

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "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. 539/JP/2017
निर्धारण वर्ष/Assessment Year : 2012-13

The ITO, Ward-1, Beawar.	बनाम Vs.	M/s Maniratnam Gems Pvt. Ltd. Chhajer Sadan, Near Chiman Singh Lodha School, outside Nehru Gate, Beawar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAFCM 7852 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

CO No. 29/JP/2017
(Arising out of ITA No. 539/JP/2017)
निर्धारण वर्ष/Assessment Year : 2012-13

M/s Maniratnam Gems Pvt. Ltd. Chhajer Sadan, Near Chiman Singh Lodha School, outside Nehru Gate, Beawar.	बनाम Vs.	The ITO, Ward-1, Beawar.
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राजस्व की ओर से / Revenue by : Shri B.K. Gupta (CIT)
निर्धारिती की ओर से / Assessee by : Shri Rajiv Khandelwal (C.A.)

सुनवाई की तारीख / Date of Hearing : 01/01/2019
उदघोषणा की तारीख / Date of Pronouncement: 18/03/2019

आदेश / ORDER

PER: SHRI VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the Revenue against the order of the Id. CIT(A), Beawar dated 26.04.2017 and the cross objection filed by the assessee for the assessment year 2012-13 wherein the respective grounds of appeal are as under:-

ITA No.539/JP/2017 (Revenue's appeal)

"Whether looking to the facts and circumstances of the case the Id. CIT(A) is justified in restricting the trading addition of Rs. 6,18,39,745/- to Rs. 6,05,878/- by applying the G.P. @ 2% only on the unverified purchases of Rs. 4,32,77,012/- from M/s Anant Exports, Surat instead of the turnover declared by the assessee; without considering the fact the books of account of the assessee were rejected u/s 145(3) of the act, not only on the above issue but also on the basis of other defects noticed by the AO, during the course of assessment proceedings, owing to which the G.P. shown by the assessee was not accepted.

CO No. 29/JP/2017 (Assessee's appeal)

"1. The Commissioner of Income-tax (Appeals), Ajmer (hereinafter referred to as the CIT(A) erred in upholding the action of the Assessing Officer in rejecting the books of account of the appellants by invoking the provisions of section 145(3) of the Act.

The appellant contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the

action of the Assessing Officer in rejecting the books of account of the appellants.

2. The CIT(A) erred in upholding the action of the Assessing Officer in making gross profit addition of Rs. 6,05,878/-, being 1.4% (2%-0.6%) of Rs. 4,32,77,018 in relation to purchase from M/s Anant Exports.

The appellants contend that on the facts and in the circumstances of the case and in law the CIT(A) ought not to have upheld the action of the Assessing Officer in making the aforesaid addition of gross profit."

2. Briefly the facts of the case are that the assessee company is engaged in the business of Gems and Jewellery as well as diamonds and carry out its activities through its branches situated at Surat and Mumbai. During the year under consideration, the assessee has reported total turnover of Rs. 446 Crores and has reported Gross Profit rate of 0.61% as against the G.P rate of 0.15% on turnover of Rs 434 Crores shown in the immediate preceding year. In order to verify the results declared by the assessee company, the latter was asked to furnish details of purchases and sales exceeding Rs. 50 lacs. Further in order to verify the genuineness of the transactions, information U/s 133(6) of the Act were also sought from 19 parties however, in respect of 11 parties, the notices sent to them were received back undelivered and in most of the cases, the notices were returned with the remarks "left" by the postal authorities. However, during the course of assessment proceedings, the assessee furnished copy of the confirmations in respect of these parties however, the same were not

found reliable and were not found acceptable to the Assessing Officer holding that when the notices were received back unserved, how these parties are responding to the said notices through the assessee and therefore, the information submitted that the assessee were not found acceptable. Further, the Assessing Officer received information from DDIT Mumbai stating that the assessee has taken accommodation entry of bogus purchases of Rs. 50 lacs from M/s Taj Impex which is entity operating from Shri Praveen Kumar Jain. Accordingly, information from M/s Taj Impex were also sought U/s 133(6) of the Act. Based on these preliminary enquiries, the AO issued show cause notice to the assessee wherein the AO stated that in spite of sending notices to the various parties, no verification of purchase could be made, therefore, he intend to reject the books of account and apply suitable G.P. rate in respect of purchase shown to have been made from the said parties. Further, in the show cause notice, the AO also stated that he intend to add back the entire amount of Rs. 50 lacs in respect of purchase shown to have made from M/s Taj Impex which is nothing but accommodation entry obtained from Shri Uttam Hinger who is associate of Shri Praveen Kumar Jain and indulge in the business of providing accommodation entries of bogus purchases and the said addition was proposed to be made U/s 69C of the Act.

3. In response, the assessee filed its submissions however, the same were not found acceptable to the AO. As per the Assessing Officer, notice issued U/s 133(6) of the Act were sent on the addresses given by the assessee and these parties are not a small time shop keepers but diamond dealers, some of which are running business in

the status of private limited companies and as such addresses as furnished by the assessee should have been correct. No verification of purchases/sales could be made as letters were received back unserved and it is surprised to note that how the above parties have complied with and send reply when they have not got notices U/s 133(6) of the Act and letters were received back undelivered. The information so supplied by the assessee is not on the letter pad of the said concerns and the same cannot be taken cognizance and it is not ascertained as to whether these were supplied by the concerned parties. Mere payments made through account payee cheque do not prove genuineness of the transactions. The Id. AR's contention that Unique Diamond International is foreign company from whom import was made rather than purchasing from Surat, the AO stated that the assessee has furnished his Surat address "Unique Diamond International, Millenium Dia, Complex, Varachha Road, Surat and notice was issued U/s 133(6) accordingly on the Surat address. The Assessing Officer further stated that the fact of accommodation entry being provided is admitted by Praveen Kumar Jain whose statement were recorded U/s 132(4) of the IT Act on 01.10.2013. Further, the Assessing Officer rejected the books of accounts of the assessee stating that the assessee has not kept qualitative details of closing stock and Diamonds are precious stone as such in the absence of qualitative details, their real valuation of closing stock is not ascertainable. Further, on perusal of the purchase register, no bill numbers were found mentioned in respect of purchases made from 7 parties. Further, the assessee has made bogus purchase of Rs. 50 lacs to reduce the incidence of tax from M/s Taj Impex, Surat which is found to be bogus purchase in view of the admitted statement of Shri

Praveen Kumar Jain. The AO also referred to the statement of Shri Praveen Kumar Jain recorded U/s 132(4) of the I.T. Act as well as statement of Shri Uttam Chand Hinger, proprietor of M.s Taj Impex whose statement were also recorded U/s 132(4) of the Act wherein he admitted that he is only director on paper and none of these concerns run by Shri Praveen Kumar Jain is genuine and all these concerns are used for providing entries for purchase unsecured loans and shares application money. The AO accordingly held that in view of the admitted statement of Shri Uttam Chand Hinger, purchase of Rs. 50 lacs by the assessee from M/s Maniratnam Gems Pvt. Being a bogus purchase entry which is obtained just to reduce tax incidence and payment by account payee cheque is not sufficient to establish the genuineness of purchases. In view of the above reasoning so elaborately discussed in the assessment order, the book results were rejected.

4. Thereafter, the AO observed that the assessee on its consolidated sales of Rs. 446 crores has reported G.P. rate of 0.61% which is quite low and thereafter, referring to the decision of Hon'ble Gujarat High Court in case of Mayank Diamonds Pvt. Ltd. vs. ITO dated 07.11.2014, applied G.P @ 2% on the consolidated sales and given the declared G.P. of Rs.2,73,87,008/-, trading addition of Rs. 6,18,39,745/-was made to the declared total income of the assessee.

5. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A). During the course of appellate proceedings, the Id. CIT(A) requested the AO to examine 11 parties from whom the assessee has made the purchases during the year and which was not

verified during the course of assessment proceedings. In respect of M/s Surana Corporation Ltd, Chennai, the Id. CIT(A) has stated that the party appeared before the DDIT, Chennai and confirmed the sale of goods to the assessee company. Four parties namely Helios jewellery Private Limited, Vithoba Narayan Kalambe, Vithoba Kalambe (HUF) and Superstar Multitrade Pvt. Ltd, appeared before the DDIT, Mumbai and confirmed the sale of goods to the assessee. Regarding 4 parties namely, M/s International, Surat, Yash Overseas, Surat, Satyarth Export and Adeshwar Gems Pvt. Ltd, the Id. CIT(A) stated that though these parties were not found by the DDIT, Surat at the address given by the assessee but the assessee produced all these four parties before the AO and all these four parties have confirmed before the AO that they have sold the goods to the appellant. Regarding Unique Diamond International, the Id. CIT(A) stated that the party is based out of USA and the AO did not issue any notice U/s 133(6) at its USA address. Regarding Anant Export, Surat, the Id. CIT(A) stated that the party could not be found by the DDIT, Surat at the address given by the appellant and the assessee has also expressed its inability to produce the party as the assessee was not in contact with the party. Based on above examination and verification of the various parties, the Id. CIT(A) stated out of the 11 parties whose purchases were sought to be verified by the AO, except M/s Anant Export, Surat, all other parties have confirmed that they have sold goods to the appellant. The Id CIT(A) also acknowledged the fact that though the AO has expressed his doubt in respect of the genuineness of the purchases from these parties on the basis of the statement of these parties or for other reasons however, he was of the view that purchases made by the appellant

cannot be held to be bogus, just on the basis of suspicion or doubt when these parties have in unambiguous manner, confirmed that they have sold the goods to the assessee and the assessee has produced all the necessary documentary evidences including purchases bills and bank statements of the assessee in which the payment to these parties are reflected. It was further held by the Id CIT(A) that the Assessing Officer or DDIT has not brought on record any evidence to show that payments made to these parties through banking channel were received back by the assessee in cash. The assessee is also maintaining stock register wherein quantity of goods purchased and sold are recorded, the AO has not found any discrepancy in the quantity of goods purchases or sold recorded in the stock register. Regarding M/s Anant Export, Surat though the party is not available at the given address however, the assessee has filed copy of the purchase bills of this party and in the bank statement of the assessee, the payment made to the this party are duly reflected and the quantity of goods purchased from this party is also recorded in the stock register. Regarding purchases of Rs. 50 lacs made from M/s Taj Impex, the Id. CITT(A) has held that AO has treated the said purchase as unverifiable only on the basis of statement of Shri Praveen Kumar Jain which was subsequently retracted by him. It was further held by the Id. CIT(A) that the assessee has furnished complete documentary evidence to prove the genuineness of the purchase recorded and the goods received from M/s Taj Impex has also entered in the stock register. The AO has not found any discrepancy in the quantity of goods purchased and sold recorded in the stock register. Regarding issuance of notice issued U/s 133(6) of the Act to M/s Taj Impex, the AO has not mentioned that notice was returned

back unserved or M/s Taj Impex had denied having made sale to the assessee. Further, the AO has also not brought on record any evidence to show that payment made to M/s Taj Impex by the assessee through banking channel was received back in cash. Thus, there is no evidence with the AO to treat the purchases from M/s Taj Impex as unverified purchases except the statement of Shri Praveen Kumar Jain which he had already retracted. Regarding the AO's observation that the assessee is not maintaining qualitative details of closing stock, the Id CIT(A) held that the assessee is maintaining the stock register consistently in quantitative terms and in support, reference was drawn to assessment year 2013-14 wherein the AO has rejected the book results of the assessee U/s 145(3) of the Act mainly on this ground however has made an addition of Rs. 3 lac only. The Id. CIT(A) finally stated that at the most, purchase of Rs. 4,32,77,012/- made by the assessee from M/s Anant Export, Surat can be held to be unverifiable because the parties is not available at the address given by the assessee. But the assessee has furnished all the documentary evidences to prove the purchases from these parties including the purchase bills and bank statement in which the payment made to M/s Anant Export are reflected. The goods received from M/s Anant Export are also recorded in the stock register of the assessee. The assessee could not have sold the goods unless he had purchased the goods and the quantity of goods purchased and sold are recorded in the stock register which have been accepted by the AO. Thereafter, the Id. CIT(A) finally held that he is of the considered view that it would be fair and reasonable to upheld the rejection of book results made by the AO U/s 145(3) of the Act but he restricted the addition in respect of the

difference between the GP rate declared by the assessee @ 0.61% and the GP rate estimated on this unverified purchases of Rs. 4,32,77,012/-. Given that the AO himself has estimated GP rate of 2%, the Id. CIT(A) has held that it would be fair and reasonable to restrict the addition to Rs. 6,05,878/- (2% less 0.61% on Rs 4,32,77,018) and the balance addition of Rs 6,12,33,867 was directed to be deleted.

6. Against the said findings of the Id. CIT(A), the Revenue in appeal stating that the Id. CIT(A) has erred in restricting the trading addition by applying G.P. @ 2% on the unverifiable purchase instead of total turnover declared by the assessee without considering the fact that the books of accounts of the assessee were rejected U/s 145(3) of the Act not only on the above issue but also on the basis of other defective notice issued by the AO. In its cross objection, the assessee has challenged the action of the Id. CIT(A) in upholding the action of the Assessing Officer in rejecting the books of account of the assessee by invoking the provisions of Section 145(3) of the Act and further, in making the addition of Rs. 6,05,878/- in relation to purchases from M/s Anant Exports.

7. During the course of hearing, the Id. DR has submitted that the assessee was engaged in the business of trading including import of precious stones, mainly diamond rough and cut and polished diamonds and having offices at Mumbai and Surat. It has filed its ROI for the year declaring total income at Rs. 19,88,730/-. It has disclosed total turnover of Rs. 446 Crore, on which it has declared GP of Rs. 2.74 Crore giving GP rate of 0.61%. However, as per the separate trading accounts for

Mumbai and Surat, it has declared sales of Rs. 364 Crore and Rs. 81.50 Crore in respect of its Surat and Mumbai offices respectively and has declared GP rates of 0.08% and 0.50% accordingly giving overall GP rate of 0.15% against 0.61%.

7.1 It was further submitted that undisputed fact that the assessee has not maintained any qualitative stock register and it has claimed to maintain its stock register of FIFO basis. The AO has made enquiries from 19 entities with which the assessee has transactions of sale/purchase during the year under consideration and has issued notices u/s 133(6) accordingly. It is noted by the AO that 11 of above notices were received back unserved with the postal remarks "left/undelivered". The AO has confronted the same to the assessee but a very vague reply was submitted by the assessee as appearing on page 10/11 of the assessment order. No effort was made by the assessee to produce these entities before the AO. Further, it has also been gathered by the AO that the assessee has obtained accommodation entry amounting to Rs. 50 Lac for purchase of goods from M/s Tej Impex, an entity controlled and managed by Shri Pravin Kumar Jain, a known entry operator. In view of the above facts, after giving a show cause notice to the assessee and after considering the submissions of the assessee, the AO has rejected the books of accounts of the assessee and has given the detailed reasons from page 11 to 17 of the assessment order and after placing reliance on the judgment of Hon'ble High Court of Gujarat, the AO has applied GP rate of 2% on total sales of Rs. 446 Crore declared by the assessee in its profit and

loss account and has made trading addition of Rs. 6.18 Crore to the income of the assessee.

7.2 It was further submitted that during the appellate proceedings before the Ld. CIT(A), it was stated by the assessee that its actual sale and purchase were to the tune of Rs. 411 Crore and Rs. 413 Crore respectively and the AO has also taken inter branch transfers and sales returns into total turnover, however, without the supporting evidences and explaining why the total turnover was shown at higher figure in the audited profit and loss account. During the appellate proceedings, the assessee furnished new address(es) of these 11 entities and the Ld. CIT(A) has directed the AO to make enquiries from these entities. In its 1st Remand Report, it has been stated by the AO that the enquiries at the new addresses provided by the assessee were made by the ADI(Inv), Surat and it has been reported by the ADI(Inv) that 5 of such parties were not available at these new addresses provided before the Ld. CIT(A) and therefore, the purchases from them were bogus.

7.3 It was accordingly submitted that in its rejoinder, of CIT(A) order, regarding these 5 entities, the assessee has now, again furnished new addresses of M/s Adeshwar Gems P. Ltd and M/s Satyarth Exports and affidavits from M/s M S International and M/s Yash Overseas stating that due to renovation of their offices, the offices were closed at the time of making enquiries by ADIT(Inv.). It was stated that the 5th entity M/s Anant Exports could not be contacted. It is pertinent to mention here that the affidavits were nothing but additional evidences but the appellate order is totally silent on their admission as additional

evidence. The rejoinder was again forwarded to the AO for its comments. In its 2nd Remand report, it was stated, inter alia others, by the AO that the affidavits were after thought and these 4 entities were not found at the time of making enquiries by the ADI(Inv) and the genuineness of purchases could not be verified.

7.4 It was further submitted that on the basis of rejoinders of the assessee to the 2nd Remand report of the AO, the Ld. CIT(A) has now directed the AO to provide opportunity to the assessee to produce the above 4 entities. These entities were produced by the assessee before the AO, however, in its 3rd Remand report, the AO has made various observations with respect to transactions with these entities and has again submitted that the transactions with these entities were not genuine. The assessee has also filed its 3rd rejoinder. The findings of Ld. CIT(A) are appearing from pages 34 to 38 of the appellate order. In para 4.7 on page 38, the Ld. CIT(A) has sustained the rejection of books of accounts by the AO u/s 145(3) but has restricted the trading addition of Rs. 6.18 Crore made by the AO to Rs. 6,05,878/- by estimating GP of 2% on unverified purchase of Rs. 4,32,77,012/- from M/s Anant Exports.

7.5 It was further submitted that earlier, the Jaipur Tribunal has been consistently following its own decision rendered in the case of Anuj Varshney, wherein disallowance of 15% of bogus/unverifiable purchases were upheld. Subsequently, the additions thereof were sustained on basis of past trading results of the assessee. However, in the impugned appellate order, the Ld. CIT(A) has followed none of

these decisions and devised its own method of restricting trading addition, being 2% of the unverifiable purchases, which is not correct.

7.6 It was further submitted that as evident from the above details that the Ld CIT(A) has provided a number of unwarranted opportunities to the assessee to allow the assessee to prove the impugned transactions without examining why the appellant has not stated the correct addresses in the first instance before the Ld. CIT(A). The Ld. CIT(A) has totally ignored the spot verification report of ADIT (Inv), Surat and has again directed the AO to provide an opportunity to the assessee to produce 4 entities before the AO and the AO was not directed to make any spot verification. Further, the AO has raised serious issues in its 3rd Remand Report (pg 31), which has not been controverted by the Ld. CIT(A) in its appellate order. The Ld. CIT(A) has accepted all the contentions of the assessee without critically examining the material placed on record, which are being discussed as under:

M/s Yash Overseas

(i) As per PB-26, there are three addresses of M/s Yash Overseas. Further, as per invoices issued by M/s Yash Overseas, the rates of diamond rough varied from Rs. 24 per carat (PB-42) to Rs. 19,850/- and there was no details of quality, size etc. Similarly, the rates of cut and polished diamonds varied from Rs. 2,935/- per carat to Rs. 1,13,000/-. In the absence of qualitative details and looking to the fact that stock was maintained on FIFO, it is impossible to verify the trading results.

(ii) As per affidavit of M/s Yash Overseas, it has sold rough, cut and polished diamonds etc. to the assessee to the tune of Rs. 2634 Crore only. As per details filed by the assessee during assessment proceedings of its 'sales', the assessee has also made sales of Rs. 3,89,55,000/- to M/s Yash Overseas but has shown M/s Yash Overseas as a Sundry Debtor at Rs. 138.94 Crore i.e. it has to receive Rs. 138.94 Crore from M/s Yash Exports. Interestingly, the affidavit of M/s Yash Overseas is silent on the purchases made by it from the assessee company and why the amount of Rs. 138.94 Crore was shown to be owed by M/s Yash Overseas to the assessee. Further, it appears that the copy of relevant bank statement of M/s Yash Overseas was not filed during the remand proceedings. How, the transactions could be verified?

M/s M S International

(i) As per PB -55, there are three addresses of M/s M S International and are same as in the case of M/s Yash Overseas. The confirmed copy of account of M S International as appearing in the books of assessee was filed and not as per books of accounts of M/s M S International i.e. no independent confirmation as per books of M S International was filed during remand proceedings by M/s M S International. Further, it appears that the copy of relevant bank statement of M/s M S International was not filed during the remand proceedings. How, the transactions could be verified?

(ii) As per affidavit of M/s M S International, it has sold rough, cut and polished diamonds etc. to the assessee to the tune of Rs. 17.13 Crore only. As per details filed by the assessee during assessment proceedings of its 'sales', the assessee has claimed to have made sales of Rs. 6,21,33,506/- to M/s M S International but, surprisingly, has shown M/s M S International as a Sundry Debtor at Rs. 15.02 Crore i.e. it has to receive Rs. 15.02 Crore from M/s M S International. Interestingly, the affidavit of M/s M S international was silent on this amount of Rs. 15.02 Crore owed by M/s M S International to the assessee and its purchases of Rs. 6,21,33,506/- from the assessee company.

7.7 It appears that the Ld. CIT(A) has not examined the above facts, which clearly indicate that the so called transaction with M/s Yash Overseas and M/s M S International were nothing but manipulated one and they have just provided entries to the assessee company, especially looking to the fact that the copies of the relevant bank statements of M/s Yash Overseas and M/s M S International were not provided, at least before the Hon'ble Tribunal and in the absence of which, how the verification of the transactions could be made.

Satyarth Exports

7.8 As per PB-313,314, the assessee has made advance payment of Rs. 10,54,74,380/- to M/s Satyarth Exports in the earlier years as opening balance of the same amount is appearing on 01.04.2011. However, M/s Satyarth Exports issued a number of invoices to set off

the above amount from 03.09.2011 to 28.11.2011 further, the copies of invoices were not filed. Even the bank account of M/s Satyarth Exports was not filed for verification of the transactions. It was mentioned that before the Ld. CIT(A), as appearing on page 10 of impugned appellate order, one old address and one new address of M/s Satyarth exports was submitted. However, in the affidavit (PB.312) of Satyarth Exports, a third address was given and there was no mention of 'new address' as stated before Id. CIT(A).

7.9 It was further submitted that in the impugned order, the Ld. CIT(A) has referred to subsequent assessment order for AY 2013-14 and has recorded that the AO has made only a trading addition of Rs. 3 lac thereof after invoking the provisions of section 145(3) without appreciating the fact that no such enquiries were made by the AO in the said year. It may be mentioned that the assessee has not mentioned whether the said rejection of books of accounts as well as trading addition of Rs 3 lac was accepted by it or not and if contested in appeal, the fate of such appeal. If the assessee has accepted the assessment order for AY 2013-14, then the CO of the assessee deserves to be rejected.

7.10 It was further submitted that the AO has applied GP rate of 2% on the total sales declared by the assessee company by relying upon the judgment of Hon'ble High Court of Gujarat, which has not been discussed at all by the Ld. CIT(A). Further, as per Notification no. 2/2008 issued by CBDT, the GP rate of 6% was stated to be reasonable. There is nothing on record that the earlier assessments of

the assessee were completed under scrutiny assessment and thus, the past trading results of earlier two years are not relevant at all. It was further submitted that the Ld. CIT(A) was not justified in restricting trading addition of Rs, 6,18,39,745/- made by the AO to Rs. 6,05,878/- ignoring the various decisions of jurisdictional Tribunal and Hon'ble High Court of Rajasthan and ignoring the facts and circumstances of the case, as discussed by the AO in the assessment order as well as in three remand reports of the AO. It was submitted that the trading addition made by the AO and deleted by Ld. CIT(A) may kindly be restored.

8. Per contra, the Id. AR of the assessee has submitted that the Id. CIT(A) has erred in sustaining the rejection of books of accounts. The Id. AR submitted that out of total purchases of Rs 448.28 Crores, purchases from only few parties amounting to Rs. 68.96 crores were unverified. However, during the course of appellate proceedings, based on examination by the DDIT as well as by the AO himself, this purchases have been verified and the parties have been produced and there is no basis for Id. CIT(A) to confirm the rejection of books of account. Regarding purchase from M/s Taj Impex, the Id. AR has submitted that the assessee furnished the necessary documentation in support of its purchase and the Id. CIT(A) has duly confirmed the same but has wrongly rejected the books of accounts. It was further submitted that the books of accounts are duly audited and no adverse comments have been made by the auditors and therefore, there is no basis for rejection of books of accounts. Regarding estimation of GP rate, Id. AR submitted that the assessee had disclosed a better GP rate

as compared to the previous years and it was submitted that the assessee has shown GP rate of 0.61% as against 0.15% for the A.Ys. 2011-12 and 0.2% for A.Y. 2010-11. It was further submitted that even in AY 2013-14, the assessee has declared a G.P rate of 0.19% which was accepted except for an addition of Rs 3 lacs by the AO. It was accordingly submitted that even where the books of accounts are rejected, there is no basis for making the addition and it is settled legal proposition that mere rejection of books of account does not ipso facto result in addition in the hands of the assessee.

9. We have heard the rival contentions and perused the material available on record. The Assessing officer has rejected the books of accounts by invoking the provisions of section 145(3) and the same has been sustained by the Id CIT(A). Once the books of accounts are rejected, only course of action left with the AO is to assess the income of the assessee on the basis of best judgement. Where the assessee has a settled past history, in such cases, accepted G.P rate for the past years in assessee's own case has been held by the Rajasthan High Court as proper and reasonable basis for estimation of G.P rate for the current year. In the instant case, the AO has estimated the G.P rate of 2% on the declared turnover of the assessee without considering the assessee's own past history. The Id CIT(A) has accepted the assessee's declared G.P and at the same time, as upheld G.P rate of 2% on unverified purchases from M/s Anant Exports. This act of the Id CIT(A) contradicts his own act of confirming the rejection of books of accounts and the results so declared by the assessee. Once the books of accounts have been rejected due to non-verifiability of purchases made

by the assessee company and non-maintenance of qualitative records and provisions of section 145(3) have been invoked, the authorities cannot resort to make addition as a percentage of the unverified purchases or by estimating gross profit rate on such unverified purchases. Only course left with the authorities is to estimate the gross profit rate based on best judgement and the past results of the assessee provides a reasonable basis for such estimation. For the year under consideration, the assessee has declared G.P rate of 0.61% as against 0.15% in AY 2011-12 and 0.20% in AY 2010-11 and has thus declared a better G.P rate for the year under consideration as compared to average G.P rate for the past two years. Even where the books of accounts are rejected, there is thus no basis for making the addition in the hands of the assessee company. It is a settled legal proposition that mere rejection of books of accounts are not sufficient to hold that the trading additions have to be necessarily made in the hands of the assessee company. Where the assessee company has declared a better trading results as compared to previous years, such results provide a reasonable basis to hold that there should not be any addition in the hands of the assessee company. In light of above discussions and in the entirety of facts and circumstances of the cases, the trading addition so made by the AO and so confirmed by the Id CIT(A) are hereby directed to be deleted and the trading results so declared by the assessee are directed to be accepted.

10. The issue regarding rejection of books of accounts so raised by the assessee in its cross-objection thus becomes academic and we

donot deem it appropriate to adjudicate the same on merits and the same is dismissed as infructious.

In the result, the appeal of the Revenue is dismissed and cross objection of the assessee is partly allowed.

Order pronounced in the open Court on 18/03/2019.

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:- 18/03/2019.

*Santosh.

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

1. अपीलार्थी / The Appellant- ITO, Ward-1, Beawar.
2. प्रत्यर्थी / The Respondent- M/s Maniratnam Gems Pvt. Ltd., Beawar.
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. ITA No. 539/JP/2017 & CO No. 29/JP/2017}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar