

**IN THE INCOME TAX APPELLATE TRIBUNAL "E", BENCH  
MUMBAI**

**BEFORE SHRI M.BALAGANESH, AM  
&  
SHRI RAVISH SOOD, JM**

**ITA No.959/Mum/2012  
(Assessment Year :2005-06)**

Asst. Commissioner of Income Tax CC-22 Room No.403, Aayakar Bhavan 4 <sup>th</sup> Floor, Mumbai	Vs.	M/s. Snejay Gems 308, Shukra Diamond Gaushala Lane Daftary Road Malad (E) Mumbai - 97
<b>PAN/GIR No.AAFS3339L</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Revenue by	Shri Ritesh Mishra
Assessee by	Shri Madhur Agarwal
<b>Date of Hearing</b>	<b>11/09/2019</b>
<b>Date of Pronouncement</b>	<b>11/12/2019</b>

**आदेश / O R D E R**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.959/Mum/2012 for A.Y.2005-06 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-39, Mumbai in appeal No.CIT(A)39/IT-308/10-11 dated 09/11/2011 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 254 of the Income Tax Act, 1961 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 27/12/2010 by the Id. ACCC-2, Mumbai (hereinafter referred to as Id. AO).

2. The only ground raised by the revenue is with regard to valuation of stock of jewellery.

3. The brief facts of this issue are that the assessee is engaged in the business of trading in diamond. There was a search and seizure action u/s.132(1) of the Act on 02/10/2004 in the case of Sunjyot Gems. In consequence to this, a survey action u/s.133A of the Act was conducted in the business premises of the assessee on 02/10/2004. The assessee filed a return of income for the A.Y.2005-06 on 28/10/2005 declaring total income of Rs.1,09,86,750/-. During the course of survey proceedings stock of diamonds of 1089.70 Crores belonging to assessee were found alongwith Jangad Memo (Approval Memo). The said stock of diamonds of 1089.70 Crores were valued by the approved valuer at the time of survey at Rs.2,55,41,800/-. There was no retraction made by the assessee subsequently with regard to the said disclosure and the same was duly considered by the assessee while filing return of income also. There was certain stock of diamonds belonging to the assessee which was found with Sunjyot Gems also. In order to verify the accountability of stock of diamonds of assessee found with Sunjyot Gems, Shri Narendra Sanghvi, partner of assessee firm was asked to explain above stock of diamond with respect to the books of accounts. He explained 278.04 Crores as opening stock as on 01/04/2004 and the rest of 823.57 Crores as purchases made from four parties amounting to Rs.1,59,53,910/- during the F.Y.2004-05 as under:-

S.No.	Date of Bill	Name of the party	Qty (in cts)	Rate (per cent)	Amount (Rs)
1	24.8.2004	M/s Yogen C. Jhaveri 8/1432 Koyasth	298.21	21000	62,62410

		Street, Vaihhav Parl, Flat No 6, Gokipura, Surat			
2	25.8.2004	Anuj Exports 204, Sapna Apts, Maiidharpura, Surat	20.01	15000	3,00,150
3	7.9.2004	M/s Darshil Impex, Aymbil Bhgvan, 2 <sup>nd</sup> Floor, Gopipura, Surat	305.25	17000	51,89,250
4	9.9.2004	M/s Yogen C. Jhaveri - Surat Address as above	200.10	21,000	42,02,100
		<b>Total</b>	<b>823.57</b>		<b>15953910</b>

3.1. The assessee came forward to offer this sum of Rs.1,59,53,910/- as it is undisclosed income by way of declaration during survey and by considering the same while filing the return of income also in respect of 823.57 carats of diamonds. The Id. AO in the original assessment completed u/s.143(3) of the Act dated 28/12/2006 made further addition of Rs.52,64,584/- on the ground that the total closing stock of 1101.61 Crores including opening stock of Rs.278.04 Crores which were valued at 2,02,77,216/- whereas the assessee had valued the opening stock of

Rs.43,23,306/-. Accordingly, the Id. AO computed further unaccounted investment made in the stock in the sum of Rs.52,64,584/- as under:-

Value of Stock of diamond of Rs.1089.70 Crores as per valuation report	Rs.2,55,41,800/-
Less Value of opening stock of Rs.278.04 Crores As stated by the assessee	Rs.43,23,306/-
	=====
Unexplained investment in stock	Rs. 2,12,18,494/-
Less unexplained investment in Stock offered by the assessee	Rs.1,59,53,910/-
	=====
Difference	Rs.52,64,584/-
	=====

3.2. The assessee disputed the valuation report of the department valuer on various parameters by stating that the valuation has been done on the basis of estimating the loss and samples and the valuer did not consider the aspects of mixed diamonds whose value would be lesser comparatively. The Id. AO however, disregarded this objection of the assessee by holding that the assessee itself had obtained the invoices on the basis of average rate and hence, it cannot state that the valuer has done valuation on an estimation basis without considering the element of mixed diamonds. The Id. AO also observed that assessee quoted high price indicating that the diamonds were of high quality and in view of this the assessee's plea that the rate per carat is approximately Rs.17,000/- to

Rs.21,000/- has no basis. The Id. AO also observed that the rate adopted by the valuer is approximately 25% lesser than that of the rate as per Jangad Memo (Approval Memo).

3.3. Hence, it could be seen that the Id. AO made addition of Rs.52,64,584/- in the original assessment over and above the amount offered by the assessee pursuant to the survey in the sum of Rs.1,59,53,910/-.

3.4. In the first round of proceedings, the matter reached up to the Tribunal and this Tribunal remanded the matter to the file of the Id. AO with the following directions:-

*Para 14 : The issue of inclusion of the accounted opening stock of 266.13 cts in the said valuation report ignoring the actual cost price as per the books is analysed as under. Admittedly, assessee had the total opening stock of 278.04 cts and they are accounted. Out of the same, the stock 266.13 cts are given to Sanjyot Gems and found at their premises, which is an admitted fact both by the Sanjyot Gems and the assessee firm on one side and the revenue on the other side. As evident from the records, these diamonds were also treated by the Registered valuer on par with the other unaccounted diamonds in matters of the valuation. When the details of the date of acquisition of the diamonds are not available, the valuation done by Sri Kapoor cannot be faulted. However, during the survey and the assessment proceedings, the correct cost price based on the evidences should have been determined. Determination of the cost of the unaccounted diamonds with the help of the Valuer is statutorily legal and certainly not when the diamonds are accounted and date and cost of acquisition is known. Considering the fact that the books of accounts of the assessee are 'not rejected' by the revenue authorities, they should have examined the cost price of the said diamonds in the light of the books and applied the actual rates applicable to these diamonds of opening stock origin. Therefore, the impugned order of the CIT(A) needs to be reversed in this regard. We do not have relevant particulars to quantify the relief and therefore, it has to go to the files of the AO for the limited purpose of the quantification. **Consequently, the AO is directed to quantify the relief considering the relatable purchase bills, if any in respect of the opening stock related stock. Further, the assessee is directly file relevant material in this regard to substantiate his claim. Thus, the matter is set aside to the AO for this limited purpose.***

*Para 8 : Aggrieved by the order of the CIT(A) in confirming the addition of Rs.52,64,584/- made by the AO, the assessee has filed an appeal before the*

*Tribunal. Assessee has filed the concise grounds as well as an additional ground pointing out the CIT(A) has erred in not increasing the purchase cost while making addition to the valuation of unexplained investment in stock. r\ Since this issue of 'not increasing the consequential purchase cost of the alleged diamonds' has not been raised during the first appellate proceedings, the AO or CIT(A) has not accession to deal with the same. Considering the merits of the issue, we proceed to admit the same and refer the same to the files of the AO for fresh adjudication after giving reasonable opportunity of being heard. Accordingly, the additional ground is set aside.*

4. In the second round of proceedings, the Id AO made addition of Rs.1,59,53,910/- being the value of purchase of diamonds made during the year as unexplained expenditure u/s.69C of the Act, ignoring the fact that this sum was already offered to tax by the assessee in the return of income in consonance with the declaration made during the course of survey.

4.1. Further, the Id AO observed that addition on account of unexplained expenditure shall be the difference of income declared and valuation as per paragraph 3 of the assessment order. Accordingly, the addition should have been (Rs.2,12,18,494/- (-) Rs.1,56,53,760/-) i.e.Rs.55,64,734/-. However, only Rs.52,64,584/- was added. Accordingly, the balance sum of Rs.3,00,150/- ( 55,64,734-52,64,584) is added in the total income of the assessee.

4.2. Hence, the Id. AO in second round of proceedings made total addition of Rs.1,62,54,060/- and completed the assessment on 27/12/2010 u/s.143(3) r.w.s. 254 of the Act.

5. The Id. CIT(A) after elaborate discussions ultimately observed that no addition could be made in the sum of Rs.19,14,593/- towards valuation difference of opening stock of diamonds. The Id. CIT(A) upheld the addition of Rs.33,49,991/- for the difference in valuation in respect of purchase of 823.57 carats of diamonds during the year.

5.1. The Id. CIT(A) further deleted the addition in the sum of Rs.1,59,53,910/- u/s.69C of the Act.

6. Aggrieved, the revenue is in appeal before us.

7. We have heard rival submissions and perused the materials available on record including written submissions dated 28/08/2017 and 12/04/2018 of the Id. DR and written submissions of the assessee dated 25/04/2018. We find from written submissions of the Id. DR that purchase of 823.57 carats of diamonds made during the year would be unaccounted stock of the assessee. While this is so, there is no need to treat the opening balance of diamonds of 278.04 carats as unaccounted stock or make any addition thereon on account of valuation difference. It is not in dispute that the opening balance as on 01/04/2004 of 278.04 carats of diamonds have been duly reflected in the books of accounts of the assessee with proper valuation and part of it were also found as stock on the date of survey. The total stock found during the survey was subjected to valuation by the departmental valuer and difference in valuation was attributed for the opening stock quantity also. We hold that since the opening balance of diamonds have already been duly reflected in the books of accounts and duly accounted by the assessee, there cannot be any addition in the sum of Rs.19,14,593/- being the valuation difference on the same. Hence, we hold that the Id. CIT(A) had rightly deleted the said addition.

7.1. We find that the Id. AO in the second round of proceedings had made an addition u/s.69C of the Act by treating the purchases of 823.57 carats of diamonds made during the year as unexplained expenditure. It would be pertinent to note that the second round of proceedings had emanated out of the directions given by the Tribunal as reproduced

supra. Admittedly, in the first round of proceedings, there was no addition made u/s.69C of the Act by the revenue. Hence, the Id. AO could not have made any addition u/s.69C of the Act in the second round of proceedings. Even otherwise, we find that the assessee had duly offered to tax in the return of income, the value of purchase of 823.57 carats of diamonds in consonance with the declaration made by him at the time of survey and hence there is no need to make any further addition thereon. We find that the revenue had raised an additional ground challenging the deletion of addition u/s.69C of the Act. No arguments were advanced by the Id. DR at the time of hearing before us in this regard. We find that even the written submissions filed by the Id. DR, does not make any mention about the addition made u/s.69C of the Act.

7.1.1. In view of our aforesaid observations, we hold that the Id. CIT(A) had rightly deleted the addition made u/s.69C of the Act in the sum of Rs.1,59,53,910/- on which, we do not find any infirmity.

7.2. Now, what survives is the addition made on account of value of 823.57 carats of diamonds purchased during the year.

Value of 823.57 carats as per the departmental valuation	– Rs.1,93,03,901/-
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Less: Value of 823.57 carats of diamonds offered by the assessee	-Rs. 1,59,53,910/-
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<b>Difference i.e. the addition upheld by the Id. CIT(A)</b>	<b>Rs. 33,49,991/-</b>
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We find that the Id. CIT(A) had erred in holding that Rs.33,49,991/- being the difference in value of diamonds purchased during the year would go to increase the purchase cost thereon and consequently to be allowed as deduction, thereby making it revenue neutral. In this regard, it is

pertinent to note that this finding of Id. CIT(A) is misconceived in as much as the difference of Rs.33,49,991/- , being the valuation difference in respect of purchase of 823.57 carats of diamonds during the year, could be added only u/s.69C of the Act as unexplained expenditure and as per the proviso to Section 69C of the Act, the addition made thereof cannot be allowed as deduction. In view of this provision, the argument of the Id. AR that this sum of Rs.33,49,991/- to the extent proportionately included in closing stock as on 31/03/2005 should be allowed to be carried forward and allowed as deduction as and when they are sold, is devoid of merit and against the provisions of the Act. Hence, the said argument of the Id. AR is hereby rejected. Accordingly, the original grounds and the additional grounds raised by the revenue are disposed in the aforesaid manner.

**8. In the result, appeal of the revenue is partly allowed.**

Order pronounced in the open court on this 11/12/2019

**Sd/-**  
**(RAVISH SOOD)**  
**JUDICIAL MEMBER**

Mumbai; Dated  
KARUNA, *sr.ps*

**Sd/-**  
**(M.BALAGANESH)**  
**ACCOUNTANT MEMBER**

11/12/2019

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai

