

**IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A Nos.1879,1872/AHD/2013 & 2833/AHD/2014
निर्धारणवर्ष/Assessment Year: 2009-10**

1. Assistant Commissioner of Income Tax, Circle-9, Surat.	V.	M/s. Anjana Exports, 1, Kohinoor Society, Opp. G K Chambers, Varachha Road, Surat- 395 006. [PAN: AADFA 0943 R]
2. M/s. Anjana Exports, 1, Kohinoor Society, Opp. G K Chambers, Varachha Road, Surat- 395 006. [PAN: AADFA 0943 R]	V.	Assistant Commissioner of Income Tax, Circle-9, Surat.
3. Assistant Commissioner of Income Tax, Circle-9, Surat.	V.	M/s. Anjana Exports, 1, Kohinoor Society, Opp. G K Chambers, Varachha Road, Surat- 395 006. [PAN: AADFA 0943 R]
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent
निर्धारितीकीओरसे /Assessee by	Shri Mehul Shah, CA	
राजस्वकीओरसे /Revenue by	Shri Srinivas T. Bidari, CIT(D.R.)	
सुनवाईकीतारीख/ Date of hearing:	11-02-2020	
उद्घोषणाकीतारीख/Pronouncement on:	04-05-2020	

आदेश /O R D E R

PER O.P.MEENA, AM:

1. The above two appeals filed by the Revenue are directed against the separate orders of Commissioner of Income-Tax (Appeals)-V, Surat [in short “the CIT(A)”] dated 18-04-2013 and 01-08-2014 for the AY. 2009-10 respectively & one appeal filed by the Assessee is directed against the order of Commissioner of Income-Tax (Appeals)-V, Surat [in short “the CIT(A)”] dated 18-04-2013 for the AY. 2009-10.

In ITA No.1879/AHD/2013/AY.2009-10 by the Revenue:-

2. Ground No. 1& 2 relates to deleting the addition of Rs.5,58,41,797/- made on account of low gross profit by rejecting the books result u/s.145(3) of the Act.

3. Briefly stated the facts of the cases are that the assessee has shown GP of Rs.8,12,24,118/- @ 3.7% on the turnover of Rs.2,18,98,74,418/- in comparison to the earlier years GP of Rs.9,50,28,006/- @ 6.14% on the total turnover of Rs.1,54,61,22,671/-. Thus, there is fall in GP by 2.44%. It was further noticed that the assessee has claimed the profit in excess as a sum of Rs.2.31 crore, in the gross receipt if the foreign exchange fluctuation rate is reduced from the GP ratio, then 1% of the GP will further reduced of the assessee. Therefore, the assessee was asked to furnish the details of diamond manufacturing quantitywise and qualitywise and the basis of valuation of closing stock along with supporting evidences. But the assessee neither furnished any explanation with regard to the above details asked for nor he produced the books of accounts for the verification purposes which are called on several times. Therefore, the AO observed that the assessee has prevented his office from verifying the books of accounts. Further, the assessee has not maintained qualitywise details of polished diamonds which has been manufactured. The assessee has not provided closing stock details qualitywise and piecewise which will have significant impact on the valuation issues. Therefore, the basis of valuation of closing stock of polished diamonds was rejecting by rejecting books of accounts of the assessee u/s.145(3) of the Act. The AO further, observed that the assessee

has not substantiated its claim along with fact that how much the increase in the purchase cost affect its GP, and how much the decrease or increase in sales price have affected its GP. By merely stating that there was a recession in that period does not discharge the liability of the assessee to explain the reasons for falling GP ratio of 2.44% which is almost 40% fall in terms of GP from the previous years 2006-07 & 2007-08. The assessee has stated that due to fluctuation in prices of excess rate of dollar, the assessee has got less prices of export and paid more prices on import. But, the AO observed that assessee has earned a net foreign exchange fluctuation of dollar prices; therefore this contention of the assessee is factually incorrect. The AO further noted that GP ratio in financial year 2006-07 was at 6.37% and in financial year 2007-08 was at 6.15%, the average of which comes to 6.26%, whereas in the assessment year under consideration, the GP is shown at 3.71% which is inclusive of net foreign exchange fluctuation gain of Rs.2.13 crore. In view of this, the AO has considered the average GP rate of two preceding years which comes to 6.26%. Accordingly, worked out rate which the difference in GP comes to 2.55%, hence applying the GP rate of 2.55% made addition of Rs.5,58,41,797/- on account of fall in GP rate.

4. Being aggrieved, the assessee filed an appeal before the Id. CIT(A), wherein it was submitted that the turnover of the assessee is Rs.218.98 crore as against Rs.157.09 crore in the immediate preceding year. In such cases, where turnover runs into crores of rupees, it is not at all necessary that every year there will be always be increase in gross profit. The GP rate year under consideration has gone down, because of unfavorable market

conditions as on one hand, and there is a substantial rise of gross import and local purchase of 51% and 31% respectively. On the other hand, the export price is an only increase by 22.5% and this has led to the fall in GP ratio. All the purchases/imports as well as exports/local sales are supported by proper purchase bills/sales bills. It was further submitted that the non-compliance before the AO was not unintentional and not deliberate as such details were handed over to the counsel, but who failed to produce the same before the AO for the reasons best known to that counsel. During the remand proceedings, the assessee has produced the books of accounts and other details before the AO. The AO vide remand report submitted that the books of account have been rightly rejected as the labour charges to the extent of Rs.17,76,00,000/- entered in the register were found to be defective as same were not bearing proper signature. There was variation in signatures of managers and karigars. However, the CIT(A) was of the view that the AO does not have the necessary expertise to examine and comment that the signatures are different as it is the work of a hand writing expert. The *prima facie* variation of signatures appearing in the registers cannot be sole basis of considering the books of account as defective and not verifiable. The gross of consumption of rough diamond in AY.2008-09 is 13.87% while in AY.2009-10; it has come down to 9.32%. Therefore, the rejection of books of accounts merely on the ground of difference in signature is not justified, hence, rejection of books of account u/s.145(3) was held to be not justified. With regard to addition of Rs.5,58,41,797/- by estimating GP rate at 6.15%, the CIT(A) has observed that the method of

valuation of closing stock has been consistently followed by the assessee from year to year and this method of valuation adopted by the appellant is similar to that in the case of M/s. Dhami Brothers v. ACIT, Circle-9, wherein its method has been approved by 'A' Bench of Tribunal, Ahmedabad vide its order dated 06-08-2010 in ITA No.2309/AHD/2008 for the AY.2004-05. On perusal of this order of the ITAT, it was found that while working out cost of production of rough diamonds, the electricity expenses have been added under the manufacturing head which includes labour wages and electricity expenses to work out the total cost of manufactured of polished diamonds. Since, the assessee has himself relied on this judgement of ITAT regarding the method of valuation of closing stock, the AO in the remand report has correctly included the electricity expenses of Rs.52,30,244/- to work out the total manufacturing cost of polished diamonds at Rs.2,10,11,22,627/- as against the appellant's cost of Rs.2,09,58,81,383/- by adding electricity expenses of Rs.52,30,244/- to the total manufacturing of polished diamonds. Hence, the contention of the appellant of non-inclusion of electricity bill towards manufacturing cost was rejected and finding of the AO were upheld. The CIT(A) further observed that the assessee has produced the relevant records in form of export bills, purchase bills, cash etc. along with the books of account and no defects has been pointed out by the AO in the purchase sale bills etc., therefore, GP addition made by the AO after rejection of books of account of Rs.5,58,41,797/- cannot be upheld. Therefore, the GP addition of Rs.5,88,41,797/- made by the AO was deleted but the findings given by the AO in the remand report including the

electricity expenses of Rs.52,30,244/- in the manufacturing cost was found to be correct and revaluation of the closing stock after including the electricity expenses was upheld. The AO was therefore directed to recalculate the closing stock after including the electricity expenses of Rs.52,30,244/- in the manufacturing cost and taking the average cost of Rs.11318.91 as shown by the appellant instead of average cost of Rs.11211/- considering by the AO in the remand report. In view of these facts, the GP addition of Rs.5,58,41,797/- was deleted and the electricity expenses amounting to Rs.52,30,244/- was directed to be added to the manufacturing cost to calculate the closing stock at average cost of Rs.11318.91/- per carat which has been arrived after reducing the GP margin of 3.71% from average export price of Rs.11756.69 per carat, hence, the ground was partly allowed.

5. Being aggrieved, the Revenue has filed this appeal before this Tribunal against the deletion of GP addition of Rs.5,58,41,797/- and the assessee has also filed an appeal against the order of the CIT(A) directing the revaluation of closing stock after considering the electricity expense of Rs.52,30,244/- The Id. CIT(DR) submitted that the Id. CIT(A) has not appreciated the facts that during the course of remand report proceedings, the AO observed that the assessee failed to prove the genuineness of salary register. Further, during the assessment proceedings, the AO observed that the assessee has failed to genuineness of karigars wages register, hence, the genuineness of books of account is not proved, therefore, the AO has correctly made addition on account of fall in GP. The Id. CIT(DR) also relied on the

statement of facts submitted by the AO in Para 5 wherein revised working valuation of closing stock was considered at 11246.34 per carat as against Rs.9800/- per carat shown by the assessee.

6. On the other hand, the ld. counsel supported the order of the CIT(A). The ld. counsel referred to working closing stock placed at paper book page no.25, according to which average cost of manufacturing of polished diamonds comes to 11326.78 per carat and closing stock has been valued at 998.00 per carat. The ld. counsel referred Para 6.1.1 of the order of the CIT(A) wherein it was submitted that the AO has contended that books of accounts are defective as the labour charges to the extent of Rs.17,76,00,000/- are not verifiable. However, the ld. counsel pointed out variation in signature of managers and karigars cannot be regarded as a valid ground for treating the books of accounts as defective as it is a known-fact that the workers put their signature on register in a casual manner and many times they depute somebody on their behalf to collect their salaries. Further, the ratio of labour wages to the cost of consumption of rough diamonds in AY.2008-09 was 13.87% whereas the same in AY.2009-10 comes to only 9.32% which clearly manifest that there is a significant reduction in claim of labour charges for the year under consideration. Therefore, the ground of rejection of books of accounts u/s.145(3) of the Act by the AO was rightly allowed by the CIT(A). Further, electricity expenses of Rs.52,30,244/- relates mainly to the office premises of the assessee and the same is more or less fixed in the nature as increase/decrease in manufacturing activity does not have any significant impact on the overall electricity expenditure. The electricity

expenses were considered in the working of total cost of polished diamonds manufactured because assessee has consistently adopted the policy to treat the electricity expenditure, administrative expenses, and therefore the same is recognized as explained in profit and loss account.

7. In rejoinder to above, the ld. CIT(DR) submitted that the ITAT, Ahmedabad vide its order dated 06-08-2010 in ITA No. 2309/AHD/2008 found that while working out the cost of production of rough diamonds, the electricity expenses have been added under the manufacturing expenses which includes labour, wages and electricity expenses to work out the total cost of manufactured polished diamond. Therefore, the CIT(A) has correctly directed that the electricity bill's expenses to be included towards the manufacturing cost and consequently in the closing of manufactured diamonds.

8. We have heard the rival submissions and perused the relevant material available on record. We find that the books of accounts were rejected by the AO merely on the basis of variation of signatures of karigars, workers as appearing in the salary register. However, no specific defects have been pointed out by the AO. Therefore, the difference in signature cannot be a ground to reject the books of accounts. The CIT(A) has rightly observed that the AO is not hand writing expert to distinguish the signature of the karigar. Therefore, we are of the considered opinion that the CIT(A) has rightly allowed the ground of rejection of books of accounts u/s.145(3) of the Act in favour of the assessee. So far, the deletion of GP addition of Rs.5,58,41,797/- is concerned. We find that the assessee has produced the

relevant records in form of export bills, purchased bills and cash books etc. along with books of accounts and no defects have been pointed out by the AO in the purchase sales bills etc. The only reason for making GP addition is given that there is a fall in GP as compared to preceding year. However, it has been explained that ratio of labour charges to the cost of consumption of rough diamond was at 13.87% in AY.2008-09 which has come down only to 9.32% in the assessment year under consideration. Therefore, genuineness of the labour charges cannot be doubted. Further, the GP ratio has gone down because as against the rise in average purchase cost of imports and local purchases by 51% and 34% respectively in AY.2009-10, the rise in average price of export is only to the extent of 22.51%, therefore, the fall in GP is quite justified. Further, there was overall recession in the diamond industry during the relevant period and most of the sales were export sales of the assessee, whereas the GP was disclosed at 3.71%. Thus, the export sales of the assessee constituted almost 99% of the total sales while local sales were only at 1.14%. Therefore, the deletion of GP addition is justified, hence, we do not find any infirmity in the order of CIT(A) for deleting of GP addition of Rs.5,58,41,797/-. We further note that the CIT(A) has upheld the addition of an amount of electricity expenses of Rs.52,30,244/- to be added to the manufacturing cost to calculate the closing stock by taking the average cost of Rs.11318.91 per carat which has been arrived after reducing the GP margin of 3.71% from the average export price of Rs.11756.69 per carat. Therefore, this ground of assessee is dismissed.

9. Ground No.3 relates to allowing forward contract cancellation loss of Rs.7,55,57,457/- without appreciating the fact that this forward contract were not booked for any specific export and import and not utilized in business and terminated without affecting delivery of foreign exchange.

10. Short facts of the case are that the assessee has earned Rs.16,60,97,357/- foreign exchange fluctuation gain on export and the assessee has taken set-off of the forward contract cancellation loss of Rs.7,55,57,457/- against the above foreign exchange fluctuation gain on export and the net amount has been credited by the assessee in the profit and loss account. Since, the assessee did not submit details of forward contract cancellation loss. Therefore, the AO observed that it is not delivery based transaction. As per section 43(5) of the Act, the transaction which is settled otherwise than actual delivery will be a speculative transaction. Therefore, the forward contract loss was a speculation in nature; hence, the AO relying on the CBDT Circular No.23 dated 12-09-1961 has disallowed the same.

11. Being aggrieved, the assessee carried the matter before CIT(A), wherein it was submitted that the net exchange difference gain on export of Rs.8,65,35,472/- after setting off loss on cancellation of forward contract of Rs.7.55 crore. Since, the both items being linked with fluctuation in exchange rate, set-off which is very much allowable. The assessee has also filed a copy of ledger account of exchange difference on export as also exchange difference on imports. The CIT(A) observed that the perusal of details reveals that the appellant is in the business of export of diamonds. It

is a known fact that persons who are engaged in the business of import/export are exposed to the risk of fluctuation in the exchange rate of currency. The AO has held that the forward cancellation loss is speculative in nature and is not delivery based transaction and is covered by section 43(5) of the Act. However, it is evident that the appellant is not a dealer in foreign exchange, but an exporter of diamonds. Section 43(5) of the Act defines speculative transaction to mean a transaction in which a contract for the purchase or sale of commodity is settled otherwise than by the actual delivery or transaction of such commodity. In order to hedge against losses, the appellant had booked foreign exchange in the forward market with the bank. On cancellation of contract, the appellant is either entitled to profit or loss depending on rates contracted and rates prevailing at the time of cancellation. The appellant entered into this forward contract exchange in order to protect against the fluctuation in the rate of foreign exchange currency. It is therefore quite natural that in order to minimize the risk, they may enter into such contracts with banks. As such the forward exchange contracts are very much in the nature of hedging transactions and therefore, the same cannot be treated as done with speculative intent. Hence, provisions of section 45(3) of the Act are not applicable. The CIT(A) has also supported his view by placing reliance on the decision of ITAT, Mumbai Bench in the case of Voltas International Ltd. (2009) 126 TTJ 702 (Mum), Badridas Gauridu (P) Ltd. (2004) 187 CTR 453/ (2003) 261 ITR 256 (Bom.). Hence, considering the foreign exchange contract entered by the assessee in the nature of hedging transaction, the

CIT(A) deleted the addition of disallowance of Rs.7,55,57,457/- made by the AO.

12. Being aggrieved, the Revenue has filed this appeal before this Tribunal. The Id. CIT(DR) relied on the written statement of facts in Para 8.3 in which it has been mentioned that the assessee has not booked a forward contract against any specific export and import transaction. The assessee is not a dealer of foreign exchange but is a merchant exporter against in the business of diamond. This said loss has arisen due to non-surrounding/delivery of the foreign exchange to the banking institution with whom the assessee has entered into forward booking contract. This is a clear case where the contract was terminated without affecting the delivery to the foreign exchange. Therefore, the AO has rightly treated the transaction as speculating u/s.43(5) of the Act which is not allowable under the head of income from business and profession.

13. *Per contra*, the Id. counsel for the assessee submitted that the assessee business activity comprises of import of diamonds and its manufacturing polished diamonds, the same are exported. Therefore, in this business activity, the assessee is very much exposed to exchange rate risk and in order to safeguard its business interest, the assessee enters into forward exchange contract. Therefore, the gain or loss arising on its foreign exchange contract is not anything but gain or loss arising in the course of business contract, predominantly entered by the importer or exporter to hedge against the loss. The assessee had booked foreign exchange in the forward market with bank. Such loss has been rightly allowed by the CIT(A)

for which the assessee has placed reliance on the decision of Hon'ble Gujarat High Court in the cases of CIT v. Panchmahal Steel Ltd. (2013) 215 taxman 140 (Guj) (HC), CIT v. Friends & Friends Shipping Pvt. Ltd (2013) 34 taxman.com 553 (Guj) (HC) and CIT v. Badridas Gauridu Pvt. Ltd (2004) 134 taxmann 376 (Bom) (HC).

14. We have heard the rival submissions and perused the relevant material available on record. We find that the assessee has earned foreign exchange fluctuation gain on export at Rs.16,60,97,353/- as against which the assessee has incurred foreign contract cancellation loss of Rs.7,55,57,457/- which has been set-off against the said foreign exchange fluctuation gain. The assessee is in the business of export of diamonds wherein the assessee is exposed to the risk of fluctuation in the exchange rate of currency. Therefore, in order to hedge against losses, the assessee had booked foreign exchange in the forward market with bank and on cancellation on the contracts, the appellant is either entitled to profit or loss depending on the rate of contracts prevailing at the time of cancellation. The assessee has entered to this forward exchange contract in order to protect against fluctuation in the rate of foreign exchange currency to minimize the risk. Therefore, the assessee has not entered into any speculation transaction as held by the CIT(A). The ld. counsel has placed reliance on the decision of Friends & Friends Shipping Pvt. Ltd (supra) wherein the Hon'ble High Court has held that where assessee exporter entered into foreign exchange contract as incidental to its export business and incurred loss in said contracts, said loss was not speculative loss but business loss. Similar loss

was also expressed in the case of Badridas Gauridu (P) Ltd (supra) by Hon'ble High Court and CIT v. Panchmahal Steel Ltd. (supra). In view of these facts, we do not find any infirmity in the order of CIT(A), accordingly same is upheld. Therefore, this ground no. 3 of the appeal is dismissed.

15. In the result, this appeal of Revenue for AY.2009-10 is dismissed.

In ITA No.1872/AHD/2013/AY.2009-10 by the Assessee:-

16. Ground No. 1 relates to direction to the AO to recalculate the value of closing stock after considering electricity expenses of Rs.52,30,244/- in manufacturing expenses and thereby increasing the value of closing stock.

17. We have heard the rival submissions and perused the relevant material available on record. While dealing with the ground no.1 & 2 of appeal of the Revenue, we have upheld this ground of appeal in favour of the revenue and against the assessee. Accordingly, this ground of appeal of the assessee for the reason discussed therein is therefore dismissed.

18. Ground No.2 relates to not giving direction to give the deduction of equivalent amount of Rs.52,30,244/- in AY.2010-11 by way of increase in value of opening stock.

19. We have heard the rival submissions and perused the material available on record. As we have uphold that finding of CIT(A) to consider, the electricity expenses of Rs.52,30,244/- in manufacturing expenses and thereby increase the value of closing stock. Since the value of closing stock has been increased during this year, it becomes opening stock for the next year. Therefore, the AO is directed to consider to increase the opening

stock of the equal amount of Rs.52,30,244/- in AY.2010-11 in the opening stock. Therefore, this ground of appeal of the assessee is allowed.

20. In the result, this appeal of assessee for AY.2009-10 is partly allowed.

In ITA No.2833/AHD/2014/AY.2009-10 by the Revenue:-

21. The grounds raised by the assessee reads as under:-

“(i) On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in holding that the Assessing officer has committed an error while giving effect to the Appeal order that he should have calculated the closing stock by adopting the cost of sale at Rs.11,318.91/- per carat, after reducing the G.P. margin of 3.71%, without appreciating the fact that the AO in his order u/s 250 of the Income-tax Act, 1961, dated 10.06.2013 has rightly calculated the value of closing stock as per the direction of the Ld. CIT (A) in his order No. CAS/V/187/2011-12 dated 18.04.2013.

(ii) On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in changing the operative decision tendered by him in his original order dated 18.04.2013 (concluding part of para 6.2.6 of page Nos. 16), wherein he has directed the AO to calculate the closing stock at the average cost of Rs.11318.91 per carat, whereas in the order dated 01.08.2014 (at para 6.1.3 at page No. 6), he has given a new direction that the AO should have calculated the closing stock by adopting the cost of sales at Rs.11318.91 per carat after reducing the GP margin of 3.71%. This has resulted in a change of decision in the original order of the Ld. CIT (A) dated 18.04.2013, where the said order is subject matter of appeal filed by the Revenue before the Hon'ble ITAT on 01.07.2013.

(iii) On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in directing the AO, vide his order dated 01.08.2014, to calculate the value of closing stock by adopting the value of Rs.11318.91 per carat as cost of sale, which he himself has earlier refused to entertain, vide his order dated 17.01.2014, on an rectification application filed by the assessee. Conflicting and repeated decisions are bad in law and not permissible while deciding on the same issue on 154/ rectification applications.

(iv) This new direction issued by the Ld. CIT (A) vide his order dated 01.08.2014 is vague and ambiguous, without explaining how the appeal effect has to be exactly determined and as such the order of the Ld. CIT (A) is not in line with the provisions as laid down under section 250 (6) of the Income tax Act, 1961.”

22. Ground Nos. (i) to (iv) states that the CIT(A) has erred in holding that the Assessing Officer (AO) has committed an error while giving effect to the appeal effected to the appeal order and he should have calculated the

closing stock by adopting the cost of sale at Rs.11,318.91/- per carat, after reducing the GP margin of 3.71%, without appreciating the fact and changing its decision tendered by him in his original order dated 18-04-2013 and where he has himself refused the facts, the rectification application filed by the assessee. Therefore, the new direction of the CIT(A) *vide* his order dated 01-08-2014 is vague and ambiguous. The above grounds of appeal raised by the Revenue are against the calculation of closing stock by adopting the cost of sale @11318.91 per carat. Hence, these are being considered together.

23. Briefly stated the facts of the cases are that in this case an order Section 143(3) dated 23-12-2011 was passed by the AO, wherein addition of Rs.13,13,99,254/- as against the return income of Rs.6,94,479/- were made. The assessee has filed an appeal before the CIT(A)-V, Surat who *vide* his order dated 18-04-2013, partly allowed the appeal of the assessee with certain directions to the AO for calculation of the closing stock. In consequence to which the AO passed an order u/s.250 dated 10-06-2013, giving effect to the order of the CIT(A) against the said order, the assessee filed an application u/s.154 dated 15-10-2013, claiming that there was an error in the calculation of relief allowed to it u/s.250 dated 10-06-2013. However, the AO has rejected this application u/s.154 *vide* his order dated 07-10-2013 holding that the order passed u/s.250 was as per the directions of CIT(A). The assessee thereafter filed an appeal before this CIT(A) u/s.154 and the order of the CIT(A) *vide* his order dated 01-08-2014 which the subject matter of this appeal has allowed the appeal of the assessee by

observing that the AO while giving appeal effect have calculated the closing stock by adopting the cost of sales at Rs.11318.91 per carat after reducing the GP margin of 3.71%. The CIT(A) has given following directions i.e. to sum up the GP addition of Rs.5,58,41,797/- is deleted and the electricity expenses amounting to Rs.52,30,244/- is to be added to the manufacturing cost to calculate the closing stock at the average cost of Rs.11,318.91 per carat which has been arrived after reducing the GP margin of 3.71% from the average export price of Rs.11,756.69 per carat.

24. Being aggrieved, the Revenue filed this appeal before this Tribunal. The ld. Departmental Representative (DR) submitted that the AO has valued the closing stock @11318.91 per carat, as per the directions of the ld. CIT(A) *vide* his order dated 18-04-2013, revised income has been thereafter determined at Rs.2,67,00,080/-. The assessee has not filed any appeal against this order u/s.250 dated 10-06-2013. But the assessee has preferred to move an application u/s.154 before the AO on 15-10-2013, which was rejected on 17-10-2013. The assessee has filed an appeal before the CIT(A). It was submitted that the Revenue has filed already an appeal before ITAT on 02-07-2013 against the order of CIT(A) of quantum issue. It was further submitted that the CIT(A) has not pointed out any defect in the order of AO dated 10-06-2013.

25. *Per contra*, the ld. counsel for the assessee relied on the order of the ld. CIT(A).

26. We have heard the rival submissions and perused the relevant material available on record. We find that the CIT(A) has given his direction *vide* his order dated 18-04-2013 *vide* which the GP addition of Rs.5,58,41,797/- was

deleted and the electricity expenses amount of Rs.52,30,244/- is to be added to the manufacturing cost to calculate the closing stock at the average cost of Rs.11,318,91 per carat which has been arrived after reducing the GP margin of 3.70% from the average export price of Rs.11,756,69 per carat On the basis of the above direction, the assessing officer made addition on account of closing stock at Rs.2,98,36,191/- instead of correct addition of Rs.52,30,244/- while giving effect to direction of CIT(A). "The appellant had submitted that the AO has given a wrong appeal effect on the basis of the finding given in the appellate order though there was a clear cut direction in the preceding line of para no. 6.2. which reads as " The assessing Officer is directed to recalculate the closing stock after taking into the electricity expenses of Rs.52,30,244/- included in the manufacturing cost and taking the average cost of Rs.11,318.91/- as shown by the appellant instead of average cost of Rs.11,211/- calculated by the assessing officer in the remand report. "The appellant requested to replace following line as against the original observation to clarify matter to assessing officer. In the appeal order dated 18.04.2013 it was held that the working of the AO in the remand report of recalculation of the closing stock by including exports sales and local sales to work out the average price is not the correct method to calculate the closing stock. So the cost of the sales should have been reduced at Rs.11,318/- per carat instead of Rs.11211 per carat. The AO suggested to enhance the closing stock by Rs.1,97,82,848/- in the remand report and this working was not accepted in the appeal order except in respect of the electricity expenses of Rs.52,30,244/- which was to be included in the manufacturing cost. The AO while giving effect to the appeal order should have calculated the closing stock by adopting the cost of sales at

Rs.11,318.91/- per carat after reducing the GP margin of 3.71%. Similar direction was also given while deciding the appeal order against the 154 application dated 17.01.2014. The AO is directed to give the appeal effect order as per the directions mentioned above. The ground of appeal is allowed. Considering these facts, we do not find any infirmity in the order of CIT(A), hence, same is upheld. Accordingly, ground no. (i) to (iv) of appeals are dismissed.

27. In the result, the appeal of Revenue for AY.2009-10 is dismissed.

28. In the result, in ITA No.1879/AHD/2013 for AY.2009-10 is dismissed, in ITA No.1872/AHD/2013 for AY.2009-10 is partly allowed & in ITA No.2833/AHD/2014 for AY.2009-10 is dismissed.

29. The order pronounced in the open Court on 04-05-2020

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(O.P.MEENA)
ACCOUNTANT MEMBER

Surat: Dated: 4th May, 2020/Samanta, PS

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/ Guard file of ITAT.

By order

// TRUE COPY //

Assistant Registrar, Surat