

IN THE INCOME TAX APPELLATE TRIBUNAL  
"D" Bench, Mumbai  
Before Shri Shamim Yahya (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No.02/Mum/2020 (Assessment Year 2015-16)

ITO-25(3)(3) Room NO.235 2 <sup>nd</sup> Floor, Kautilya Bhawan, BKC, Bandra(E) Mumbai-400 051	Vs.	Roomy Exports A-10, Plot No.62A Shubham Block No.6 Vile Parle(W) Mumbai-400 056  PAN : AAAGR2652P
(Appellant)		(Respondent)

Assessee by	Shri Rashmikant Modi
Department by	Shri Manoj Kumar Singh
Date of Hearing	25.08.2021
Date of Pronouncement	15 .11.2021

O R D E R

Per Shamim Yahya (AM) :-

This appeal by the revenue is directed against the order of learned Commissioner of Income Tax (Appeals)-37 dated 31.10.2019 and pertains to assessment year 2015-16.

2. Grounds of appeal read as under:-

- 1) "On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs.3,84,78,4577- made on account of suppression of sales without appreciating the fact that the assessee made the sale to M/s. Pragati Gems at below the cost of purchase to the assessee as can be evident from the average value of opening stock and purchase made before the sales made to M/s. Pragati Gems."
- 2) "On the facts and circumstances of the case and in law, the Id. CIT(A) erred in deleting the addition of Rs.98,69,057/- made on account of under valuation of closing stock without appreciating the fact that the cost price of each polished diamond comes to Rs.10,806/- per carat whereas as per the assessee, the per carat value of manufactured goods worked out to Rs.10,549/- which is mainly because of the fact that the assessee excluded wages & electricity expenses from labour charges while arriving at the cost of polished diamonds."

3. Brief facts of the case are that the assessee firm is a partnership. The assessee firms business is the same as in the last several years i.e. import of rough diamonds, getting them cut and polished from the third party by payment of manufacturing labour charges and exporting /local selling the manufactured polished diamonds and also sale and purchase of rough diamonds.

4. The AO in this case noted that the During the course of assessment proceedings it is noticed that the assessee has sold 158313.72 cts. of rough diamonds for the total consideration of Rs. 2,27,38,298/- thereby making rate of sale per cts at Rs. 143/- however on perusal of the purchase register and opening stock details it is found that the average rate per cts. is Rs. 786/-. Therefore the assessee vide letter dated 15.12.207 was show caused why the suppressed sales shown by the assessee should not be added to the total income.

5. Considering the Assessee's reply AO noted that as per the reply of the assessee it is seen that he has submitted copies of tax invoices regarding sales made to M/s. Pragati Gems, bank statement highlighting the receipt of sale considerations through banking channel, copy of ledger account of Pragati Gems, confirmatory statement of Pragati Gems for F.Y 2014-15 in order to prove that there is no suppression of sales. However, AO was not satisfied. He held that it cannot be deduced from all the documents furnished by the assessee if the sales made were suppressed or not. Merely filing all these documents does not mean the sales were not suppressed.

That the assessee has further stated that the bills regarding the transactions were submitted in this office however on further perusal of the documents it is seen that the assessee has not furnished complete documentary evidence of the transactions rather only selective bills have been submitted. That the bills produced by the

assessee for showing the opening stock are not complete and moreover the collective value of the bills is less than the value showed by the assessee in Opening stock in Annexure-VII to form No. 3CD as reproduced below which proves that the bills submitted by the assessee are not complete. That therefore, It is clear that the contention of the assessee is not verifiable and hence not justified. Moreover the assessee has stated that there were some purchases made during the last year which were lying in opening stock but on further perusal of the documents filed by the assessee it can be clearly seen that purchase value of rough diamonds per cts. in opening stock is Rs. 1014/- which is much more the average value of sale per ct. made by the assessee to M/s. Pragati Gems. That it is clear that the assessee made the sales at lower price in his books of account and got the remaining amount in cash from M/s. Pragati Gems. That in view of above facts, the sale value of the assessee per ct. is estimated as per lowest rate of purchase made per ct. during the year at Rs. 698/- and hence an addition of Rs. 3,84,78,457/- is being made on account of suppressed sales. Proceedings u/s. 274 r.w.s 271(1)(c) are hereby initiated for furnishing inaccurate particulars of income.

6. Further observation of AO are as under:-

“The copy of value and quantity of opening stock submitted by assessee is reproduced as under

ROOMY EXPORTS

F.Y.31.03.2015  
A.Y.2Q15-2016

ANNEXURE-VII TO FORM NO.3CD  
QUANTITATIVE DETAILS IN CARATS –

RAW MATERIALS:	ROUGH DIAMONDS Cts.	REJECTION DIAMONDS Cts.
Opening Stock	75,802.23	31,510.41
Purchases during the year	4,84,471.82,	

Miscellaneous Issue		
Consumption during the year	2,14,087.86	0
Transfer to Rejection	25,326.68	25,326.68
Sales during the year	1,58,313.72	
Closing Stock	1,62,545.79	56,837.09
Field of finished products	38,401.56	
Percentage of Yield	17.94	

OPENING STOCK

5,11,79,063	Rough diamond	7,69,12,545
21,45,821	Rejection Diamonds	7,87,760
2,21,48,540	Polished diamonds	3,76,21,822
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7,54,73,424	PURCHASES:(Schedule - I)	11,53,22,127
33,06,07,364	Manufacturing Exp(schd -II)	68,58,41,577
8,59,31,396	Gross profit	13,77,68,890
2,90,84,626		3,07,70,285
<hr/>		
52,10,96,810		96,97,02,879
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95,71,418	Sales &: Adm. Expenses (Schd - III)	1,17,84,176
23,76,516	Depreciation	23,79,184
1,02,22,176	Interest Expenses(Schd IV)	1,01,73,996
15,00,000	Salary to Partner	10,50,000
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2,36,70,110		2,53,87,356
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16,16,000	Income tax(Schd V)	19,64,357
	Net Profit Trfd to Partner A/c	
38,29,440	(Schedule - A)	39,02,978
<u>2,91,15,550</u>		<u>3,12,54,691</u>

*Note; Signatories to this Profit & Loss Account' also signatory to schedule"*

7. Apropos issue of addition to value of closing stock:-

The AO after making the addition for suppressed sale noted that it was further seen from the submissions made by the assessee and documents/information available on record that the assessee has undervalued the closing stock. That during the year labour charges were claimed by assessee through his P&L account at Rs. 13,77,68,890/- and if the same are included in the cost, the cost of manufacture of polished diamond comes to Rs. 41,49,91,343/- and if GP of 7% is added on the cost it comes to Rs. 2,90,49,394/-. That accordingly the total selling price of polished diamonds manufactured during the year comes to Rs. 44,40,40,737/-. That the total

manufactured diamonds during the year are 38,401 cts. That therefore the total selling price of each diamond comes to Rs. 11563/- per ct. (44,40,40,737 7 38401 cts.). The cost price of each polished diamond comes to Rs. 10806 per ct. However on verification of the stock register along with the valuation of manufacturing and local purchases, the value of manufactured goods comes to Rs. 40,51,08,672/- whereas per carat value comes to Rs. 10549/-. That therefore the assessee was show caused why the difference value of Rs. 98,69,057/- @(257) should not be added to the closing stock and compute the income accordingly.

8. AO reproduced the assessee submission as under:-

“In further support of the value of dosing stock of polished diamonds assigned in continuation of submissions already made, we are also enclosing the lot wise working of rough diamonds manufactured during the year along with resultant polished diamonds received and cost of same. It is submitted that the cost of 38,401.56 carats of polished diamonds manufactured during the year is Rs. 40,51,38,164/- as against working of Rs. 41,49,91.343/- mentioned in the above notice. The difference between the working done in the above notice and our working is because we have considered only labour charges paid for cutting & polishing of rough diamonds, whereas your honor has also considered wages and electricity expenses of Rs. 93,16,174/-. Secondly, in the working in the notice, value of rejection rough diamonds of Rs, 6,33,167/- has not been deducted from the value of rough diamonds used in manufacturing. If, we adjust this working for these two factors, cost of manufacturing will come at Rs, 40,51,38.164/-.

Secondly, even as per working in the notice, cost of manufacturing comes to Rs. 10,806/- per carat (Rs.41,49,91,343/38401.56 carats) as against cost of manufacturing of Rs. 10.549/- per carat (40,51,08.672/38401.56 carats) as submitted. In fact, as our claim of cost of manufacturing is lower than working in the notice, it means that we have claimed lesser cost as deduction while working out profit of the business and it cannot lead to upward adjustment to returned income.

It may also be appreciated that, actually closing stock value adopted by us of Rs, 35,59,01,978/- for 30,289.53 carats give average price of Rs.11,750/- per carat which is much higher than cost of manufacturing worked out of Rs.10,806/- in the notice and thus, there arises no question of an/ adjustment to returned income on account of alleged under valuation of closing stock of polished diamonds for which the inventory is already filed and documented.”

9. However, the AO was not satisfied, he held as under:-

“The reply of the assessee has been considered and the same is not acceptable as the labour charges claimed by assessee in P&L account includes all the expenses that are borne by the assessee to manufacture diamonds. Therefore assessee's claim that the labour charges should not include wages and electricity expense is totally unacceptable as these are some of the main elements used while polishing the rough diamonds It is not possible to polish the rough diamonds without the help of any mechanical device. Secondly the assessee has claimed that cost of manufacturing at Rs. 10549 per ct, is lower as compared to the cost of manufacturing of Rs. 10806 per ct, as per the notice which means that the assessee has claimed lesser cost as deduction but the same is not acceptable as It is clear that the assessee has undervalued the cost of polished diamonds to reduce his profit in order to reduce his tax liability. In view of above facts, the cost value of polished diamonds is adopted as Rs. 10806/- per ct. and accordingly difference of Rs. 98,69,057/- is being added to the total income of the assessee.”

10. Upon assessee’s appeal Ld.CIT(A) deleted the addition on account of suppressed sales by holding as under:-

“In the instant case, the AO had taken .an average and then made a conclusion that the purchase value of rough diamonds per caret in opening stock is Rs. 1014/- which is much more than the average value of sale per caret made by the assessee to M/s Pragati Gems. Further it has been stated that it is clear that amount in cash was taken from M/s Pragati Gems. The AO has further given a concluding statement that the sale value of the assessee per caret is estimated as per lowest rate of purchase made per caret during the year at Rs. 698/- and hence an addition of Rs. 3,84,78,457/- is being made on account of suppressed sales. The entire addition has been made without, documenting any evidence or any sound logic (like 40A(2)(b) transaction / related party transactions sales etc) to substantiate their argument.

During the appellate proceedings, the appellant’s AR submitted at page no.269 of the paper book where transaction wise details of rough diamond sales were given.. The gist of that chart was that it is not true that in all sales transactions, there is a loss but there are also some transactions where there is a gain and there may be a situation that the over all result of the sales is a loss because these sales are made after various considerations. To explain his case, he has presented the chart on page 269 of the paper book where the transaction wise details of rough diamond sales are given:-

Transaction wise details of rough diamond sales			
carats	Cost Value	Sales Value	Profit

30,000.15	67,50,034.00	67,50,034.00	-
25,126.58	49,49,247.00	50,50,443.00	1,01,196.00
1,03,186.99	1,07,01,458.00	1,09,37,821.00	2,36,363.00
			3,37,559.00

Thus, it is seen that on some transactions there are profits also and thus the conclusion of the AO is based on entirely misplaced findings.

Apart from this, to gather the macro picture of the business, during the appellate proceedings, the appellant's AR was asked to submit a tabular chart of AY wise details. He has submitted the details year wise gross receipts, gross profit, net profit, G,P. ratio, N.P. ratio and the years in which the scrutiny assessment has been made, which is as follows :-

<u>ROOMY EXPORTS A.Y. 2015-16</u>						
G.P/N.P. RATIO TREND						
FINANCIAL YEAR	Assessment	GROSS RECEIPTS	GROSS PROFIT/LOSS	NET PROFIT	GP RATIO	NP RATIO
A.Y. 2019-20		45,25,28,511	2,58,04,655	15,49,436	5.70	0.34
A.Y. 2018-19		61,98,05,445	3,57,35,218	16,70,071	5.77	0.27

A.Y. 2017-18		60,16,15,495	3,61,62,501	6,93,721	6.01	0.12
A.Y. 2016-17	U/S 143(3)	70,92,74,871	2,97,79,669	8,41,910	4.20	0.12
A.Y. 2015-16	U/S 143(3)	48,17,58,948	3,07,70,285	39,02,978	6.39	0.81
A.Y. 2014-15	U/S 143(3)	40,57,74,683	3,57,04,824	38,29,440	8.80	0.94
A.Y. 2013-14		24,62,91,648	2,53,00,898	9,83,069	10.27	0.40
A.Y. 2012-13		19,41,00,391	1,88,31,000	12,26,401	9.70	0.63
A.Y. 2011-12		16,75,14,601	1,88,31,000	5,56,788	9.93	0.33

After perusal of the chart, it is seen that the assessee's case has been scrutinized in the previous AY i.e. 2014-15 and the subsequent AY i.e. AY 2016-17. In the AY 2014-15 only additions of Rs. 97,843/- has been made on account of adhoc disallowances. In the subsequent AY i.e. 2016-17, the returned income was accepted as it is and no additions were made in this year also. In the instant year i.e. 2015-16 the AO has made an effort to dissect the manufacturing process and has made an attempt to understand the business process and on the basis of understanding has made certain additions. Before I chart on to the specific grounds, it is seen that in the current year Net Profit ratio is 0.81 which is on higher side while comparing the performance in the earlier / subsequent four years. The Net Profit ratio of the assessee is in the band - width of 0.12 to 0.91. The same is the picture with Gross profit ratio with in the band - width of 4.20 to 10.27 and in the instant year this ratio is 6.39. These two broad macro indicators do not indicate any anomaly in the ratios or to an overall profit ratio declared by the assessee. After an analysis of these broad parameters where I do not visualise any significant shift. I have also perused the scrutiny assessment orders of AY 2014-15 and. 2016-17 and it is seen that some adhoc disallowances has been made which is less than Rs. One lakh in AY 2014-15 and the Return for AY 2016-17 was accepted without any addition. Considering that in the previous / subsequent year, after scrutinizing, the AO has not given any adverse inference with regard to the maintenance of accounts or sales / purchases, the

inferences drawn by the AO in this year are also not factually or legally sound. In absence of a cogent finding by the AO, the addition made by her on account of suppression of sales is deleted.

11. As regards, the increasing the valuation of the closing stock. Ld.CIT(A) noted that AO has added the different amount of Rs. 98,69,057/- by adding this figure to the total income of the assessee which in fact to be reduced from the profit shown by the assessee, if the assessee has claimed lesser cost of manufacturing as stated by the A.O. That the AO finally worked out by simply referring to the face of profit and loss account i.e. 257 (10,806-10,549) and issued show cause why the same should not be considered as the assessee has undervalued its overall cost of polished diamonds to reduce the profit and hence be added to the closing stock amounting to Rs. 98,69,057/- (38401x257). The Ld.CIT(A) in this regard observed as under:-

“The appellant’s AR rebuttal to the AO’s question was replied vide letter dated 22.12.2017 which stated as under:

1. If assessee has claimed less manufacturing cost as per AO’s above working and allegation than it amounts to in fact the profit is already shown at increased level already the assessee has shown higher profit i.e. lower claim of cost higher the profit.
2. The AO has completely forgotten to consider and compare actual rate at which the closing stock of polished diamond has been valued by the assessee i.e. 11.750/- per carte (35,59,01,978/ 30,290) which is higher than the above two artificial rates of cost arrived at by the A.O. i.e. 10,806 & 10,549/-.

After going through the facts and the nature of addition made it is observed that the AO is not very clear while making addition. At the same it is also relevant at that the assessee’s books are audited under section 44AB of the Act wherein the value of the closing stock is certified.”

12. He further submitted that at the appellant stage assessee also submitted the various details of closing stock for rough diamonds and polished diamonds. He reproduced those from page No. 24 to 28 of his order. Thereafter, he held as under:-

“The appellant’s AR rebuttal to the AO’s question was replied vide letter dated 22.12.2017 which stated as under:

3. If assessee has claimed less manufacturing cost as per AO's above working and allegation than it amounts to in fact the profit is already shown at increased level already the assessee has shown higher profit i.e. lower claim of cost higher the profit.
4. The AO has completely forgotten to consider and compare actual rate at which the closing stock of polished diamond has been valued by the assessee i.e. 11.750/- per carte (35,59,01,978/ 30,290) which is higher than the above two artificial rates of cost arrived at by the A.O. i.e. 10,806 & 10,549/-.

After going through the facts and the nature of addition made it is observed that the AO is not very clear while making addition. At the same it is also relevant at that the assessee's books are audited under section 44AB of the Act wherein the value of the closing stock is certified.”

13. Thereafter, Ld.CIT(A) referred to certain case laws that addition should not be based upon conjunctures. He concluded as under:-

“It is important to note here that as per books, the value of the closing stock of Polished Diamonds is much higher i.e. 11,750/- (Rs.35,59,01,978/30,289.53 carats) which is already higher than the amount wrongly worked out by the AO i.e. Rs.10,806/-. Therefore, there is no case for making any addition on this ground.

Accordingly, the addition made by the A.O. of Rs. 98,69,057/- to the total income by alleging less cost of manufacturing claimed by the assessee is bad both on fact as well as law. Accordingly, the addition made by the AO is deleted.”

14. Against the above order, revenue is in appeal before us.

15. We have heard both the parties and perused the records. We note that with regard to addition on account of suppressed sales Ld.CIT(A) has referred to various charts and ratios analysis presented before him by the assessee. There is no whisper that these additional documents and submissions were given to the AO for his report thereon. In our considered opinion, Ld.CIT(A)'s act of accepting these submissions without the AO having an opportunity to factually verify them and offer his comment vitiates the order of Ld.CIT(A). The Ld.CIT(A) has accepted these submissions and ratios on gospel truth without even mentioning that they have been verified by him for factual accuracy. This makes the order of Ld.CIT(A) legally unsustainable.

Similar in the portion with regard to stock addition. Here also additional documents have been referred without AO's comment thereon. The Ld.CIT(A) clearly referred that these documents were produced at appellate stage. This clearly shows there that is violation of rule 46A. Hence in the facts and circumstances of the case, we consider it appropriate to remit the issue to the file of the AO. The AO shall consider all the issues afresh after taking into account the additional document and submission before Ld.CIT(A). The AO shall give the assessee proper opportunity of being heard.

16. In the result, revenue appeal is allowed for statistical purpose.

Pronounced in the open court on 15 .11.2021.

Sd/-  
(PAVAN KUMAR GADALE)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 15 /11/2021  
*Thirumalesh, Sr.PS*

Copy of the Order forwarded to :

The Appellant

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

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai