

आयकर अपीलीय अधिकरण "B" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
BEFORE SRI MAHAVIR SINGH, VP AND SRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.1413/Mum/2016
(निर्धारण वर्ष / Assessment Years 2010-11)

The Income Tax Officer Ward-2(1)(4), R.No.553, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020 (अपीलार्थी / Appellant)	बनाम/ Vs.	M/s Grandiose Jewellery Pvt. Ltd., 402-B, 4 th Floor, Glitz Mall 99, Vithalwadi, Mumbai-02 (प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAAGCA5371D		

अपीलार्थी की ओर से/ Appellant by	:	Shri Rahul Raman, CIT DR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Prakash Jotwani, AR

सुनवाई की तारीख / Date of hearing:	21.01.2020
घोषणा की तारीख / Date of pronouncement:	03.02.2020

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष /

PER MAHAVIR SINGH, VP:

This appeal by the Revenue is arising out of the order of Commissioner of Income Tax (Appeals)-4, Mumbai in Appeal No. CIT(A)-4/IT-108/ITO-2(1)(4)/2013-14 dated 23.12.2015. The Assessment was framed by the Income Tax Officer, Ward-2(1)(4), Mumbai (in short ITO/ AO) for AY 2010-11 vide dated 30.03.2013, under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of Revenue is against the order of CIT(A) deleting the estimation of income of ₹44,11,48,669/-. For this, Revenue has raised the following three grounds.

"1. The order of CIT(A) is opposed to law and facts of the case.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in directing the Assessing Officer to delete the estimated income of ₹44,11,49,669/- stating that there is no reason or basis to sustain such huge addition base on some presumptive abnormalities having no impact on purchase and sales price.

3. For these and other grounds that may be urged at the time of hearing, the decision of Ld. CIT(A) may be set aside and that of AO restored."

3. Briefly stated facts are that the assessee is a private limited company engaged in the business of trading of diamonds & gold jewellery and other ornaments. The assessee filed its return of income declaring total income at ₹6,33,126/- on 28.09.2010 i.e. within due date under section 139(1) of the Act. The Assessing Officer issued notice under section 143(2) of the Act and the assessee's case was selected for scrutiny. The



Assessing Officer during the course of assessment proceedings compared the gross profit on Assessment Year 2009-10 with that of relevant Assessment Year 2010-11 and GP rate for Assessment Year 2009-11 was 0.34%, whereas, for this Assessment Year i.e. 2010-11, it was 0.27%. The Assessing Officer noted that the turnover was increased from ₹51,04,71,042/- to ₹414,14,86,692/- which is more than 7.5 times of the turnover of preceding previous year. Therefore, according to Assessing Officer the net profit ratio has been reduced to 92% and according to him, no prudent businessman would expand its turnover without profit. The Assessing Officer taking the bases as low GP and higher turnover and comparing the earlier years GP, rejected the books of accounts vide Para 4.2 as under: -

"4.2 (i) The turnover of the assessee company as compared to last year has increased by ₹390,10,15,650/- from ₹51,0471,042/- to ₹441,14,86,692/-. Expenditure on packing material as compared to last year has increased by ₹ 42,699 only from ₹4,25,588 to ₹ 4,68,287. This indicates that the assessee has incurred negligible expenditure for packing jewellery worth more than 440 crores.

(ii) It is observed that the assessee has claimed labour charges expenses of

₹71,54,233/- in making of jewellery. The same is shown-under administrative expenses. It is evident that while the assessee is incurring expenditure on labour charges. The same is not factored into the sale price while making sales. The assessee is not able to co-relate jewellery sent for job work with its purchases. Similarly, the assessee is not able to co-relate jewellery received after job work with sales. This further strengthens the inference that these are not normal sales and purchase transactions. The entire labour charges expenses of ₹ 7154233/- is hence lie Die for disallowance.

(iii) The assessee company is handling jewellery in excess of Rs. 440 crores. The fact that the assessee does not have any requirement for 'insurance' further strengthens the inference that no actual business is carried out by the assessee and only the transactions in the books represent entries for accommodating the beneficiary parties.

(iv) Details of purchase order received for making/trading of jewellery are not filed.

(v) The various chart of goods traded filed during the course of assessment, proceedings reflects total pieces/total value without item-wise description of jewellery.

(vi) The value addition done by the assessee and the mark-up on different types of jewellery i.e. diamond studded jewellery, precious stones, gold jewellery etc. could not be ascertained. This was more so necessary because assessee company was incurring making charges from Rs. 100/- to Rs 600/- per 10 grain. The labour charges incurred for de-studding of diamond was Rs. 5001- and the same de- studded jewellery, was claimed to be made into new jewellery for which labour charges was separately charged at Rs. 600/-. Thus total combined labour charges for converting old jewellery into new jewellery was Rs.1100/- per 10 gram. (Enclosed herewith with this order annexure showing analysis of labour charges paid).

(vii) From the analysis of the labour charges (see annexure to this order) for converting old jewellery to new jewellery, it is seen that in s. no. 15 & 16 of the annexure, the labour charges paid is Rs. 200/-and Rs. 100/-for 22K gold. Whereas in s.no. 1 & 2 of the annexure it can be observed that labour charges paid is Rs 500/- and Rs. 600/-for 18K gold. This recovery of huge labour charges paid in respect of some jewellery could not be ascertained as the new jewellery made and sold was not identifiable with the sales made for want of item-wise description of jewellery.

(viii) The assessee was asked to furnish separate manufacturing and trading account and it was submitted by the assessee that no separate account is maintained.”

4. The Assessing Officer thereafter, applied profit rate at the rate of 10% and made assessment under section 143(3) of the Act. Aggrieved, assessee preferred the appeal before CIT(A). The assessee before CIT(A) challenged the first ground regarding rejection of books of accounts and framing assessment order under section 144 read with section 145(3) of

the Act. The relevant ground raised before CIT(A) i.e. ground No.1 read as under: -

"1.a The learned officer grossly erred in passing the order U/s 144 r.w.s. 145(3) of the Income Tax Act, 1961.

1.b.i. The learned officer grossly erred in rejecting books of accounts of your appellant.

1.b.ii. The learned officer erred in rejecting books of account since he did not show that either the books of account maintained by your appellant are incorrect or incomplete or method of accounting adopted by your appellant was such that the true profit of the assessee cannot be deduced there from.

1.b.iii. The learned officer erred in making best judgement without pointing out any specific defect or discrepancy in the books of accounts, which were duly audited by an independent Chartered Accountant. The audited accounts could not have been rejected without pointing out any specific defects or deficiencies in the books of account maintained by your appellant.

i.b.iv The learned officer erred in rejecting the books because the net profits were very low. The learned officer grossly erred in ignoring the fact that gross margins were in line with earlier Assessment Year 2009-10, which was duly accepted in the scrutiny proceedings.

A low profit would not itself be a reason for disbelieving the accounts. He ought to have looked in to the accounts to show that there was material to conclude that there was something false in the account books, which he did not.

1.b.v The learned officer erred in rejecting the books of account on ground of low or no profits. The mere fact that net profits were low was not material, because an assessee may be incompetent or his method of business may be uneconomic.

The learned officer grossly erred in inferring that since the net profit ratio has reduced, the transaction of purchase and sales are not conducted as per normal practice. The learned officer grossly erred in ignoring that Gross margins are derived from purchase and sales and not the net

margins. Further the learned officer erred in ignoring the fact that gross margin ratio was in line with the earlier year and the same is duly accepted by him.

1.b.vi. The learned officer erred in rejecting the books of account for failure to maintain shape or design wise stock in the stock register ignoring the fact that the stock register was duly maintained with product, quality and quantity by your appellant from which income could be deduced.

1.b.vii The learned officer erred in passing best judgement order without pointing out any error in the profit and loss account and the audited reports.

1.c. The learned officer grossly erred in not granting proper opportunity of being heard. Thus principle of natural justice is violated. Your appellant had a right to question the correctness or relevancy of the materials on the basis of which the officer proposes to make the best judgement assessment.

1.d. The learned officer grossly erred in ignoring CBDT instruction No. 767 dated



4.10.1974 and passed on over pitched assessment order u/s. 144 creating huge unrecoverable demand.

1.e. The learned officer erred in ignoring the past assessment records of your appellant, wherein accounts maintained by your appellant were duly accepted and even gross margins of your appellant were duly accepted."

5. The CIT(A) after taking two remand reports from the AO, noted that the Assessing Officer has not given any factual discrepancy in the books of account and only pointed out higher turnover and low gross profit rate comparing to preceding previous years for rejection of books of account. Accordingly, CIT(A) accepted the book results and allowed the ground No. 1 of the assessee vide Para 3.8 to 3.14 as under: -

"3.8 I have circumspected the facts and circumstances of the case and have carefully considered the findings of the Assessing Officer, additional evidences, remand report, counter representation of the Appellant and rejoinder of the Ld. A R I find that this is a glaring case where addition has been made on estimated N.P. @10% of turnover without any basis and that too after accepting G.P @0.34% in A.Y.2009-10, being immediate preceding



year. Obviously, Ld. Assessing Officer has made the addition on flimsy ground that there is some abnormality in maintenance of Accounts. It is seen from the Assessment Order that Ld. Assessing Officer has not pointed out any "factual discrepancy" in the Accounts nor has pointed out any defects in the Accounts. He has simply mentioned some abnormalities which are obviously insignificant and by no stretch of imagination can it be regarded as sufficient ground for rejecting the veracity of financial transactions. No recourse can be had to best judgement assessment where mistakes in the Accounts are insignificant. The facts in CIT vs. Padmachand Ramgopal (1970) 76 ITR 719 (SC) aptly demonstrate this proposition. If any estimate is made of assessable income, it must be based on adequate and relevant material vide: CIT vs Popular Electric Pvt. IS [1993] 203 ITR 630 (Cal.) Here in this case, it is found that Assessing Officer has estimated income by applying ratio of 10% as NP. without any evidence or material in possession. None of the reasons given by



the Assessing Officer is tenable for estimating such high net profit @10%. In Para 4.3 of Page 6. the Assessing Officer says that because of various abnormalities, it appears to him that Assessee is not engaged in actual trading/manufacturing activities but has arranged accommodation entries for various beneficiaries whereas in next Para 4.4, Pg.6 & 7. Assessing Officer says "the facts of the case of the assessee company is that it is engaged in manufacturing/trading of jewellery mostly with local parties. Since Assessee company is also dealing in diamond studded jewellery wherein the profit margin is more than gold jewellery." Thus, it is very evident that Assessing Officer's approach and reasoning is contradictory one, and also, self-defeating one "An assessment based on mere conjecture, surmise or suspicion, or on irrelevant and inadmissible evidences and material, is invalid and unsustainable in law vide; Umatharan Shaw & Bros. v. CIT, (1959) 37 ITR 271 (SC); Lachand Bhagat Ambica Ram v. CII, AIR 1959 SC 1295 (1959) 37 ITR 288 (SC); Dhakeshwari

Cotton Mills Ltd. v. CIT, AIR 1955 sc 65: (1954) 2 ITR 775 (SC); Dhiraj Lal Girdhari LaI v. CIT AIR 1955 SC 271 : (1954) 26 ITR 736 (SC). In making an assessment u/s.143(3) of the Income-tax Act, 1961, the ITO is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support an assessment u/s.143(3) of the Income-tax Act, 1961. Dhakeswari Cotton Mills Ltd. v. CIT, AIR 1955 SC 65 ' (1954) 26 ITR 775, 782 (SC). Also see: CIT v. Gokaldas Hukumchand, (1943) 11 ITR 462, 469 (Bom); Ram Datta Sita Ram of Basti, In re, (1947) 15 ITR 61, 85 (all.); United Pael Construction Co. v. CIT, (1966) 59 hR 424, 426 (MP); CIT v. R.Y. Durlabhji. (1955)80 Taxman 479 : (1955) 211 ITR 178, 189 (Raj.).

3.9. As regards, abjection against additional evidence filed under Rule 46A of the Income-tax Act, 1961 by the Assessing Officer by letter No.ITO-2(1)(4)/Remand Report/2014-15 dated 27.08.2014, it is pertinent to mention that none of the arguments or objections of



the Assessing Officer is found tenable because, of the reason that after considering the relevance of the evidences, the then Lid. 01(A) has admitted the same, matter was remanded under section 250(4) of the Income-Tax Act, 1961 for making effective enquiry. Thus, the opportunity was given to the Assessing Officer for establishing his claim or substantiating his reasoning. Further, it was also noticed that packing list was not submitted during the course of assessment proceeding as the same were not submitted during the course of assessment proceeding as the same were not called for by the Assessing Officer. It can be seen from the assessment order itself that Assessing Officer has not issued any specific show-cause stating his observation and reason for counter representation by the appellant. It can be seen from the statement of facts that Appellant has appeared through A.R. on more than 15 occasions and had filed reply and details on 04.10.2011, 14.09.2012, 23.09.2012, 03.12.2012, 14.12.2012, 19.12.2012 11.01.2013, 16.01.2013, 22.01.2013, 29.01.2013,



11.02.2013. 1802.2013 and 18.03.2013. These facts reveal that there was no any noncompliance or laxity on the part of the Appellant When Assessing Officer has not given any basis for estimation of N.P. @10% against his own admission of G.P. @0.34% in AY.2009-10, Appellant is entitled to counter such baseless estimation with necessary evidences. That is why in appellate proceedings. Appellant has submitted Packing List of purchase & sales on 12.06.2014. Since Assessing Officer has not asked for Packing List, it was not submitted during the assessment proceedings and when Assessing Officer had mentioned it in Assessment Order, at the back of Assessee, it is entitled to furnish the evidences in support of his counter representation. Therefore, I find no merit in the objection of Assessing Officer regarding admission of additional evidence. In fact, such Packing List of purchase & sales are not at all additional or new evidence, rather it is primary evidence which was always available alongwith books of accounts. Ld. Assessing Officer has wrongly presumed

that such packing list of purchase & sales are additional evidence.

3.10. The reasoning of the Assessing Officer that assessee has not furnished Freight Bills and Courier Bills is meaningless because, such jewellery item is not a bulky item which needs lorry, trucks or Tempo Such items are valuable items and are always transported through hand delivery. Therefore, the contention of the Appellant not accepted by the Assessing Officer in Para 5(i) of first Remand report, is worth disapprovable. Similarly, it carried no meaning to observe that purchase & sales bills do not bear names of the persons/agency through which goods were moved from one place to another place. The Appellant had given reply by letter dated 07.08.2014 that there is no practice in such business to mention persons or agency's name on purchase or sale bill. Similarly, the fact in respect of non-mention of description of Packing List because Appellant is not a manufacturer but is a trader, deals in mixed wholesale lots of jewellery and there is no practice of mentioning Design No. at Packing List.



It appears that Ld. Assessing Officer presumes something to be done by the Appellant while preparing sale bills or obtaining purchase bills, and if, same is not found mentioned, he goes to believe otherwise which is not sustainable. Further, the contention of the Assessing Officer Abat Packing List does not bear item wise valuation of jewellery for each piece separately, as the diamond and gold in jewellery are soon to be of varying quantity, is also having no meaning because, Appellant had explained that basic purpose of Packing List is totally goods at the time of receipts and delivery with physical weight and number of pieces with descriptions. The price and valuation of jewellery is mentioned in Invoices and not at Packing List because price is not charged on piece to piece basis like in retail, but on the basis of purity of Gold and embedded diamonds. All such descriptions are there in purchase bills as well as in sales bills. Similarly, it carries no meaning that Packing List bears no signature of any person because as evident from the evidences on record that Packing List bear stamp of giver of the



articles and recipient's sign on the Invoice after his satisfaction. Similarly, I find no meaning in the observation of the Assessing Officer that goods in transit have not been insured. On the contrary, it is a matter of record that insurance is being taken by CHA for outstation goods in transit. If a particular Assessee does any such business according to his own method, it is none of the business of the Assessing Officer to presume other manner of business. Therefore, the first remand report of the Assessing Officer is not worth-approval nor can it be basis for estimation of higher income without any contrary evidence.

3.11. Where the assessee maintains regular books of accounts which are duly audited and if, there is a decline in G.P. and disproportionate increase in expenses in certain heads in that by itself, would not empowere Assessing Officer to reject the book results. This has been held in the case of Century Tiles Ltd vs. JCIT [2014] 3 ITR (Tn.) 230 (Ahmadabad ITAT) Order dated 09.06.2014.



3.12. As regards second remand report dated 17.04.2015, it is pertinent to mention that even during second round of investigation, the Assessing Officer has failed to substantiate the basis of estimation of N.P.O.10% whereas, appellant had very successfully refuted the presumption of the Assessing Officer with evidence. By letter dated 16.03.2015, appellant has submitted the evidences of Industry's Average Gross Profit & Net Profit of the F.Y.2009-10 relevant to this year, which is 0.33% and (-)0.38%. The Appellant has given data of 24 companies doing trading of Diamond and Gold studded jewellery. That data has been obtained from the International Fiscal Association - India Branch on Capital Line Basis. While submitting the data, Appellant has removed data relating to the Companies/Firms engaged in manufacturing activities or Gold trading or Diamonds trading as Appellant is mainly engaged in trading of Gold & Diamonds jewellery. The average profit in this trade in the F.Y.2009-10 has been between 0.06% to (-)3.37% and overall average profit has been in negative. When these



evidences and counter facts were brought to the notice of the Assessing Officer for investigation and effective inquiry by order dated 23.03.2015, the Assessing Officer had failed to carry out any such investigation, enquiry or scrutiny but has merely submitted his "comments" claiming it as remand report. Such comments are counter representation of the Assessing Office, is self-defeating one. In his counter comments, Ld. Assessing Officer has mentioned that out of 24 companies referred to by the Appellant, 2 companies namely; M/s Kalpana Plastiks and M/s. Indo Bonito are doing Polymer Busiess and Television Software, hence, not comparable is factually incorrect because by letter dated 22.06.2015, Appellant has clarified that these 2 Companies are also engaged in trading in Gold & Diamond Jewellery, in addition to their other business like Polymer Business and Television Software. Obviously, Ld. Assessing Officer has not investigated the true Accounts of such parties and has gone to observe superficially. As regards, other 22 cases, Assessing Officer has failed to reveal otherwise, hence, there is

no reason whatsoever to disbelieve the authenticity of such information given by the Appellant. The Ld. Assessing Officer has not properly appreciated the facts of the case. When Appellant has clarified that data has been obtained through International Fiscal Association – India branch on Capital Line Basis, which is in public domain, there is no valid reason whatsoever with the Assessing Officer to challenge the authenticity of the data without contrary evidence in possession.

Further It is very evident that in Para 5 of the Remand report dated 17.04.2015, Assessing Officer himself has admitted that the list contains "Companies which are Public Ltd. Companies are listed on "Stock Exchange". It means Assessing Officer admits that other 22 companies are Public Ltd. Companies, hence, it is ridiculous to disbelieve the authenticity of the company or data. As regards, contention that these are Public Limited Companies whereas assessee is a Pvt. Ltd. Co., hence, these are not comparable is baseless because while comparing a case one has to see the business, area and the performance of the companies. It



has nothing to do with status of the company whether it is a Pvt. Co. or Listed Co. In order to have comparable data, one can rely only on information which is available in public domain and obviously, it is possible only when such companies are Ltd. Companies. Data and performance of closely held or Pvt. Co. could not be available in public domain. Therefore, I find no merit in such remand report which is more or less counter comments of the Assessing Officer. Obviously, Ld. Assessing Officer has failed to establish his claim or basis for estimation of N.P. @10% contradicting his own admission of G.P. of the Appellant of Assessment Year 2009-10 which is 0.34%. Thus I find no reason whatsoever to justify the stand of the Assessing Officer. As demonstrated by the Appellant that even in 22 remaining comparable cases, average G.P. comes to 0.34% and N.P. ratio is ranging from 0.66% to (-) 3.37% average (-) 0.42%, there is no reason to adopt 10% N.P.

3.13 As mentioned earlier Assessing Officer has not indicated any material on which his assessment is based, hence,

such addition cannot be sustained vide: Chiranjilal Steel Rolling Mills vs. cit (1972) 84 ITR 222(Punj). The Assessing Officer is not entitled to make a guess without evidence, vide cit vs. Maharajadhiraja Kameshwar Singh of Darbhanga (1993) 1 ITR 94 (PC). That an authority making a best judgement assessment must make an honest and fair estimate of the income of the assessee and though arbitrariness cannot be avoided in such estimate, the same must not be capricious but should have a reasonable nexus to be available material and the circumstances of the case. Brij Bhushan Lal Parduman Kumar v. Cit (1978) 115/ ITR 524, 530 (SC) AIR 1979 SC 209, K.T. Thomas V. Ag ITO, (1990) 49 Taxman 173 (1989) 78 CTR 97 (1990) 184 ITR 561, 565 (Ker).

3.14 Thus, in the light of above factual as well as legal references and discussions, I have reached to the conclusion that Assessing Officer has made the addition without any evidence or material in possession whereas Appellant has demonstrated the evidences justifying the ratio of N.P. disclosed by it, hence, I find no reason or basis to sustain such huge

addition based on some presumption abnormalities having no impact on purchase and sales price. In this case, purchase & sales are fully verifiable, hence, no estimation of G.P. and N.P. could be made. Therefore, the Assessing Officer is directed to delete the estimated income of ₹ 44,11,48,669/- and adopt the profit shown by the Appellant. Further, I find no reason to sustain the disallowance of various expenses like Labour chares and Legal & Professional Fees, etc. because Assessing Officer has not established that these expenses are in genuine, incorrect or false."

Aggrieved, Revenue preferred the appeal before Tribunal.

6. Before Tribunal, the Revenue has raised the only ground regarding the order of CIT(A) directing the Assessing Officer to delete the estimated income by applying the profit rate. We noted that the Revenue has not raised the issue of acceptance of book result by CIT(A) as there was no factual discrepancies in the book results as noted by him. Once, there is no ground regarding acceptance of book results by the CIT(A) which was rejected by Assessing Officer, we need not to go further as the CIT(A) has categorically given finding after taking two remand reports from Assessing Officer, wherein there is no iota of allegation that the book results were rejected based on some



discrepancies in the books of accounts. Hence, on this very ground we dismiss the appeal of Revenue. Accordingly, the appeal of Revenue is dismissed.

7. In the result, the appeal of Revenue is dismissed

Order pronounced in the open court on 03.02.2020

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)
(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)
(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 03.02.2020

सुदीप सरकार, व. निजी सचिव/ Sudip Sarkar, Sr.PS

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai