

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN, AM &  
SHRI PAVAN KUMAR GADALE, JM**

आयकरअपीलसं./ I.T.A. No. 1782/Mum/2013  
(निर्धारणवर्ष / Assessment Year: 2009-10)

Blue Bugget Jewels Pvt. Ltd. 314, Panchratna, Opera House, Mumbai-400 004	<b>बनाम/ Vs.</b>	ACIT 5(1), Room No. 568, 5 <sup>th</sup> floor, M. K. Road, Aayakar Bhavan, Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAACB9761C		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकीओरसे/ <b>Assessee by</b>	:	Shri K. Gopal & Ms. Neha Paranjpe, ARs
प्रत्यर्थीकीओरसे/ <b>Respondentby</b>	:	Mrs Kavita P. Kaushik, DR
<b>Virtual Date of Hearing</b>	:	05.10.2020
<b>Date of Pronouncement</b>	:	11.12.2020

आदेश / ORDER

**Per S. Rifaur Rahman, Accountant Member:**

The present appeal has been filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals) - 9 in short referred as ‘Ld. CIT(A)’, Mumbai dated 04.12.2012 for Assessment Year (in short AY) 2009-10.

2. The brief facts of the case are, assessee is a private limited company registered under Companies Act, 1956 was engaged in the business of manufacturing and trading of diamonds and gold jewellery. The Assessment year under consideration is 2009-10. The Assessee had filed its return of income declaring the total income at Rs.81,45,080/- for the present assessment year which was selected for the scrutiny assessment. During the course of the assessment proceedings, the AO asked for various details which were duly submitted by the Assessee from time to time.

3. During the assessment proceedings, based on the documents submitted, the AO observed as under:

3.1. The Assessee had valued closing stock of the polished diamond stock at Surat incorrectly. In view of the AO, the Assessee had fabricated its books of account, manipulated the stock and considered the purchases made prior to 25.03.2009 in the stock which in the opinion of the AO were already sold.

3.2. The Assessee had not maintained details such as quality and size of the polished diamonds in the stock register maintained for the year. Further, the AO observed that the Assessee had declared some small

percentage of profit on the purchases made till February, 2009 and thereafter, had booked the loss on the purchases made in the month of March, 2009. On page no.- 3 of the assessment order, the AO listed out the transactions entered in March, 2009.

3.3. With regard to rough diamonds, the AO noticed that the Assessee had not maintained the details of rough diamonds on the quality parameter.

3.4. After going through the sample invoices of labour charges, the AO observed that the invoices do not contain qualitative details of the polished diamonds and the basis of calculation of weight loss is not mentioned therein. The AO was also of the view that no qualitative information of diamond processing was maintained in the records. Further, it was observed by the AO that sale bills do not contain the details like weight, size and rate of diamonds.

4. On the basis of the aforesaid observations, the AO found the following defects:-

- i. The details such as quality, size, purity and clarity are not maintained for local purchases and sales of rough and polished diamonds. The Assessee had systematically

booked the loss of Rs. 56,64,499/- on the transactions entered in March, 2009.

ii. The AO, in the proceedings initiated against the director of Riddhi Siddhi diamonds u/s 131 of the Act, observed that all the purchases were made by the aforesaid entity from M/s. S. Jhaveri in which the directors of the Assessee were partners. The AO was of the view that the said transactions were circular in nature and in the absence of the qualitative details, it is not possible to ascertain whether these transactions were undertaken at arm's length price.

iii. The AO doubted the correctness and completeness of the accounts of the Assessee, rejected the same u/s 145(3) of the Act and proceeded to determine the income on the estimation basis. The total addition of Rs. 3,85,52,981/- was made by the AO to the returned income of the Assessee as under:

- i. The total loss, of Rs. 56,64,499/-; on the transactions entered in the month of March, 2009 was added to the returned income of the Assessee.
- ii. Rs. 3,28,88,392/- being 2% of the gross sales of Rs. 1,64,44,19,623/- was added on the

observation that the GP of the Assessee for the year is very low.

5. The AO passed the assessment order on 29.12.2011 u/s 143(3) of the Act against which the Assessee filed an appeal before the Ld. CIT(A)-9, Mumbai.

6. Before the Ld. CIT(A), the Assessee filed written submissions dated 11.08.2012 and 05.10.2012 including the application for admission of additional evidence (Pages 67 to 76 of the paper book). It is pointed out at this stage that the Assessee dealt with each observation of the AO and refuted the same in a detailed manner. Since the Assessee submitted some documents in the form of additional evidence, the Ld. CIT(A) sent it back to the AO and asked to furnish a copy of the remand report which is at Pagesno. 83 to 86 of the paper book. The remand report dated 12.11.2012 was submitted by the AO to the Ld. CIT(A) which was, thereafter handed over to the Assessee for its comments. Accordingly, the Assessee filed a reply dated 01.12.2012 which is at page no. 87 to 111 of the paper book.

7. Subsequently, the Ld. CIT(A) adjudicated the issue based on the aforesaid documents and dismissed the same on the following observations.

i. The Ld. CIT(A) rejected all the documents submitted in the form of additional evidence on the observations that they are not signed and moreover, they do not throw any light on the qualitative details of diamonds;

ii. The Ld. CIT(A) confirmed the stand of the AO of rejecting the books of account on the ground that the qualitative details of diamond were not maintained by the Appellant.

iii. The Ld. CIT(A) found the action of the AO reasonable and confirmed the estimation of GP @2% based on the GP rates of the preceding two assessment years.

iv. The Ld. CIT(A) relied on certain case laws in order to support his conclusion.

8. Aggrieved with the above order, assessee is in appeal before us on the grounds mentioned below:-

1. The Ld. Commissioner of Income Tax (Appeal)-9, Mumbai [hereinafter referred to as Ld. CIT(A)] erred in passing order dated 4<sup>th</sup> December, 2012 confirming the Assessment Order dated 29<sup>th</sup> December, 2011 passed under section 143(3) of the Act determining the total income of the Assessee at Rs. 4,68,37,090/- as against returned income of Rs. 81,45,080/- making following additions and disallowances:

<i>Sr. No</i>	<i>Particulars</i>	<i>Amount (Rs.)</i>
<i>A</i>	<i>Addition on account of loss suffered in local trading treating the same as fictitious losses</i>	<i>56,64,499</i>
<i>B</i>	<i>Estimation of Gross Profit by rejecting book results</i>	<i>3,28,88,392</i>

*A. Addition on account of loss suffered in local trading treating the same as fictitious losses Rs. 56,64,492/-*

2. The Ld. CIT(A) erred in confirming addition of Rs. 56,64,499/- treating the loss suffered in local trading as fictitious sales without appreciating the facts and circumstances of the case is not at all justified and the same may be deleted.

3. The Ld. CIT(A) failed to appreciate that the Assessee deals in variety of diamonds and therefore, it is not possible to maintain separate account of the diamonds

*traded by the Appellant. Thus the addition of Rs. 56,64,499/- is not at all justified and the same may be deleted.*

*4. Without prejudice to the above, the Ld. CIT(A) failed to appreciate that the Ld. A. O. has not been able to point out that the Assessee has understated its income by selling the diamonds outside Books of Account. Therefore, the addition of Rs. 56,64,499/- treating the loss as fictitious loss is not justified and hence, the same may be deleted.*

*B. Estimation of Gross Profit by rejecting book results – Rs. 3,28,88,392/-*

*5. The Ld. CIT(A) erred in confirming the action of the A.O. in making addition of 3,28,88,392/- by rejecting the books of accounts maintained by the Assessee without appreciating the facts and circumstances of the case. The Appellant, therefore, prays that the addition of Rs. 3,28,88,392/- is unjustified and hence, the same may be deleted.*

*6. The Ld. CIT(A) failed to appreciate that the Assessee maintains proper stock register giving the quantitative and qualitative details of diamonds and the same was furnished during the course of assessment proceedings and appellate proceedings. Hence, the*

*addition of Rs. 3,28,88,392/- is not at all justified and the same may be deleted.*

*7. The Assessee craves leave to add, amend, alter or delete any of the above grounds of appeal.*

9. With regard to ground no. 1 to 4 in respect of addition of Rs. 56,64,499/- on account of loss suffered in local trading treating the same as fictitious losses, Ld. AR submitted that AO disallowed the loss and made an addition of Rs. 56,64,499/- on the observations that the said transactions were carried out in the month of March, 2009 in order to book losses. The AO relied on the statement Mr. Kamat as recorded u/s 131 of the Act in which he had mentioned that his concern purchased the diamonds from M/s. S. Jhaveri (partnership firm of the directors of the assessee) and sold the same to the Assessee and concluded that the transactions were circular in nature. Before the Ld. CIT(A), the Assessee made a detailed submission which is at page no. 73 of the paper book and elaborately explained as to what was the commercial/business need which compelled the Assessee to sell the diamonds purchased from M/s. Riddhi Siddhi diamonds at loss. However, the Ld. CIT(A) did not find any objection in the

said submission. However, he remained silent on the said issue in the impugned order.

10. Ld. AR further submitted that Mr. Kamat, in his statement, has not mentioned that the transactions of M/s. Riddhi Siddhi diamonds with the Assessee were sham. As elaborately explained at Page 73 of the paper book, the Assessee had to sell diamonds below the purchase price due to the compelling factors and the said transactions cannot be considered as sham merely because the transactions that resulted in loss were with the known/related parties. He submitted that it is a well settled law that a law does not oblige the person to maximise his profits even with known/related entities. He strongly relies on the decisions of the Hon'ble Supreme Court in the cases of "*CIT v. A. Raman and Co. [1968] 67ITR11/ and CIT vs. Calcutta Discount Co. Ltd*". In the light of the abovementioned submission, he requested to delete the aforesaid addition of Rs. 56,64,499/-.

11. With regard to Ground no. 5 & 6 in respect of Addition of Rs. 3,28.88.392/- on account of estimation of gross profits by rejecting book results, Ld. AR submitted that the addition of Rs.

3,28,88,392/- as made by the AO and confirmed by the Ld. CIT(A) is in contradiction with the legal position and the facts under consideration. It is pointed out that though the AO in his order mentioned that he had rejected the books of account u/s 145(3) of the Act, the AO passed the assessment order dated 29.12.2011 u/s 143(3) of the Act determining the total income of the Assessee on the basis of the profit and loss account for the year under consideration which transpires from the page no. 9 of the assessment order dated 29.12.2011. Thus, he submitted that this stand of the AO is completely contrary to the rejection of accounts u/s 145(3) of the Act and thus, the addition of Rs. 3,28,88,392/- on the basis of rejection of accounts may be deleted.

12. He further submitted that the sole reason for the rejection of books of account is non-maintenance of qualitative details of diamonds. It is practically impossible for any diamond dealer to maintain size, quality details regarding each and every diamond purchased considering large quantities in which they are usually purchased and sold. It is an admitted fact that the Assessee had

maintained all other relevant details which are necessary for the valuation purpose. Further, before the Ld. CIT(A), the Assessee clarified that the stock at Surat was correctly maintained. However, on account of some inadvertence, some incorrect details were provided during the course of the assessment proceedings. Further, neither the provisions of Companies Act, 1956 nor the accounting standard-2 prescribed by the institute of chartered accountant of India impose an obligation on a dealer to maintain qualitative details of stock. It is pertinent to note that the accounts of the Assessee were subject to audit under Companies Act, 1956 as well as the Income Tax Act, 1961. Thus, he submitted that the Ld. CIT(A) as well as the AO erred in rejecting the books of account u/s 145(3) of the Act on this aspect. The Assessee relies on the decision of the Hon'ble ITAT-Ahmedabad bench in the case of "Pankaj Diamonds vs. A CIT [2010] 5 ITR(TRIB.) 469 (Ahmedabad)".

13. Ld. AR further relied on the decision of Hon'ble ITAT Ahmedabad C Bench in the case of DCIT vs M/s Kabir Jewels

Pvt Ltd. [ITA 3054/Ahd/20G93 (A.Y. 2006-07) at page 10 in para 5 has observed as under:-

*" The case cited by the A. O. are not comparable further he only made the ground for rejection of book result i.e. not maintaining qualitative details of the opening stock, purchase sale and closing stock. As various Co-ordinate Bench had decided that this is not a sufficient ground for rejecting the book-result. The A.O. has to bring on record other evidences which support the rejection of book result, which has not been found place in the assessment order."*

14. He further clarified that in the case of the above-mentioned case laws the G.P. rate was much higher as the same were prior to global melt down in the year 2008. The present case at hand is the previous year 1/4/2008 to 31/03/2009. The global melt down had effected jewellery and diamond business very badly. Hence, he prays that relying on the ratio laid down by the Hon'ble Tribunal in the above-mentioned case law the addition may be deleted.

15. He further submitted that AO as well as the Ld. CIT(A) did not consider the submissions of the assessee and rejected the

books of account and estimated the GP @2% on the observation that the Assessee had disclosed similar gross profit rates for the preceding years. It is submitted that the Assessee categorically mentioned before both the Ld. authorities, more specifically before the Ld. CIT(A) the reasons for such a fall in GP rate for the present year which is at pages 71 and 72 of the paper book. However, such reasons were not appreciated by the Ld. CIT(A). It is now well settled proposition of law that mere fall in GP is not a sufficient reason to reject books of account u/s 145(3) of the Act and relied on the following decisions:-

- i. CIT vs. Smt. Poonam Rani [2010] 192 Taxman 167 (Delhi)
- ii. CIT vs. Swastik Foods- [2015] 61 taxmann.com 83 (Himachal Pradesh) .
- iii. PCIT vs. IBILT Technologies Ltd- [2018] 98 taxmann.com 255 (Delhi)

16. He further submitted that the case laws relied upon by the Ld. CIT(A) in the last paragraph of the impugned order are not

applicable to the facts under consideration. In "*Shri Venkateshwar Sugar Mills vs. CIT(A) [2012] 341ITR 588 (Allahabad)*", the Hon'ble High Court upheld the rejection of accounts as certain discrepancies were found in the books of account and no stock register for gunny bags, diesel consumption as well as consumable stores like sulphur, salt and lime, etc., were not open for proper verification. In "*CIT vs. Indo Nippon Chemicals Co. Ltd [2003] 261 ITR 275 (SC)*" the issue was with regard to valuation of stock and there was no rejection of accounts u/s 145(3) of the Act. In "*Amba Rice mills vs. CIT [2010] 325 ITR 33 (Punjab & Haryana)*", again the question of rejection of books of account never existed and the case was decided on peculiar facts. It is submitted that none of the above decisions applies to the present issue under consideration and the Ld. CIT(A) is not correct in relying on the said decisions having distinguishing features. Thus, he requested to delete the addition of Rs. 3,28,88,392/-.

17. On the other hand, Ld. DR submitted that AO has verified the books of account, but not on the basis of GP. He objected to

the view of Ld. AR that AO proceeded to make addition based on Gross Profit. For that purpose, he brought to our notice page no. 3 & 4 of the assessment order. He relied in the case of PCIT vrs. Sameer Diamonds Exports Pvt. Ltd. 71 ITD 75 (1999), which is similar to assessee's own case and he heavily relied on the order of AO and Ld. CIT(A).

18. Considered the rival submission and material placed on record. With regard to ground no. 1, we notice from the record that AO observed while rejecting the losses declared by assessee to the extent of Rs.56,64,499/- that on perusal of the export invoices, it is observed by him that the quality of diamonds exported has complete information. However, there is no such details are available in various sales and purchase invoices in respect of losses declared. We notice that AO has not brought on record whether he expressing his opinion on polished diamonds or unpolished. Assessee has explained in their submission before both authorities that they deal with polished as well as unpolished. It is practice of the assessee that they trade on unpolished diamonds without any specification. With regard to

polished diamonds, they categorise the diamonds as per the lot and sell based on the diamond. Any left over in that lot is kept in the same packet. When they sale locally, it is evaluated at the time of point of sale and complete the transaction. The balance is again kept in the same packet. It is not practical to deal in such huge category of quality with their size and cut, every industry has it its own way of dealing with the stock. The tax authorities has to understand the industry and their custom of dealing with their stock keeping. Just because in export invoices, it is mentioned and exported as such, it is does not mean that the stock also has to be maintained similar manner. The export orders are received with particular specification and the same are exported. In the local market, the sales are completed based on the required specification and transactions are completed at the point of sale evaluation where both the parties buyer and seller agrees with the terms of quality and price.

19. In the given case, assessee has dealt with the related persons and just because, it is dealt with the related persons and assessee incurred certain loss, it does not mean that assessee had

only involve in booking fictitious losses. There is no specific finding by the tax authorities that assessee has sold and recorded such losses with specific findings. In case, AO has doubt with the transaction, he could have verified the individual transactions with specification of sales and specification of export invoices at the similar point of time. There is no such investigation merely based on the observation that assessee has not maintained stock register with quality, he has rejected the losses recorded by the assessee. Even Ld. CIT(A) rejected the paper book just because there are some discrepancies in the submission of certain documents, he could have asked the assessee to submit proper documents before him and he could have given another opportunity to assessee to rectify the defects. In our considered view, the dealings in the diamonds require special knowledge, industry experience and the rates are volatile. AO cannot presume and made addition or reject the transaction merely because of losses declared by the assessee. Therefore, we are inclined to allow the ground raised by the assessee. Accordingly, ground no. 1 raised by assessee is **allowed**.

20. With regard to ground no. 2, we notice that the tax authorities have rejected the book results merely because assessee has not maintained stock register quality wise. As discussed in the previous para, it is the method followed by the assessee and it suits the assessee. As held in the case of M/S Kabir Jewels Pvt. Ltd. (supra), the Co-ordinate Bench has observed that AO only made the ground for rejection of books result i.e. not maintaining qualitative details of the opening stock, purchase, sales and closing stock. It held that it is not a sufficient ground for rejecting the book results. The AO has to bring on record other evidences which support the rejection of book results.

21. In the present case also, AO has heavily relied on the qualitative details, which assessee has not maintained and for this reason only the books results were rejected. Respectfully following the above decision i.e. Kabir Jewels (supra), we are inclined to come to the conclusion that AO cannot reject the book result merely on this issues of maintaining qualitative details in the stock register.

22. Further, we notice that AO has observed in his order that the assessee has declared meager GP compared to earlier two assessment years. We notice from the record that the observation of the AO is not correct, as per book result, the assessee has achieved 2.42% of GP and 0.46% of NP. When compared to previous years figure of 2.86% and 0.68% respectively. Even AO rejected the book results in order to estimate the G.P, he should have matched the average previous two years GP and NP ratios. In our view, AO proceeded with the wrong notion that there is no sufficient GP, he accordingly added 2% as additional GP.

23. We reject the proposition of making 2% additional GP as the additional net profit. The revenue authorities can not presume the way they expect the assessee to conduct their business and achieve the expected margin in each transaction is not practical. Therefore, in our view, the result has to be evaluated based on the market situation and the regular practice of the assessee over the years. Since, the diamond industry rates and qualities are based on market demand and supply, further, the assessee maintains the books in this particular method and the same method was

followed over the years, the results of those years were not rejected. Therefore, we are inclined to accept the submission of the assessee and further Ld. DR relied on the case Sameer Diamonds Exports (supra). In this case, the assessee had exported diamond to its sister concern abroad and failed to disclose the details of procurement of diamond with qualitative details. Because of this reason, the books were rejected. In the given case, AO accepts that assessee has declared all the details for the exports. The facts are distinguishable to the present case. Accordingly ground no. 2 raised by the assessee is **allowed**.

24. In the net result, the appeal filed by the assessee is **allowed**.

*Order pronounced in the open court on 11.12.2020.*

<i>Sd/-</i> (Pavan Kumar Gadale) न्यायिकसदस्य / Judicial Member मुंबई Mumbai; दिनांक Dated : <i>Sr.PS. Dhananjay</i>	<i>Sd/-</i> (S. Rifaur Rahman) लेखासदस्य / Accountant Member 11.12.2020
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**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Assessee
2. प्रत्यर्थी/ The Respondent

3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)**  
**आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**