

IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT  
AND SHRI B R BASKARAN, ACCOUNTANT MEMBER

ITA Nos. 1335 & 1336/Bang/2017
Assessment years: 2012-13 & 2013-14

M/s. Vijay Gems & Jewellery, No.24, 5 <sup>th</sup> Cross, Gandhinagar, Bangalore – 560 009. <b>PAN: AAIFV 7294F</b>	Vs.	The Assistant Commissioner of Income Tax, 5(2)(1), Bangalore.
APPELLANT		RESPONDENT

ITA Nos. 1393 & 1394/Bang/2017
Assessment years: 2012-13 & 2013-14

The Deputy Commissioner of Income Tax, Circle 5(2)(1), Bangalore.	Vs.	M/s. Vijay Gems & Jewellery, No.24, 5 <sup>th</sup> Cross, Gandhinagar, Bangalore – 560 009. <b>PAN: AAIFV 7294F</b>
APPELLANT		RESPONDENT

Assessee by	:	Shri Rohit G., CA
Revenue by	:	Shri Pradeep Kumar, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	29.01.2020
Date of Pronouncement	:	28.04.2020

**ORDER**

*Per B R Baskaran, Accountant Member*

These cross appeals are directed against the orders passed by Ld CIT(A)-5, Bengaluru and they relate to the assessment years 2012-13 and

2013-14. All these appeals were heard together and are being disposed of by this common order, for the sake of convenience.

2. In both the years, the assessing officer estimated the “net profit” of the assessee by rejecting books of accounts. The Ld CIT(A) confirmed the rejection of books of accounts in AY 2013-14, but he held that the rejection is not justified in AY 2012-13. However, in both the years, the Ld CIT(A) held that the AO should have estimated the “Gross Profit” only. Accordingly the Ld CIT(A) estimated the gross profit in both the years and allowed deduction of expenses. The orders so passed by LD CIT(A) gave partial relief to the assessee. Hence both the parties are in appeal before us assailing the decision of Ld CIT(A) on the points decided against each of them.

3. The assessee is a partnership firm. It is engaged in the business of trading in loose diamonds and diamond studded jewellery. The partnership firm was formed on 01.04.2011. So the first year of operation of the assessee is AY 2012-13.

4. A search operation u/s 132 of the Act was conducted in the hands of the assessee 20-04-2012. The said search operation was in consequence of search undertaken in Challani group of cases in Chennai on 19-04-2012, where one diamond studded jewellery was found. Mr. Jayantilal Challani had deposed that he had purchased above said diamond studded jewellery from the assessee herein by paying cash and also agreed to declare the same as his unaccounted investment. Consequently, the assessment of AY 2012-13 was completed u/s 153A r.w.s. 143(3) of the Act and the assessment of AY 2013-14 was completed u/s 143(3) of the Act. In both the years, the AO rejected the books of accounts and estimated the total income @ 4.50% of the turnover of that year.

5. As stated earlier, the Ld CIT(A) confirmed rejection of books of accounts in AY 2013-14, being the year of search in view of deficiencies found during the course of search. Considering the deficiencies noticed during the course of search proceedings, the AO had also rejected the books of accounts in AY 2012-13, i.e., the year immediately preceding the year of search. Since the AO did not point out any specific deficiency in AY 2012-13, the Ld CIT(A) held that the rejection of books of accounts in that year is not justified. Before Ld CIT(A), the assessee had taken alternative contention in both the years that the estimate should be made only at Gross Profit level and not at Net profit level as done by the AO. The Ld CIT(A) accepted the above said alternative contentions in both the years and accordingly applied the rate of 4.50% at Gross profit level and allowed deduction of expenses.

6. In the appeal filed by the assessee, the rejection of books of accounts and estimation of income are being contested. In the appeal of the revenue, the relief granted by Ld CIT(A) is being contested. The first issue relates to the rejection of books of accounts. According to the assessee, it has offered explanations to all the queries raised by the AO and explained the differences, if any, noticed during the course of search. Hence there is no justification for rejection of books of accounts in AY 2013-14. The assessee has further contended that the AO has not found any deficiency in the books of accounts pertaining to AY 2012-13. The AO has simply followed his decision taken for AY 2013-14 for rejection of books of accounts in AY 2012-13 also. Accordingly it was contended that the rejection of books of accounts for assessment year 2012-13 is not justified. The Ld A.R reiterated the contentions raised before the tax authorities in this regard. The Ld D.R, on the contrary, submitted that the search action revealed that the books of accounts maintained by the assessee are not reliable for the reasons discussed by the AO in the

assessment order. He submitted that the deficiencies pointed out by the tax authorities are related to the State of Affairs of business carried on by the assessee. Hence the same cannot be restricted to the year of search alone. He submitted that the theory of preponderance of probabilities could very well be applied in income tax proceedings. Since the assessment of AY 2012-13 came to be reopened on account of search, the findings related to the state of affairs of the assessee found in the year of search can be applied to the year relevant to AY 2012-13 also.

7. We heard the parties on this issue and perused the record. We have noticed earlier that the search proceedings in the hands of the assessee were conducted as a consequence of search conducted in Challani Group, Chennai. There is no dispute with regard to the fact that the unaccounted diamond studded jewellery found in the hands of Challani was purchased by them from the assessee herein. However, we notice that there is difference with regard to the explanations offered in that regard by Mr. Challani and the assessee, i.e., Mr. Challani has stated that the above said jewellery has already been purchased by him by paying cash to the assessee. However, the assessee has stated that it has sent the jewellery on sale or approval basis to Mr. Challani. From the assessment order, it is not clear as to whether the above said jewellery was shown as assessee's stock, if the claim of the assessee that the same has been sent on approval basis was correct. No explanation is also available as to the claim of Mr. Challani that he has already paid cash towards the cost of jewellery. These discrepancies remain unresolved. Further, the value of stock sent to Mr. Challani was shown at Rs.3.21 crores, while the official valuer has valued the same at Rs.4.09 crores.

8. We notice that the search officials have found difference between book stock and physical stock and the same has been tabulated as under:-

Assessment year : 2012-13

Items	As per books	Physical stock	Difference
Gold	70.72 kgs	21.78 kgs	48.94 kgs
Loose Diamonds	12,761.642 carat	9505.965 carat	3255.677 carat
Diamonds in jewellery	7543.296 carat	2295.315 carat	5248.101 carat
Bullion	731.603 grams	767.080 grams	35.477 grams

The assessee has explained the difference before the search officials. The main explanations offered were that :-

- (a) goods have been sent on approval basis to its related concerns named M/s Sri Krishna Diamonds (on consignment basis).
- (b) goods sent to gold smiths for making jewellery.
- (c) Some goods are available with another related concern named M/s Raj Diamonds.

After giving credits for above items, the search team found that there were still difference of 201.848 carat of diamonds jewellery (excess); deficit of 9.884 kgs of gold and excess of 95.199 carat of loose diamonds. The search team also found that the assessee has not collected acknowledgements from the Gold smiths for the gold given to them. It was also noticed that the assessee has been using several kinds of vouchers for goods sent on approval basis and some of them have not been included in the computer system for inventory. The search officials have also noticed that the several cash sales bills in the name of Aura Jewels have not been included in the sales reflected in the books of accounts. Accordingly they have stated in the appraisal report that the books of the

assessee are not reliable. The AO has also summarised various deficiencies as under:-

- (a) Difference between value of the stock sent to Mr. Sripal Challani (Rs.3.21 crores) and as valued by official valuer (Rs.4,09,54,141/-) indicates suppression of sales.
- (b) Stock variation in respect of book stock and physical stock as on day of search which is not reconciled to this date.
- (c) Presence of various cash sales bills which are not recorded in the books of accounts as on the day of search.
- (d) Destroying of approval vouchers issue prior to 1.4.2012 which makes it impossible to verify genuineness of the approvals issued to various parties.
- (e) Inconsistencies in the rates of sale particularly w.r.t loose diamonds as compared to cost of purchase included in closing stock.
- (f) Besides the above a survey u/s 133A was carried out at another premises of the assessee located at No.122, Neela Complex, 3<sup>rd</sup> Floor, C T Street, Nagarthpet, Bangalore – 560 002 on 20-04-2012 and a sworn statement was recorded u/s 131 of the Income tax Act from Mr. Pradeep Saitha, Manager of the show room. It has been observed that there was excess of 7.442 carats of diamond and 80.751 grams of gold jewellery. The same has not been explained by him on the day of survey. The assessee has also not explained this discrepancy.
- (g) Another important facet to this matrix is the fact that there is no stock detail available with the assessee based on the grading of diamonds. This is especially glaring when the assessee claims to be one of the largest dealers of loose diamonds in South India. Diamonds are graded according to its cut, colour, clarity and caratage taking into account inclusions/spots. (For example, VS (Very Small), VVS (Very Very Small) and going upto E & F which refer to the finest quality).

9. Even though the assessee has offered explanations on various points, we notice that the assessee has roped in its sister concerns to explain the difference in stocks. The explanation given for maintaining different sets of 'approval books' is not convincing. There is no evidence to substantiate the explanations that the goods were given to gold smiths, i.e., it has been claimed that the gold was issued to them without any acknowledgment slip. In any case, the gold smiths are under the control of the assessee only. There is no proper explanation as to why the "approval books" pertaining to the period prior to 1.4.2012 was destroyed. Though the assessee has offered explanations as to why the cash sales made to Aura jewels was not accounted for, yet the same is also self supporting explanations. It is in the common knowledge that the rate of diamond would depend upon "four Cs", i.e., carat, colour, clarity and cut. The AO has noticed that the assessee did not maintain grade wise stock details, which is unlikely. This fact alone would show that the assessee has not maintained proper books of accounts. On the whole, we notice that the explanations furnished by the assessee on various types of deficiencies noticed by the revenue are self supporting explanations, i.e., no third party evidences or materials were brought on record by the assessee to explain the differences. Hence we are of the view that the assessing officer was justified in rejecting the book results in AY 2013-14.

10. We have noticed that the AO has rejected the book results of assessment year 2012-13 also by considering the various types of deficiencies noticed by the search team. The contention of the assessee is that the AO should not have rejected the book results of AY 2012-13, as the alleged deficiencies do not relate to the financial year relevant to the assessment year 2012-13. We have noticed that the assessment of AY 2012-13 has been reopened u/s 153A of the Act consequent to search operations conducted u/s 132 of the Act. Hence assessments of AY 2012-

13 and 2013-14 have been completed together by the assessing officer. Further, in our view, the deficiencies noticed by the search team cannot be considered to be assessment year specific, since it only revealed a particular pattern followed by the assessee or the general state of affairs of business carried on by the assessee. The AO has also observed that the "approval vouchers" pertaining to the period prior to 1.4.2012 has been destroyed and further the grade wise stock details of diamonds have not been maintained. Since the search team has found out particular pattern followed by the assessee, which is found to be defective and further the state of affairs of business carried on by the assessee is found to be unreliable, in our view, the AO was justified in rejecting the book results for AY 2012-13 also.

11. Next issue relates to the estimation of income of the assessee for both the years under consideration. We have noticed that the AO has estimated the net income of the assessee @ 4.50% of the turnover. However, the Ld CIT(A) has estimated the Gross Profit of the assessee by adopting the very same rate of 4.50% and has allowed deduction of various expenses/losses claimed by the assessee. There should not be any doubt that, after rejection of book results, the rate of gross profit could be determined by considering the gross profit level declared by comparable cases. While we agree with the view of the Ld CIT(A) that the profit should have been estimated at "Gross profit level", we notice that the Ld CIT(A) has not brought any comparable cases to determine the Gross profit rate at 4.50% in both the years. Hence, there is fallacy in the approach of the Ld CIT(A) in this regard, which cannot be upheld. We also notice that there was no occasion for the assessing officer to examine various expenses claimed by the assessee, since he had estimated the net profit. Accordingly, we are of the view that matters relating to estimation of gross profit rate by considering comparable cases and examination of various

expenses claimed by the assessee require fresh examination at the end of the assessing officer. Accordingly, we set aside the orders passed by Ld CIT(A) in both the years and restore the issues relating to estimation of gross profit rate and examination of various expenses claimed by the assessee in both the years to the file of the assessing officer, who shall examine them in accordance with law after affording adequate opportunity of being heard to the assessee.

12. In the result, both the appeals of assessee and revenue are treated as allowed for statistical purposes.

Pronounced in the open court on this 28<sup>th</sup> day of April, 2020.

Sd/-

Sd/-

( N V VASUDEVAN )  
VICE PRESIDENT

( B R BASKARAN )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 28<sup>th</sup> April, 2020.

*/Desai S Murthy/*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar  
ITAT, Bangalore.