

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "B": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA.No.1296/Del./2013
Assessment Year 2010-2011

The DCIT, Central Circle-13, Room No.332, ARA Centre, Jhandewalan Extn., New Delhi.	vs.,	M/s. Diamount Jewels (P) Ltd., Shop No.2612-13, Bank Street, Karol Bagh, New Delhi. PAN AACCD5204E
(Appellant)		(Respondent)

ITA.No.1907/Del./2013
Assessment Year 2010-2011

The DCIT, Central Circle-13, Room No.332, ARA Centre, Jhandewalan Extn., New Delhi.	vs.,	M/s. Diamound Hut India Pvt. Ltd., 2883/17, Hardhyan Singh Road, Karol Bagh, New Delhi. PAN AABCD7234M
(Appellant)		(Respondent)

For Revenue :	Ms. Nidhi Srivastava, CIT-DR
For Assessee :	-None-

Date of Hearing :	20.05.2019
Date of Pronouncement :	03.06.2019

ORDER

PER BHAVNESH SAINI, J.M.

Both the Departmental Appeals are directed against different Orders of the Ld. CIT(A)-1, New Delhi, Dated 20.12.2012, for the A.Y. 2010-2011 and Dated 03.01.2013 for the A.Y. 2010-2011 respectively, in respect of two different Assessees.

2. We have heard the Ld. D.R. and perused the findings of the authorities below. However, none appeared on behalf of the assessee, despite notifying the date of hearing. Both the appeals are decided as under :

ITA.No.1296/Del./2013 – (M/s. Diamount Jewels (P) Ltd., :

3. Briefly the facts of the case are that a search and seizure under section 132 of the I.T. Act, 1961, was carried out in the M/s. Diamond Hut Group of cases on 27.10.2009. The case of the assessee was also covered in operation under section 132 of the I.T. Act. The assessee filed return of income declaring total income of Rs.3,49,43,330/- on 28.12.2010. During the course of

search operation, discrepancy in stock of Gold/Silver/Diamond Jewellery/Woolen etc. was noticed at all most all the business premises of the Diamond Hut Group which was confronted to Sh. Suresh Verma, Director of Diamond Hut India Pvt. Ltd. The statement of Sh. Suresh Verma, Director of Diamond Hut Group was also recorded on oath under section 133A of the Act wherein he offered a sum of Rs.11.09 Crores as additional income over and above the regular income earned during the financial year 2009-2010. His statement is reproduced in assessment order in which he has after confronting with the seized material, offered a sum of Rs.3,18,62,953/- as additional income over and above the income under appeal and paid the taxes. The assessee, therefore, has not explained/ specified the manner in which the undisclosed income was derived and also has not produced any document supporting the manner in which the undisclosed income of Rs.3,18,62,953/- was earned or has not substantiated the manner in which undisclosed income was derived. The A.O. made the additions in the assessment order which have

been deleted by the Ld. CIT(A). In the background of these facts, the Revenue challenged the Order of the Ld. CIT(A) in deleting the addition.

4. Ground No.1 is general an need no adjudication.

5. On Ground No.2, Revenue challenged the Order of the Ld. CIT(A) in restricting the addition to Rs.9,20,245/- made by the A.O. on account of undisclosed cash. The A.O. noted that during the course of survey u/s 133A of the Income Tax Act, 1961 by the Investigation Wing of the Income Tax Department at the business premises of Assessee-Company at Karol Bagh, New Delhi, excess cash of Rs.60,00,000/- was found which could not be explained properly by the persons who were controlling the business affairs at the business premises. During the course of survey at the business premises/showroom of Assessee-Company at Karol Bagh,cash of Rs.61,25,000/- was physically found whereas the cash as per books of account was only Rs.1,25,000/-. The statement of Sh. Amit Verma an employee of the group, who was working as Cashier, was recorded on oath under section 133A by the officers of the

Investigation wing of the Department. The discrepancy in cash was confronted to him. In his statement he stated that a cash of Rs.61.25 lakhs belonging to the company is lying at the premise out of which Rs.60 lakhs was received by him today i.e. on 27.10.2009, which is the date of survey operation only at about 12 P.M. He further stated that the cash amounting to Rs.60 lakhs was been received by him from Gurgaon branch. He also stated that the branch shop situated at Gurgaon is closed today i.e. 27.10.2009. Moreover, there were neither any entry of cash transfer in the books maintained at Gurgaon Branch of the company nor any entry of receipt in the books maintained at Karol Bagh was found. The A.O. noted that during the course of survey/search at Gurgaon, cash balance as on 26.10.2009 in the books maintained there was much less than the amount alleged to have been received from Gurgaon Branch. Statement of sh. Amit Puri was also recorded on oath in which he has stated that Rs.60,00,000/- cash was sent to the head office at Karol Bagh, New Delhi. But the cash available in the books of accounts maintained at

Gurgaon was only Rs.49,39,127/- as on 26.10.2009. The A.O. did not find explanation of assessee to be proper. The A.O. accordingly made the addition of Rs.60 lakhs on account of unexplained cash not accounted for on the date of search.

6. The assessee challenged the addition before the Ld. CIT(A) and it was submitted that addition was made without appreciating the factual submissions by assessee. The cash was recorded in books of account which have been completely ignored by the authorities below. Copy of the letter was filed to explain the factual details. Certificate from Chartered Accountant was filed to confirm that cash was available in the books of account on the date of the search. Since on the date of search action, showroom at Gurgaon was closed on account of weekly holidays, therefore, for safety and security purposes, the excess cash was never left at the shop. Since the Bank of assessee is regulated from Karol Bagh place which is regular practice of the assessee that excess cash is always taken and transferred to Karol Bagh place. No inconsistency or defects have been pointed

out in maintenance of the books of account. The assessee claimed that cash amounting to Rs.53,48,755/- was reflected in the books of account of the assessee at the time of survey/search, while a further amount of Rs.11,87,139/- was reflected in the accounts of a group company called M/s Diamond Hut India Pvt. Ltd. Relevant cash books belonging to the assessee were seized by the Department during the search itself. Therefore, the addition is unjustified.

7. The Ld. CIT(A) noted that it is well-known that trade in bullion and jewellery generates large cash sales. It is also not disputed that the cash available as per the records seized, by the Department itself, was Rs.53.48.755/-. Therefore, it is not appropriate to treat the entire cash as unaccounted simply for the reason that there was no entry regarding cash transfer from one branch of the assessee to another. The Ld. CIT(A), however, found that evidence of further amount of Rs.11,87,139/- reflected in the accounts of M/s Diamond Hut India Pvt. Ltd. was neither found during the course of survey/search and it was never

claimed during those proceedings that the cash belonged in part to this company also. The Ld. CIT(A) noted that cash on the date of search and seizure was found of Rs.62,69,000/- and admittedly the cash available with the assessee was of Rs.53,48,755/-. The explanation of assessee to that extent was accepted and addition was restricted to Rs.9,20,244/-.

8. The Revenue is in appeal on Ground No.2, challenging the Order of the Ld. CIT(A) in restricting the addition to Rs.9,20,244/-. The Revenue has served the notice upon the assessee. Service report is filed on record. The Ld. D.R. relied upon the Order of the A.O. and submitted that cash as per books of account was of the lesser amount, therefore, addition should not have been deleted.

9. After considering the submissions of the Ld. D.R. we do not find any merit in this ground of appeal of the Revenue. The assessee explained that cash of Gurgaon Branch was transferred to Karol Bagh Branch because of the closure of the showroom at Gurgaon on account of holiday. The explanation of assessee was not accepted by

the A.O. because no entries to that effect have been made in the books of account. The Ld. CIT(A), however, specifically noted that cash available as per the records seized by the Department shows availability of the cash in the books of account of assessee at Rs.53,48,755/-. This fact has not been rebutted by the Revenue Department. Since assessee is keeping and maintaining several business entities at different places, therefore, entire cash available in the books of account of assessee of different entities should have been considered. The explanation of assessee could not be ignored that there was a transfer of cash from Gurgaon Branch to Karol Bagh Branch. Therefore, entirety of the facts and the fact that seized records itself shows availability of the cash with the assessee in the books of account clearly shows that Ld. CIT(A) on proper appreciation of facts and material on record, correctly deleted the addition of Rs.50,79,755/-. Ground No.2 of the appeal of Revenue has no merit and the same is accordingly dismissed.

10. On Ground Nos.3 to 5, Revenue challenged the Order of the Ld. CIT(A) in deleting the addition of Rs.2,40,49,700/- made by A.O. on account of under reporting of profit.

11. During the course of assessment proceedings it was noticed that the assessee had shown net profit of Rs.3,42,80,787/- during the year under consideration against the total sales turnover of Rs.267.34 crores. If the amount which were disclosed by the assessee during the course of search operation i.e., Rs.3,18,62,953/- is reduced from the profit reported by the assessee for the year under consideration, net profit left is only Rs.24,17,834/- (Rs.3,42,80,787 - Rs.3,18,62,953). Hence, the net profit ratio for assessment year under appeal excluding the surrender amount is just 0.09%. The A.O. noted that in preceding assessment year 2009-2010 the net profit ratio is 0.99%. In assessment year 2008-09 it was 2.5%, which indicates that after disclosing the unaccounted income the assessee has claimed expenses by inflating them so as to reduce the tax liability. The A.O,

therefore, applied net profit ratio of 0.99% of the last year and made the addition of Rs.2,40,49,700/- .

12. The assessee challenged the addition before the Ld. CIT(A). It was submitted that A.O. made the addition without any adverse material by merely applying net profit rate of earlier year. There was no basis to make the addition. Books of account of the assessee are audited in which sales, purchases have been properly recorded. No single purchase or sale was found outside the books of account. No discrepancy have been noted in the debtor or creditors. Therefore, A.O. made the addition arbitrarily. The acceptance of the books of account/results thereof as a rule and rejecting the same are only be the exception. The A.O. cannot reject the books of account without pointing-out any specific defects in the maintenance of the books of account. The assessee produced the complete details along with vouchers and documents which have not been rejected by the authorities below. The assessee comprehensively explained this issue before the Ld. CIT(A)

to show that explanation of assessee has not been refuted in any manner. Low profit is neither a circumstance nor a material to justify the addition. No real income actually accrued to or received by assessee. Therefore, the addition is wholly unjustified.

13. The Ld. CIT(A) noted that Director of the Assessee Company had admitted during the course of survey/search that amount of Rs.3,18,62,953/- represented the undisclosed income of the assessee and paid the taxes thereon over and above the normal income. therefore, it was incumbent on the part of the assessee to disclose this income separately while filing the return. The assessee has not followed the admission and merged its trading results with the unaccounted entry admitted earlier. The Ld. CIT(A), therefore, directed that this amount should be considered as income from other sources and A.O. was accordingly directed to do.

13.1. As regard addition of Rs.2,40,49,700/- computed by the A.O. by applying the net profit rate of last

year, the Ld. CIT(A) specifically found that there is an increase in the cost of the assessee in assessment year under appeal as compared to earlier year. The interest cost was found to have gone up. The salary has increased as compared to earlier year and other cost have also increased. The Ld. CIT(A), therefore, noted that profit margin of the assessee is below 1%, but, the circumstances noted above clearly show that trading result may also be in loss. But, in the present case, the result of the assessee is in profit and not in loss. Therefore, estimated addition made by the A.O. cannot be sustained. The Ld. CIT(A), accordingly, set aside the Order of the A.O. and deleted the entire addition.

14. The Ld. D.R. relied upon the Order of the A.O.

15. After considering the submissions of the Ld. D.R. in the light of findings of fact recorded by the Ld. CIT(A), we do not find any merit in these grounds of appeals of the Revenue. The assessee has surrendered Rs.3.18 crores over and above the normal income during the course of search

and survey. The assessee also paid the taxes thereon. The Ld. CIT(A) directed it to be considered as income from other sources. The A.O. without pointing-out any specific defects in the maintenance of the books of account of assessee, noted that if the surrendered amount is reduced from the income declared by assessee, there will be a low net profit as compared to net profit declared in the preceding year. Since the Ld. CIT(A) considered the surrendered amount under different Head of Income i.e., "Income from other sources", therefore, there was no justification for A.O. to reduce the same from business income of the assessee declared as per the books of account. No sales and purchases were found to have made by assessee outside the books of account. No details of expenses or creditor and debtor have been noted to show that any unaccounted expenses claimed by assessee. The A.O. did not reject the books of account of assessee under section 145(3) of the I.T. Act. The A.O. merely presumed that assessee might have inflated the expenses to reduce the tax liability. This observation of the A.O. is not supported by any material or

evidence brought on record. It is a case of search and survey and nothing was found therein to indicate that assessee made any bogus entries in the books of account. Therefore, there was no reason to compare the profit of earlier year with the profit declared in assessment year under appeal. Low project by itself is no ground to make addition. In the absence of any material on record, particularly that books of account have not been rejected by the A.O. and that the surrendered amount is treated as income from other sources by Ld. CIT(A), there was no justification for the A.O. to make this addition. The Ld. CIT(A), on proper appreciation of facts, rightly found that in assessment year under appeal, the costs of the assessee have increased substantially as against the cost incurred in preceding assessment years. This fact has not been rebutted by the Revenue Authorities through any evidence or material on record. The Ld. CIT(A), therefore, appreciated facts of the case correctly and rightly deleted this addition. There is, thus, no merit in these grounds of appeal of Revenue and the same are accordingly dismissed.

16. In the result, ITA.No.1296/Del./2013 of the Revenue is dismissed.

ITA.No.1907/Del./2013 – (M/s. Diamond Hut India Pvt. Ltd.,) :

17. In this Departmental Appeal, Revenue challenged the deletion of addition of Rs.3,00,96,835/-.

18. The A.O. noted that in this case also, assessee has surrendered the undisclosed income of Rs.4,09,80,003/-. The A.O. similarly applied the net profit rate of preceding assessment years and made the addition of Rs.3,00,96,935/-. The Ld. CIT(A) on the same reasonings as given in the case of M/s. Diamount Jewels (P) Ltd., (supra), deleted the similar addition.

19. The Ld. D.R. submitted that that this issue is same as have been considered and decided in connected appeal of M/s. Diamount Jewels (P) Ltd., (supra).

20. We, therefore, following the Order on Ground Nos. 3 to 5 in the case of M/s. Diamount Jewels (P) Ltd.,

(supra), do not find any merit in the Departmental Appeal and the same is accordingly dismissed.

21. In the result, ITA.No.1907/Del./2013 of the Revenue is dismissed.

22. To sum-up, both the appeals of the Revenue are dismissed.

Order pronounced in the open Court.

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 03rd June, 2019

VBP/-

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2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "B" Bench
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//By Order//

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