

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री रमेश सी. शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C. SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 209/JP/2019
निर्धारण वर्ष/Assessment Year : 2015-16.

M/s. Hare Rama Hare Krishna Corals Pvt. Ltd., C-101-G, Ridhi Sidhi Complex, Jaipur.	बनाम Vs.	The Income Tax Officer, Ward-6(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AABCH 7017 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri P.C. Parwal (CA)
राजस्व की ओर से / Revenue by: Shri A.N. Nehra (JCIT)

सुनवाई की तारीख / Date of Hearing : 03.04.2019.
घोषणा की तारीख / Date of Pronouncement : 21/05/2019.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 26.12.2018 of Id. CIT (A)-2, Jaipur for the assessment year 2015-16. The assessee has raised the following grounds :-

1. The Id. CIT (A) has erred on facts and in law in upholding the rejection of books of accounts u/s 145(3) of IT Act, 1961.
2. The Id. CIT (A) has erred on facts and in law in confirming the trading addition of Rs. 26,53,797/- by applying g.p. rate of 12% on turnover of Rs. 8,21,60,955/- as against g.p. rate of 8.77% declared by the assessee.
3. The assessee craves to amend, alter and modify any of the grounds of appeal.
4. The appropriate cost be awarded to the assessee.

Ground Nos. 1 & 2 are regarding rejection of books of account under section 145(3) and confirming trading addition by applying GP rate of 12% as against GP rate of 8.77% declared by the assessee.

2. The assessee is engaged in the business of import, export and wholesale of precious/semi precious, non precious stones, gems & jewellery. The assessee filed its return of income for the year under consideration on 29.09.2015 declaring total income of Rs. 3,50,020/-. During the scrutiny assessment, the AO noted that the assessee has shown purchases of semi finished Coral Mix shape @ Rs. 90,000/- per kg on 3rd April, 2014 from M/s. P.D & Company whereas the purchases made on 11.11.2014 from the same party of semi finished Coral Mix shape is Rs. 63,000/- per kg. Again the rate of purchases of Coral rough (Rubrum) is shown @ Rs. 23,727/- per kg from M/s. Brancaccio Raffaele Italy on 04.03.2015 whereas the assessee has shown the same article purchased from Shree G.K. Chudiwalas, Jaipur on 14th March, 2015 at Rs. 65,000/- per kg. Again the purchases of Coral rough (Rubrum) was made from Ditta Orlando Lorenzo Italy on 01.04.2014 at Rs. 10,278/- per kg. Similarly, the AO has also pointed out a vast variation in the sale price recorded by the assessee of Coral rough (Rubrum) which ranges from Rs. 500/- per kg to Rs. 18,000/- per kg. The sale price of Coral mix shape semi finished is also vary from Rs. 60,000/- per kg to Rs. 90,000/- per kg. The AO accordingly asked the assessee to explain the reasons for same item sale/purchase on different rates on different dates. Accordingly, the AO observed that the value of opening stock and closing stock and actual sales and purchases are not verifiable. The rates of items are valued on the basis of size and pieces purchased and sold but the assessee has not maintained stock on the basis of size of the items. Even the size of the stones are

not mentioned either in the purchase or sale bills. Thus the AO opined that the books of account maintained by the assessee do not show the real picture of its business. The AO further noted that there is a stiff decline in the GP declared for the year under consideration in comparison to the GP declared in the preceding year. The AO accordingly proposed to reject the books of account under section 145(3) and estimate the income of the assessee by applying average GP. The assessee filed its reply but the AO was not satisfied with the reply of the assessee and held that during the year under consideration purchases and sales made by the assessee are not comparable due to the fact that the details mentioned in the bills of purchases and sales made at different rates on different dates are only rough/semi finished/finished coral, however, the rates of the items are valued on the basis of size of the pieces sold or purchased but no details are given in the purchase or sale bills as well as the assessee has also not maintained stock on the basis of size of the items. Accordingly, the AO rejected the books of account on the ground that the valuation of the stock is not qualitative and quantitative and no verification can be made. The AO then applied the average GP of the preceding year worked out at 14.44% and then applied GP @ 12% on the turnover of the assessee to estimate the income. Accordingly, the AO has made an addition of Rs. 26,53,797/- on this account. The assessee challenged the action of the AO before the Id. CIT (A) but could not succeed.

3. Before us, the Id. A/R of the assessee has submitted that the assessee has maintained complete quantitative details of various items manufactured/sold by it. The lower authorities have not found any discrepancy in the details so mentioned. The opening stock, purchases, sales and closing stock has been accepted by them.

The only deficiency pointed out by the lower authorities is that quality-wise details are not maintained for which they have referred to different rates of purchase/sale of Coral rough/Coral semi-finished. However, the AO has ignored that the assessee has purchased Coral rough at different rates and at such rate it is transferred for manufacture. The rough is converted into semi-finished/finished goods and thereafter the same is sold. Only in few cases the assessee has traded in rough/semi-finished goods. The closing stock is valued at cost based on its quality. Thus, when the assessee has maintained complete quantitative record, then the decline in GP rate loses its significance. He has relied upon the following decisions :-

PCIT vs. Bhawani Silicate Industries,
236 Taxman 596 (Raj. HC)

Malani Ramjivan Jagannath vs. ACIT
316 ITR 120 (Raj. HC)

CIT vs. Gotan Lime Khaniz Udyog
256 ITR 243 (Raj.)

Pr. CIT vs. Hues India Ltd.
2015-TIOL-2275/2016 ITL 455 (Raj.) dt. 30.07.2015.

CIT vs. Jacksons House
198 Taxman 385 (Delhi)

and submitted that merely because qualitative record was not maintained, the books of account could not be rejected. A minor deficiency of quality-wise record in books of account would not necessarily lead to addition in income of the assessee. Thus the Id. A/R has submitted that in all these decisions, the Hon'ble High Courts have taken a consistent view that not maintaining the quality-wise stock details cannot be a reason for rejection of books of account. So far as variation in the purchase and

sale of Coral rough and Coral semi-finished goods are concerned, where purchases are made at higher rate than they are sold at higher rate after mixing with the lower rate purchases. Similarly the assessee has specifically pointed out the reasons for decline in overall GP rate from 12.81% to 8.77% by giving bifurcation of GP rate earned on export sale and the local sale. He has further contended that the GP rate in local sale has been reduced from 13.33% to 13.21% which is very negligible and that too on account of increase in local sales from Rs. 221.89 lacs to Rs. 356.77 lacs. However, in the export sales, the GP rate has declined from 12.35% to 5.43% due to increase in the turnover from Rs. 255.67 lacs to Rs. 464.83 lacs.

4. On the other hand, the ld. D/R has submitted that there is a vast difference in the purchase price as well as the sale price made by the assessee at the same point of time and from the same parties. Therefore, the difference in the purchase and sale price attributed to the size and quality of the stones, the valuation of the closing stock is not possible in the absence of the stock maintained on quality-wise. The AO has given relevant details in the assessment order to show that there is wide difference in purchase price of the same goods made at the same point of time. Similarly, there is a huge difference of sale price made by the assessee and as per the purchase bills and sale bills, the article is shown as same being semi-finished Coral Mix stones, mainly two types of stones were purchased and sold by the assessee – one is semi finished Coral Mix and another is Coral rough (Rubrum) but the difference in the purchase and sale of these items at the same point of time has not been explained by the assessee. Further, in the absence of the details and stock register maintained on different quality of stocks, it is not possible to verify the correctness of these purchases and sales as well as the valuation of opening and

closing stocks. Therefore, this is not a simple case of any grain stock or other goods where there is no much difference of quality of purchases made in different lots, but the goods purchased and sold by the assessee are precious stones and, therefore, the price of stone is completely depends on the size of stone. Therefore, in the absence of maintaining the details and stock register on the basis of the size of stones, the valuation of opening and closing stock is not possible. Further, the bills and vouchers of purchases as well as sales also do not mention the size of stones. Accordingly, the AO has rightly rejected the books of account when the same are not reflecting the true and correct affairs of business activity of the assessee. As regards the addition made by the AO by taking the GP rate at 12%, it is very reasonable considering the past history of the assessee and average GP of past history comes to 14.44% whereas the AO has applied only 12% for estimating the income of the assessee. He has relied upon the orders of the authorities below.

5. We have considered the rival submissions as well as the relevant material on record. The assessee is dealing in precious and semi-precious stones. The AO in the assessment order has given the relevant details of the rate of purchases made by the assessee of a particular type of stone but the difference in the rates is very significant even when the purchases are made from the same party and within a span of one week. Therefore, there is a good reason for questioning the correctness of the purchase and sale price declared by the assessee. This is not a stray incident as noticed by the AO but this variation in the purchase and sale price of the same type of stone is in majority of the cases. The AO has given these details in para 3 as under :-

" 3. On perusal of the details filed, it is found that the assessee has purchased/sold coral rough / semi finished / finished corals at different rates on different dates. In the purchase ledger submitted by the assessee it is found that the rate of purchase of semi finished coral mix shape mentioned @ 90,000/- per KG on 3.4.2014 from P.D. & Company and rate of purchase of semi finished coral mix shape mentioned @ 63,000/- per KG from P.D & Company on 11.11.2014, rate of purchase of coral rough (RUBRUM) @ 23,727/- per KG from Brancaccio Raffaele Italy on 4.3.2015 and rate of Coral rough (RUBRUM) @ 65,000/- from Shree G.K. Chudi Walas Jaipur on 14.3.2015, rate of Coral rough (RUBRUM) @ 10,278/- from Ditta Orlando Lorenzo Itali on 1.4.2014.

Like this, in the sale ledger submitted by the assessee it is found that the rate of sold Coral Rough (RUBRUM) @ 18,000/- per KG to Shri GK Chudi Walas, Jaipur on 5.4.2014 and Coral rough (RUBRUM) @ 6,168/- per KG to Taitung Red Coral Co. Ltd. Taiwan on 9.10.2014 and Coral Rough (RUBRUM) @ 500 per KG to Harman Trade Inc. Delhi on 25.3.2015, and Coral Mix Shape semi finished @ 90,000/- per KG on 19.2.2015 and Coral semi finished mix shape @ 60,000/- per KG to Narayan & Co. on 23.1.2015 and Coral semi finished mix shape @ 70,000/- per KG to Narayan & Company on 30.10.2014 and Coral semi finished mix shape @ 60,000/- per KG to Narayan & Company on 1.9.2014. On asking reasons for same items selling/purchasing on different rates on different days, the A/R of the assessee further submitted that the rates are different on the basis of size of the pieces of corals. The size is not mentioned in the bills because of voluminous purchase and sale of the corals. Therefore, it is concluded that the assessee is not maintaining qualitative and quantitative stock of the items purchased and sold. Therefore, the valuation of opening stock and closing stock and actual value of sale and purchase are not verifiable. During the year under consideration, the assessee has

purchased coral of Rs. 2,00,06,034/- from its sister concern M/s. P.D. & Company and sold coral of Rs. 3,08,63,405/- to M/s. Narain & Company. Sales & purchases to related concerns are not comparable due to the fact that the details mentioned in the bills of purchases and sales made at different rates on different dates are only rough/semi finished/finished coral, however, the rates of the items are valued on the basis of size of the pieces sold or purchased but the assessee has not maintained stock on the basis of size of the items and not mentioned size of the items sold or purchased in sell/purchase bills. Thus, the books of accounts maintained by the assessee do not show the real picture of its business."

Thus it is clear that the assessee has made purchases to the tune of Rs. 2,00,06,034/- from sister concern M/s. P.D. & company and sold Coral of Rs. 3,08,63,405/- to M/s. Narain & Company. Both these concerns are related parties and, therefore, the non specification of the quality of the articles purchased and sold either in the bills of purchase/sale or in the stock register is a serious defect in the books of account and that too when the assessee is dealing with the related parties. Though the difference may be due to the size and quality of the stone which is recorded under same category but it is not a general commodity of grain/oil seed so that practically it may not be possible to maintain the stocks and details as per the quality of the grain or oil seed. The assessee is dealing in the precious and semi-precious stones and the price of stones varies in thousands time depending upon the size and quality of stone. It is apparent from the details as recorded by the AO that the purchase as well as sale price varies from Rs. 63,000/- to Rs. 90,000/-, that may be due to quality of stones but the assessee has shown all these

articles under the same category of semi finished Coral Mix shape. These purchases were made from same related parties. Similarly, the purchases of Coral rough (RUBRUM) was made at a price which ranges from Rs. 500/- per KG to Rs. 65,000/- per KG. A similar variation is also noticed and apparent on record regarding the sale transactions. Therefore, apart from the correctness of the purchase and sale prices declared by the assessee, the closing stock of the assessee cannot be valued when the assessee is not maintaining the same on the basis of size of the stones. There is no dispute that there is a steep decline in GP for the year under consideration in both segments i.e. domestic as well as export. The AO has given the details of the GP declared by the assessee for the preceding years in para 4 as under :-

Assessment Year	Turnover	GP shown	Export Turnover	GP shown in Export
2012-13	5,88,15,013/-	15.80%	1,21,08,527/-	26.10%
2013-14	6,25,11,670/-	14.71%	1,48,21,355/-	18.36%
2014-15	4,77,66,869/-	12.81%	2,55,67,932/-	12.35%
2015-16	8,21,60,956/-	8.77%	4,64,83,679/-	5.43%

The AO has given the reasons for rejecting the books of account as no details are mentioned in the purchase and sale bills at different rates on different dates and stock register maintained by the assessee is also not revealing the value on the basis of size and quality of the stones. Accordingly the valuation of stocks cannot be correctly valued based on the details recorded in the books of account and particularly in the stock register of the assessee. The defect in the valuation of stock is a sufficient reason for rejection of books of account as the book results of the assessee are directly affected by the valuation of stock. The decisions relied upon by the Id. A/R of the assessee are all in respect of the commodities which are

cereals/mustard seeds or oils and, therefore, the variation of quality of those commodities do not affect the value significantly whereas the quality of the stone is the sole basis of the value in case of precious stones. Accordingly, those decisions cannot be applied to the case of the assessee. Further, there is no quarrel on the point that the decline in GP rate cannot be the sole basis of rejection of books of account. However, in the case of assessee, the AO has clearly made out the specific defects in the books of account of the assessee and particularly the correctness of the valuation of the stocks which will lead to incorrect results from the books of account. Further, it is also not in dispute that the rejection of books of account may not necessarily lead to trading addition but after rejection of books of account, the AO has to estimate the income of the assessee on best judgment basis. The past history of GP declared by the assessee, which is not in dispute is a good guidance and proper basis for such estimation. The Id. CIT (A) has referred and relied upon the decision of Hon'ble Jurisdictional High Court in case of Malani Ramjivan Jagannath vs. ACIT, 207 CTR 19 (Raj.) wherein the Hon'ble High Court has also held that the past history of GP is a proper basis of estimation of income. In the case in hand, though the average of the GP declared by the assessee in the preceding years is worked out 14.44% which is not disputed by the assessee, however, the AO has estimated the income by taking a reasonable GP rate at 12%. Therefore, the AO has already considered the decline in the GP for the year under consideration due to the increase in the turnover. Once the AO has applied 12% which is less than the average of the GP declared by the assessee in the preceding years, then the reason explained by the assessee for decline in GP is already subsumed in the said reasonable rate taken by the AO at 12%. Even otherwise, a

reasonable decline in the GP due to increase in the turnover is accepted but not a decline of more than half of the average of the GP. Therefore, the 2% discount given by the AO is more than sufficient and reasonable to accommodate the reasonable decline in the GP due to increase in turnover. Hence in the facts and circumstances of the case, we do not find any error or illegality in the orders of the authorities below.

6. In the result, appeal of the assessee is dismissed.

Order is pronounced in the open court on 21/05/2019.

Sd/-

(रमेश सी. शर्मा)
(RAMESH C. SHARMA)

लेखा सदस्य / Accountant Member

Sd/-

(विजय पाल रॉव)
(VIJAY PAL RAO)

न्यायिक सदस्य / Judicial Member

Jaipur

Dated:- 21/05/2019.

Das/

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

1. The Appellant- M/s. Hare Rama Hare Krishna Corals Pvt. Ltd, Jaipur.
2. The Respondent – The ITO, Ward 6(2), Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 209/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

