

IN THE INCOME TAX APPELLATE TRIBUNAL  
“F” BENCH, MUMBAI  
BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 1983/Mum/2020  
(A.Y: 2012-13)

Uni Design Jewellery (India) Pvt Ltd., Plot No. 3, Uni Design House, SeepzWicel, Opp Seepz Main Gate, Andheri (E), Mumbai - 400093	Vs.	DCIT, CC-1(2) 904, 9 <sup>th</sup> Floor, Old CGO Bldg, MK Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACU3940J		
Appellant	..	Respondent

Appellant by :	Mr.Vijay Mehta.C A. AR
Respondent by :	Mr.S.N. Kabra.Sr. DR

Date of Hearing	21.01.2022
Date of Pronouncement	10.02.2022

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals)-48,Mumbai passed u/s 143(3) r.w.s 153A and 250 of the Act. The assessee has raised the following grounds of appeal:

*Ground No. 1:*

*On the facts and circumstances of the case and in law, the*

*CIT(E) erred in confirming the stand of the AO in disallowing an amount of Rs. 3,29,387/- being 15% of the total miscellaneous expenses on ad-hoc basis. The appellant prays that the said disallowance may please be deleted.*

*Ground No. 2:*

*On the facts and circumstances of the case and in law, the CIT(A) erred in confirming the stand of the Ld AO in disallowing an amount of Rs. 2,68,727/- being 15% of the total conveyance and vehicle expenses on ad-hoc basis. The appellant prays that the said disallowance may please be deleted.*

*Ground No. 3*

*On the facts and circumstance of the case and in law, the Hon'ble CIT(A) erred in confirming the stand of Ld. AO in making an addition of Rs. 7,72,53,517/- u/s 69A of the Act by treating difference between book stock and physical stock of diamond, gold, platinum and color stone as out of book sale. The appellant prays that the said addition may please be deleted.*

*Ground NO. 4*

*On the facts and circumstances of the case and in law, the CIT(A) erred in confirming the stand of the AO in making an addition of Rs. 5,90,010/- u/s 69B of the Act by treating difference between physical stock and book stock of pearls as unexplained investment. The appellant prays that the said addition may be deleted.*

*The Appellant craves leave to add to, alter any/ or amend the foregoing grounds of appeal.*

2. The Brief facts of the case are that, the assessee company is engaged in the business of manufacturing of diamond studded Gold and Platinum jewellery. A search and seizure operations was conducted u/s 132

of the Act on the assessee group company M/S Mahendra Brothers Exports Pvt Ltd and its associates. The assessee has filed return of income for the A.Y 2012-13 on 29.09.2012 with a total income of Rs.3,47,74,594/-. Subsequently, the case was selected for scrutiny and the A.O has issued notice u/s 143(2) and 142(1) of the Act along with questionnaire. In compliance, the Ld. AR of the assessee appeared from time to time and filed the details and the case was discussed. The assessee has huge turnover and has other operating incomes. The assessee has produced the books of accounts for examination and the purchases/sales have been verified by the A.O. A search operation was carried out u/s 132 / 133A of the Act on the group concerns- 18 entities on 8-8-201. Whereas the assessee has filed the explanations and the bills/invoices of purchases and sales have been produced and verified, there were also some loose papers found at the time of search and were examined. (i) The Assessing officer (A.O) on examination of miscellaneous expenses account found that they are not properly supported and are un verifiable and estimated disallowance @ 15% which

worked out to Rs. 3,29,387/-.(ii) Similarly in respect of conveyance & vehicle expenses the assessee could not produced the complete details and the vouchers are remained unverified. The AO has estimated the adhoc disallowance @ 15% being Rs.2,68,727/-.(iii) The A.O found that there is stock difference in search carried out in respect of various stocks of precious metals as referred at Para 6 of the AO order and the assessee has filed the detailed explanations on 15.11.2011. The AO dealt on the facts and reconciliation due to weight difference. The assessee has explained the valuation of stock and the basis. The A.O. made the analysis and has observed as under:

	Gold (gms)	Platinum (gms)	Diamond (gms)	Colour Stones (gms)	Pearls (cts)
Book stock as on 08.08.2011	1,03,992.32	22,338.78	20,424.11	40,799.93	7,366.68
Physical stock invenorised on date of search after correction of calculation mistake	98972.805	16574.482	16566.56	31072.17	4719.17
Difference	(5019.515)	(5764.298)	(3857.55)	(9727.76)	(2647.51)

*Thus it clearly establishes that there are discrepancies in the stock of the assessee and shortage of stock as compare to the book stock clearly indicates that asses see is indulged in out of books sales. The submission made by the assessee has been considered. The difference because of calculation mistake has been rectified. As far as the availability of stock*

*in hand on the basis of seized paper is concerned, the same is verified from the seized papers/documents. To the extent the same is found verifiable is being given effect in the table below. However, the assessee's submission in respect of all the other papers which were not found at the time of search is being denied. Whatever the assessee has explained at the time of search and the papers have been produced on the day of search have already been given effect to. The position of a stock as on the date of search was given by the assessee itself. However, during the course of assessment proceedings the assessee proposed some adjustments in the stock on the date of the search on the basis of some fresh evidences. Since these evidences were not produced at the time of search, the same- are not acceptable.*

3. Further, the A.O. tried to reconcile the difference of stock of the precious metals and made the final adjustment of stock and value as under:

<i>Details</i>	<i>Adjusted physical stock as above</i>	<i>Adjusted book stock as on date of search i.e 08.08.2011</i>	<i>Actual difference in the stock</i>	<i>Rate</i>	<i>Valuation</i>
<i>Diamond</i>	<i>16,566.56</i>	<i>18,304.48</i>	<i>(1,737.92)</i>	<i>34,000</i>	<i>5,90,89,280</i>
<i>Gold</i>	<i>98,970.27</i>	<i>96,464.54</i>	<i>(2,505.73)</i>	<i>2,585</i>	<i>64,77,309</i>
<i>Platinum</i>	<i>16,574</i>	<i>20,807.53</i>	<i>(4,233.05)</i>	<i>2,590</i>	<i>1,09,63,600</i>
<i>Color stones</i>	<i>32,047.20</i>	<i>31,143.04</i>	<i>(904.16)</i>	<i>800</i>	<i>7,23,328</i>
<i>Pearls</i>	<i>5,112.43</i>	<i>4,719.09</i>	<i>393.34</i>	<i>1,500</i>	<i>5,90,010</i>
					<i>7,78,43,527</i>

The A.O was not satisfied with the contentions/submissions that there is no difference in the stock and the assessee has already provided the various information and details of stock and the weighing difference. But the AO has treated the value of

shortages as sale out of books and made the addition of Rs.7,72,53,517/- u/s 69A of the Act and in respect of the value of excess stock of Rs.5,90,010/- found in pearls is treated as unexplained investment u/s 69B of the Act and assessed the total income of Rs.11,32,16,240/- and passed the order U/s 143(3) of the Act dated 30.03.2014.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), the CIT(A) considered the grounds of appeal the submissions of the assessee and was not satisfied with the claims and confirmed all the additions made by the A.O and dismissed the appeal of the assessee. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Honble Tribunal.

5. At the time of hearing, the Ld.AR submitted that the CIT(A) has not considered various facts with respect to valuation and the reconciliation statements filed in the course of hearing proceedings. The Ld. AR substantiated his arguments with the copy of panchanama, reconciliation statements and documents/invoices supporting the stock. The

assessee has submitted invoices, party wise sales and sales return data for the gold, platinum, diamond, colour stones and pearls for reconciliation. The Ld.AR supported the submissions with the judicial decisions and voluminous paper book and prayed for allowing the appeal. Contra, the Ld. DR submitted that the reconciliations were not been conducted properly and the standard applied by the assessee in respect of difference has wide range of disqualifications in the metals and relied on the orders of the Lower authorities.

6. We heard the rival submissions and perused the material available on record. The Ld.AR submitted that the CIT(A) has erred in sustaining the additions without considering the assessee's business activities and commercial expediency. The ground of appeal no 1 & 2 are in respect to adhoc disallowance @ 15% of (i) conveyance and vehicle expenses and (ii) miscellaneous expenses by the AO. We considering the turnover, nature of business operations and activities are of the opinion that such addition is without identifying the particular transaction and also the assessee could not substantiate the claims

with the proper evidence and are not verifiable. We find the addition made by the A.O. @ 15% is on higher side and restrict the addition to the extent of 5% and this percentage is applicable for this assessment year only. Accordingly, we restrict the addition to the extent of 5% of the expenses discussed and modify the Ld.CIT(A) order sustaining the addition @ 5% and partly allow the grounds of appeal of the assessee.

7. On the ground of appeal no 4 & 5, The Ld. AR submitted that the assessee has furnished the details in respect of reconciliation of precious metals and is evident from the documents filed in the course of hearing proceedings. The Ld. AR referred to the facts with respect to the difference in the valuation for various metals. We find that the assessee has disclosed the factual position and has filed the reconciliations of diamond jewellery as under:

<i>Stock as per books of accounts as on 08.08.2011</i>		<i>18,304.48</i>
<i>Less:</i>		
<i>Sales effected but not considered by A.O</i>	<i>2,315.84</i>	
<i>Sales return not considered by AO</i>	<i>(693.00)</i>	
<i>Broken Loss</i>	<i>20.50</i>	
<i>Stock sent on approval basis</i>	<i>92.55</i>	

<i>Weighing difference</i>	2.08	1,737.93
<b>Physical stock found on 08.08.2011</b>		<b>16,566.56</b>

The assessee has submitted the quantitative data of stock which was explained during the course of search and the sales as on the date of search and while calculating the stock, the assessee has considered sales return provided on the date of search. The Ld.AR referred to party wise data and diamond invoices of various institutions at page 26 to 72 of the paper book. Whereas in respect of gold reconciliation, the assessee has submitted the reconciliation at page 88 of the paper book as under:

<i>Stock as per books of accounts as on 08.08.2011</i>		96,464.54
<i>Less:</i>		
<i>Excess sales considered by AO</i>	(5,775.2)	
<i>Sales return not considered by AO</i>	(5,308.54)	
<i>Difference in purchase quantity</i>	284.39	
<i>Stock with various vendors</i>	827.59	
<i>Stock sent on approval basis</i>	56.11	
<i>Stock at factory not considered</i>	147.73	
<i>Estimated recovery</i>	6966.04	
<i>Weighing difference</i>	296.27	2,505.73
<b>Physical stock found on 08.08.2011</b>		<b>98.970.27</b>

The assessee has substantiated the gold found in the course of search with the panchanama and party wise data and the invoice copies/sales return at page 100 to 127 of the paper book. Similarly, the assessee has filed the reconciliation for platinum, color stones and

pearls and supported with party wise data with respect to sale of platinum and other details. The Ld.AR emphasized on the invoices issued by courier services i.e. air bill evidence in respect of delivery of goods. The contentions raised by the Ld.AR that the addition made by the AO is excessive and gross profit embedded only has to be taxed. The Ld.AR submissions are realistic considering the factual aspects and the documents filed. We find on similar and identical issues the Hon'ble Tribunal in assessee's group case M/s Uni Design Jewellery Pvt Ltd Vs DCIT in ITA No 2578/Mum/2018 for the A.Y 2012-13 has dealt on disallowance under section 69A and 69B of the Act at page 8 Para 9 to 13 of the order, which is read as under:

*9. In grounds no.2 and 3, the assessee has challenged the additions/disallowances made of Rs` 3,70,237 and ` Rs.4,49,017, under section 69A and 69B of the Act respectively.*

*10. Brief facts are, during the search and seizure operation in the business premises of the assessee, stock of diamond, gold, platinum, silver and palladium was found physically and were valued through a Government approved valuer. On the basis of such valuation certain discrepancies were found in the physical stock and stock as per books as on the date of search and seizure operation. In the course of assessment proceedings, the Assessing Officer called upon the assessee to*

*reconcile the aforesaid difference. In response to the query raised by the Assessing Officer, the assessee furnished a chart reconciling the difference between the physical stock and stock as per books for each category of goods with some supporting evidence. However, even on the basis of reconciliation chart furnished by the assessee, some minor difference arose which the assessee tried to explain to be on account of weighing. However, the Assessing Officer was not convinced with the explanation of the assessee as he observed that the assessee uses latest technology with high precision and accuracy, hence, there cannot be any weighing difference. He further observed that the assessee has not taken the plea of such weighing difference at the time of search. Therefore, in respect of excess physical cost, the Assessing Officer made addition of ` 4,49,017, as unexplained investment under section 69B of the Act and where there was shortage in physical stock, the Assessing Officer treated them as out of book sales and made addition of ` 3,70,237, under section 69A of the Act. The assessee challenged the aforesaid additions before the learned Commissioner (Appeals) without any success.*

*11. Reiterating the stand taken before learned Commissioner (Appeals), the learned Authorised Representative submitted, the difference arising after the reconciliation is very minor difference which could be due to the weighing and the custom allowed loss which was taken on an estimate basis. He submitted, no addition/disallowance should have been made by the Assessing Officer either under section 69A or 69B of the Act on account of such difference. He submitted, the valuation of loss made on the date of search is also without any basis as loss cannot be valued on a particular day. Without prejudice, the learned Authorised Representative submitted, even if there is a minor difference in stock, the addition, if any, can be made by applying the gross profit rate.*

*12. The learned Departmental Representative strongly relying upon the observations of the Assessing Officer and learned*

*Commissioner (Appeals) submitted that the difference in stock was established on record as the assessee was unable to reconcile the difference with valid explanation. Therefore, the additions made should be sustained.*

*13. Having considered rival submissions, we are of the view that the assessee was unable to reconcile the difference between the physical stock and the stock as per books of account with valid reasoning. Therefore, to that extent, the facts are established. However, we find merit in the alternative plea of the assessee for restricting the addition to the gross profit. The Assessing Officer is directed to compute the disallowance accordingly. Grounds are partly allowed.*

8. In the present case, the A.O. has treated the book stock and physical stock of the precious metals as out of book sale and no enquiry was made by the AO. Similarly with respect to the pearls, the AO has made the addition as excess stock and was confirmed by the CIT(A) by treating the difference between the book stock and physical stock of the pearls as unexplained investment in the course of stock valuation. We find on the similar dispute issues, the Hon'ble Tribunal in assessee's group case of Mahendra Brothers Exports Pvt Ltd Vs DCIT in ITA No. 127 to 130/Mum/2021 at Para 11 & 12 has observed as under

*11. The first issue to be decided in this appeal is as to whether the ld. CIT(A) was justified in confirming the addition of Rs.11,63,054/- made u/s.69A of the Act in respect of*

*difference between book stock and physical stock of polished diamonds in the facts and circumstances of the instant case.*

*12. We have heard rival submissions and perused the materials available on record. As stated earlier, the assessee is engaged in the business of manufacturing and trading of rough and polished diamonds. A search and seizure action u/s.132(1) of the Act was carried out in the case of the assessee on 08/08/2011. At the office premises at Pancharatna Opera House stock of cut and polished diamonds found physically at the time of search was valued by the Government approved valuer. The re-conciliation between the book stock of polished diamonds (including Jangad) and the physical stock of polished diamonds was submitted before the ld. AO. The stock of cut and polished diamonds as per the stock register was 117016.98 carats. This was also submitted to the search party at the time of search by the assessee. Physical stock of cut and polished diamonds was 116968.04 carats. Ultimately there was a difference of 48.94 carats representing shortage which was explained by the assessee as weighing difference. The assessee submitted that in the light of huge volume of diamonds dealt by the assessee, this weighing difference of 48.94 carats is very miniscule and hence, it was pleaded that no addition need to be made on account of the said shortage. The ld. AO observed that assessee deals in diamond manufacturing and in this business, fineness and accuracy is maintained at micro level through very high precision instruments and equipments. The ld. AO observed further that assessee takes care of every cent of diamond as it is evident from the manner in which the stock register is maintained by it. He pointed out that in any of the audited accounts, no such weighing difference as pleaded by the assessee was noted at any stage of import, manufacturing, export or storage throughout the years. The ld. AO also observed that the valuation of cut and polished diamonds were carried out by the authorised valuer in the presence of the assessee. The ld. AO observed that in view of the accurate manner in which the stocks are maintained by the assessee, the shortage of 48.94 carats in diamond*

*industry for cut and polished diamonds representing difference really matters and the same cannot be attributed to the weighing difference. The ld. AO applied the valuation of Rs.23764.89 per carat on the shortage quantity of 48.94 carats and made an addition of Rs.11,63,054/- as sales made out of books and added the same u/s.69A of the Act. This action of the ld. AO was upheld by the ld. CIT(A). We find that admittedly there was only a shortage of stock of 48.94 carats found at the time of search i.e. physical stock was less by 48.94 carats. This goes to prove that assessee could have made sales out of books. Hence, only the profit element embedded on the said sale could be brought to tax. The argument of the ld. AO could be accepted when there is excess stock found physically either at the time of search / survey wherein the purchases of excess physical stock found need to be explained. In the instant case, since, there was only shortage of physical stock to the extent of 48.94 carats, we hold that only profit element embedded in said sale transaction could be brought to tax. In this regard we find that the ld. AR placed reliance on the Co-ordinate Bench decision of this Tribunal in the case of sister concern of the assessee in UNI Design Jewellery Pvt. Ltd., vs DCIT, Central Circle-9 in ITA No.2578/Mum/2018 dated 30/12/2019 for A.Y. 2012-13, wherein this Tribunal had also under similar facts and circumstances pursuant to the same search action on 08/08/2011 had held that only the profit element need to be brought to tax. Hence, we direct the ld. AO to compute the gross profit portion on the said sale and tax the assessee accordingly. Accordingly, the ground No.1 raised by the assessee for A.Y.2012-13 is partly allowed.*

Whereas, the Ld.AR submitted a chart reconciling the difference between the physical stock and stock as per the books of account for each precious metal with the documentary evidence and the minor difference arise due to weighing difference. Further the A.O. has not considered

sales and sales return effected prior to the date of search. We considering the ratio of the decision of the Honble Tribunal find that there is difference is stock which could not be reconciled completely in respect of the precious metals and supported with material evidence. Accordingly, we direct the Assessing officer to consider only gross profit in respect of said sale transactions difference after adjusting above said sales returns and partly allow the grounds of appeal of the Assesee.

9. In the result, the assessee appeal is partly allowed.

order pronounced in the open court on 10.02.2022.

Sd/-

(S RIFAUR RAHMAN)  
**ACCOUNTANT MEMBER**

Sd/-

(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 10.02.2022

KRK, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

( Asst. Registrar)  
ITAT, Mumbai

		Date	<u>Initial</u>	
1.	Draft dictated on	25.01.2022		PS
2.	Draft placed before author	08.02.2022		PS
3.	Draft proposed & placed before the second member			PS
4.	Draft discussed/approved by Second Member.			PS
5.	Approved Draft comes to the Sr.PS/PS			PS
6.	Kept for pronouncement on			
7.	File sent to the Bench Clerk			
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed			