stones and 84.851 kgs of semi-precious beads. The assessee has carried out details reconciliation in terms of each item of stock found during the course of search by categorising the stock in terms of nature of such stock in terms of precious stones, semi-precious stones and semi-precious beads and as recorded in the books of accounts and the concerns of the Revenue have been duly addressed. Regarding the contention of the assessee that net weight of the stock to be considered for valuation exclusive of boxes and other packing material instead of gross weight as adopted by the Department Valuer (Kamal Kant Parekh), we do not find the said contention acceptable for the reason that what has been valued is the stock of precious and semi-precious stones and not any precious/semi-precious studded gold jewellery which require separation valuation for precious/semi-precious stones and gold, and for such precious/semi-precious studded gold jewellery, the valuation methodology has been determined whereby gross and net weight is to be determined for such jewellery. Further, the contention regarding the boxes and other packing material again cannot be accepted in absence of any material on record to corroborate the same. In view of the same, we are of the considered view that there is physical stock of 4690.49 ctrs of precious stones, 3578.91 ctrs of semi-precious stones and 84.851 kgs of semi-precious beads which is not found recorded in the books of accounts.

16. In terms of valuation of such undisclosed stock, what has to be determined is the value at which such stock has been acquired by the assessee and not the value which such stock can fetch in the market or the fair market value of such stock. In the instant case, it has been contended that the valuation of the stock has been done at exorbitant high value which is more

than 15 times of even sale price and without considering the cost disclosed in the books of accounts and without considering the well-accepted accounting policy which has been followed by the assessee where it values its stock at lower of cost and net realizable value. The cost can be determined on the basis of historical and/or current cost so recorded in the books of accounts or on the basis of purchase bills if any found during the course of search. However, in the instant case, there is nothing on record either in terms of seized material or in the statement recorded during the course of search regarding any purchase bills found during the course of search. In the past, the book results have been accepted by the Revenue and therefore, on the basis of cost so recorded in the books of accounts, the valuation of such undisclosed stock can be determined in the instant case. Therefore, on the basis of cost recorded in the books of accounts, we find that cost of stock of 4690.49 ctrs of precious stones will come to Rs 181,521.49, 3578.91 ctrs of semi-precious stones will come to Rs 64,371.67 and 84.851 kgs of semi-precious beads will come to Rs 107,835.33 which is not found recorded in the books of accounts. Therefore, the undisclosed investment in excess stock found during the course of search comes to Rs 353,728.49 which can be brought to tax in the hands of the assessee.

17. In light of above discussions, it is thus clear that difference in stock of precious and semi-precious stones and beads as per books and as found at the time of search is on account of excess physical stock of 4690.49 ctrs of precious stones, 3578.91 ctrs of semi-precious stones and 84.851 kgs of semi-precious beads which is not found recorded in the books of accounts and undisclosed investment in such excess stock comes to Rs 353,728.49. Therefore, the addition to the extent of Rs 353,728.49 is hereby confirmed and the balance addition is hereby directed to be deleted.

In the result, appeal of the assessee is partly allowed.

Pronounced in the Open Court on 30/01/2019.

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 30/01/2019

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Kushal Kumar Lunawat, Jaipur
2. प्रत्यर्थी / The Respondent- ACIT, Central Circle-1, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 140/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

