

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.464/Bang/2019
Assessment Year: 2005-06

M/s. Rajesh Exports Limited No.4, Batavia Chambers Kumara Krupa Park (East) Bengaluru 560 001 PAN NO : AAACR8642N	Vs.	ACIT Central Circle-1(2) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Shri S. Parthasarathi, A.R.
Respondent by	:	Shri Sumer Singh Meena, D.R.

Date of Hearing	:	11.08.2022
Date of Pronouncement	:	12.09.2022

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against the order of CIT(A) dated 31.12.2018. The assessee has raised following grounds of appeal:-

1.	<i>The learned CIT (A) erred in sustaining the disallowance of loss of Rs.45 crores that arose due to the difference between the cost of goods purchased and the price of goods sold in the Main Unit of the Appellant. The addition was made by the AO without any evidence.</i>	<i>Rs.17,45,42,059/-</i>
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2.	<i>The learned CIT (A) erred in sustaining the addition because the learned CIT (A) overlooked the fact that the addition was not within the scope of the AO at all because the AO was specifically directed by the Hon'ble ITAT to decide on the rejection of the books of accounts. The AO accepted the books of accounts. There was no scope for the AO to decide on the gross profit of the Appellant.</i>	<i>Rs.17,45,42,059/-</i>
3.	<i>The learned CIT (A) erred in sustaining the disallowance of loss of Rs.45 crores that arose due to the difference between the cost of goods purchased and the price of goods sold in the Main Unit of the Appellant made by the- AO without accepting the explanation of the Appellant that the difference was due to the fluctuation in price in the international market which also resulted in operational loss.</i>	<i>Rs. 17,45,42,059/-</i>
4.	<i>The learned CIT (A) erred in sustaining the addition because the AO had ignored the fact that each of the Purchase and Sale was supported by an Invoice wherein the exact calculation of the Purchase and Sale amount was available based on the price per gram-of gold.</i>	<i>Rs.17,45,42,059/-</i>
5.	<i>The learned CIT (A) erred in sustaining the addition because the AO had not pointed out any deficiency in any purchase or sale invoice. The AO had not pointed out any specific entry or reason but had simply made the addition concluding that Purchase cannot be greater than Sales.</i>	<i>Rs.17,45,42,059/-</i>
6.	<i>The learned CIT (A) erred in upholding the addition of Rs.45 crores that arose due to the difference between the cost of goods purchased and the price of goods sold in the Main Unit of the Appellant made by the AO merely on surmise, suspicion and bias.</i>	<i>Rs.17,45,42,059/-</i>
7.	<i>The learned CIT (A) erred in upholding the above addition though that was not within the purview of the AO as the said issue was not remanded to the AO for reconsideration.</i>	<i>Rs.17,45,42,059/-</i>
8.	<i>For these and such other grounds that may be urged at the time of hearing, the Appellant prays that the appeal may be allowed.</i>	<i>General</i>

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2. Originally this appeal was heard by this Tribunal vide order dated 13.9.2019, wherein the appeal of the assessee was dismissed ex-parte deciding on merit. Later, assessee filed the MA vide No. 13/Bang/2020 and vide order dated 14.8.2020, the order of the Tribunal dated 13.9.2019 was recalled and hence this appeal was once again came for hearing before this bench.

3. Facts of the case are that the assessee's return of income was filed on 31/10/2005 for AY 2005-06 declaring loss income of Rs. 1,03,48,99,551/-.

3.1 An order u/s 143(3) of the Act was passed on 26/07/2007 assessing total income of the assessee at Rs. 184,09,88,961/-. The Assessing Officer worked out net business loss Rs. 16,83,90,371/- in respect of 100% of EOU unit. The AO, inter alia, rejected the books of accounts of the assessee and also restricted the claim of loss on account of shortage of gold at 0.3% as claimed by assessee.

3.2 The CIT(A)-III Bangalore vide appellate order dated 03/07/2009 deleted profit estimated by AO and held rejection of books of accounts was done in a summary manner. The CIT (A) also allowed wastage percentage as 0.93% as claimed by assessee. On further appeal, the ITAT in its order in ITA No. 858 & 859/BNG/2010 for AYs 200506 and 2006-07 dated 31/05/2016 remitted the file to AO with a direction to look into the issue of wastage while considering acceptability of assessee's books of accounts.

3.3 The assessee is a manufacturer and dealer in gold, bullion, jewellery and medallions. In the assessment order passed u/s 143(3) rws 254 29/12/2017, the AO found assessee's contentions with regard to wastage as acceptable. The AO also accepted assessee's books of accounts. The AO however

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disallowed a sum of Rs. 45,00,00,000/- claimed as Operational loss by assessee from its Main Unit.

4. The Ld. CIT(A) observed while adjudicating the appeal as follows:-

(i) Perusal of assessment order shows that during the year under consideration, the assessee had two units called Main unit and the EOU division. The assessee claimed exemption of Rs. 145,14,00,608/- u/s 10B of the Income Tax Act, 1961 in respect of its 100% EOU unit located at Whitefield, Bangalore and declared a net profit of Rs. 43,08,50,953/- from its Main unit located at Whitefield.

(ii) Ld. CIT(A) observed that the then AO while passing assessment order u/s 143(3) dated 26/07/2007 had also raised the issue of gross loss and observed that *cost of goods sold in respect of Main unit was higher than the sales turnover by over Rs. 45 crore and the assessee has no cogent reasons for such a sale below the cost price* .

(iii) Further, the ITAT Bangalore in its order dated 31/05/2016 had remitted the issue of rejection of books of accounts to the file of AO. The ITAT had also directed AO to look afresh into the issue of wastage? Therefore, the claim of assessee in its written submission dated 13/12/2018 that AO was directed by ITAT to look only into the issue of rejection of books of accounts is found to be incorrect.

(iv) Ld. CIT(A) further observed that before AO, the assessee stated that price of raw material is subject to fluctuation in the 'international market and this had impacted profitability of the unit adversely. However, no purchase bills and sales invoices were furnished before AO. The assessee had not established a

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one to one correspondence between purchases and sales or established how purchase cost exceeded sale price. Before AO, it failed to prove that average cost purchase was more than average cost of sales. Even during appellate proceedings, assessee has failed to furnish any documentary evidence to support its contentions for incurring operational losses. It has not filed any evidence to prove reasons for incurring loss amounting to Rs. 45 crore. It has not demonstrated any reason nor has it submitted any evidence for having incurred the said operational loss. On the contrary, the assessee merely stated that AO should *'not have gone into the matter.*

(v) All these show that assessee has no documentary evidence to furnish with regard to its claim for incurring operational losses. It has no evidence to file nor any proof to submit in support of its contentions. The assessee has failed to substantiate its claims with documentary evidence.

(vi) In view of the facts brought out in aforementioned paras, and since no documentary evidence has been furnished by assessee to prove it incurred operational losses, disallowance made by AO is found to be in order. Hence, Ld. CIT(A) opined that no interference in AO's order is called for since no infirmity arose. Against this assessee is in appeal before us.

5. Ld. A.R. submitted that the additions were made only on surmises without appreciating the facts correctly and without considering the details furnished. The A.O. has not validly rejected the books of accounts and he given the reasons for rejection of books of accounts as follows:-

- a) The assessee had claimed excessive gold wastage in the manufacturing process.
- b) The cost of goods in the main unit was higher than the sales.

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- c) The assessee had been debiting most of the expenses in the main unit.

5.1 The Assessing Officer (AO) in the assessment order of AY: 2005-06 has commented that "It is important to mention over here that in the immediately preceding year the assessee claimed these losses to the extent of only about 0.2%. In the succeeding year this loss is less than 0.1%." The AO further stated that "As regards the claim of the assessee towards the wastage/shortage of the gold in the production process, it has gone up from 0.2% in the immediately preceding year to 0.93% in this year, even though the manufacturing process, raw-material and finished products remains the same and therefore, the assessee's explanation fails over here."

5.2 The observation of the AO that the percentage of wastage has gone up from 0.2% in the immediately preceding year to 0.93% in this year is correct, but the AO has completely failed to understand that the products manufactured by the assessee during the previous years and the current year are totally different due to which there is a variation in the wastage percentage. In any case wastage cannot be derived by considering the percentage of wastage incurred in totality wastage can only be derived by considering the quantity of products manufactured during the comparative years.

5.3 The assessee deals in three products - Jewellery, bullion and medallions. The assessee incurs wastage in manufacture of jewellery and medallions, whereas. there is no wastage incurred in bullion because bullion is not manufactured but it is only traded by the assessee. Out of the two products manufactured by the assessee it is an accepted and tried and tested fact that jewellery

manufacturing involves intricate. process of manufacturing which incurs higher wastage percentage whereas manufacture of medallions involves simple process resulting in much lower wastage. The following is the comparative chart of the various products manufactured and wastage incurred on them by the assessee during the assessment years 2004-05 and 2005-06.

Item	Quantity Manufactured during A.Y 2004-05	Wastage Incurred during AY:2004-05	% of wastage during AY: 2004-05	Quantity - Manufactured during A.Yr 2005-06	Wastage Incurred during AY:2005-06	% of wastage during *AY: 2005-06
	Kgs	Kgs		Kgs	Kgs	
Jewellery	449.90	80.855	17.971%	24422.23	553.39	2.265 %
Bullion	11192.69	NIL	NA	413.75	NIL	NA
Medallions	39578.08	3.957	0.009%	42562.64	83.84	0.196 %
Total	51220.67	84.812	0.165%	67398.62	637.23	0.945 %

5.4 According to Ld. A.R., it can be clearly seen from the above factual table that while it is true that the wastage incurred during the AY: 2004-05 was 84.812 Kgs bringing the percentage of the total wastage incurred viz-a-viz the total material transacted to 0.165%. The wastage incurred during the AY: 2005-06 was 637.23 kgs bringing the percentage of the total wastage incurred viz-a-viz the total material transacted at 0.945%. It is based on these numbers that the AO has made the comment that *"the assessee has incurred more wastage during the current year compared to the previous years even though the manufacturing process, raw material and finished products remain the same."* The observation of the AO might be numerically correct but it is factually completely wrong. The AO has completely disregarded the fact that the assessee had manufactured only 449.9 kgs of jewellery during the AY 2004-05 whereas the assessee has manufactured 24422.23 kgs of jewellery during the AY 2005-06 and the medallions manufactured during the two years where almost of the same quantity. The overall percentage of

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increase of wastage from 0.165% in AY:2004-05 to 0.945% in AY 2005-06 is primarily due to the sharp increase- (from 449.9 kgs to 24422.23 kgs - 5428%) of the quantity of jewellery manufactured during the AY 2005-06 compared to the assessment year 2004-05.

5.5 According to the Ld. A.R. in fact the AO has failed to appreciate that the wastage incurred by the assessee during the Asst. year 2005-06 is much lower compared to AY 2004-05. If the AO was to apply the norms of the wastage incurred during the previous years to the AY 2004-05 the wastage incurred during the AY 2005-06 would be much higher because against manufacture of 449.9 kgs of jewellery the assessee has incurred a wastage 80.855 kgs during the AY 2004-05 which works out to 17.971% whereas during the AY 2005-06 the assessee has manufactured 24422.23 kgs of jewellery and incurred a wastage of only 553.39 kgs which works out to 2.265%. If the norms of the assessment year 2004-05 are applied to 2005-06 the wastage incurred for jewellery itself would be 4388.91 kgs whereas the total wastage incurred by the assessee for manufacture of all the products has been only 637.23 kgs which is much lower if the norm of the previous years were applied as suggested by the AO. The assessee being a professionally managed public limited company and a honest tax payer has only accounted for the factual and the actual loss incurred by it in the manufacturing process.

5.6 The assessee submitted that it has only claimed the actual wastage incurred by it in the manufacturing process and the percentage of wastage incurred by the assessee is much lower than the accepted norms and standards of the industry which have been approved by the Government of India.

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5.7 Further the Ld. A.R. submitted that in the chart produced at page No.7 of the CIT(A)'s order there has been a typographical error in mentioning AY:03-04 in column (B) and AY:2004-05 in column (E) it should actually be FY 03-04 (or AY 04-05) and FY 04-05 (or AY 05-06) respectively.

5.8. Further, he submitted that the wastage claimed by the assessee has been accepted by the AO which is evident from para 10 of the assessment order, which reads as follows:-

“10. As regards rejection of books of account, the ITAT mentioned in para 7 of its order that "the reasons given by the AO for rejecting the books of account, at the first blush, appear to be too general in nature." The ITAT however took note of the issue of wastage for which it has directed fresh examination by the AO, the issue of the assessee incurring a Gross Loss in its Main Unit during the relevant previous year and the matter of a survey action in a later year on 2-7-2007 during which the assessee had been questioned about discrepancies in cash and stock, and directed that the question whether the books of account were to be accepted or rejected requires a fresh look by the AO.

10.1 During the course of proceedings now before the undersigned, the assessee has furnished detailed submissions. In view of the explanations given by the assessee regarding major change in product mix as well as explaining satisfactorily the reason for increased wastage, it is felt that is not sufficient ground for rejecting the books of the assessee.”

5.9 Further, Ld. A.R. submitted that books of accounts of the assessee has not been rejected by the AO while passing the order consequent to remand by ITAT in ITA No.858 & 859/Bang/2010 for the assessment years 2005-06 & 2006-07 dated 9.5.2016. Hence, addition of Rs.45 crores made on this count to be deleted and he relied on the following judgement in the case of CIT Vs. Anil Kumar & Company in ITA No.2000001/2014 dated 25.2.2016 in which it was held as under:

“9. From out of the above, tribunal found that sundry creditors who were categorized under Annexure-A there was no dispute since the Assessing

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Officer himself had accepted that these creditors were genuine. Insofar as Annexure-B sundry creditors are concerned it came to be held that Assessing Officer had not, issued summons under section 131 of the Act to compel their attendance and there was no break up-in the remand report as to which of the creditors were served but not replied or on whom it was not served. In the factual background discussed in detail by the tribunal at paragraph 11 the said issue came to be remanded to the Assessing Officer for fresh consideration. Likewise this Annexure-C sundry creditors are concerned tribunal held that assessee had filed reconciliation of some of the accounts before the Assessing Officer did not result in Assessing Officer demanding any further evidence from the assessee to substantiate the reconciliation. As such tribunal held that assessee should be afforded an opportunity to explain the discrepancy with regard to 26 creditors out of 36 creditors. By reserving liberty to file any other supporting evidence to substantiate its case the issue came to be remanded by the tribunal to the Assessing Officer.

10. The facts as discussed hereinabove would clearly indicate that these are purely questions of fact and does not involve substantial question of law.”

8. On the other hand, Ld. D.R. submitted that the assessee has manipulated the books of accounts by claiming cost of goods sold in main unit was higher than the sales turnover over Rs.45 crores, which is not possible in this line of business and the explanation offered by the assessee for this is unsatisfactory. The Ld. D.R. submitted that the issue relating to rejection of books of accounts by the AO has been already upheld by the Tribunal on earlier occasion, now once again, assessee cannot argue this issue which has reached finality already. For this purpose, he relied on the judgement in WP No.22508/2017 dated 16.7.2018 in the case of M/s. Hyundai Motors India Ltd. Vs. Deputy Commissioner of Income-tax in which it was held as under:

“13. This Court is of an opinion that certain factual details based on the records can be re-adjudicated or verified once again when the matter was remanded back for re-consideration. Though there is a finding recorded by the ITAT during the course of presenting the case, ultimately the case was remanded to the original authority for re-consideration by the ITAT. When the case was remanded back for re-adjudication, the findings made by the ITAT cannot be taken or relied

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upon as it is. The very purpose of remanding the matter to the original authority by the Courts/Tribunals are to ensure that all the records and relevant factors are to be re-considered, re-adjudicated and a revised order is to be passed. When the order of the ITAT is unambiguous and when the case of the writ petitioner was remanded back for reconsideration in the hands of the original authorities, then the original authorities are bound to conduct an enquiry by verifying the original records once again and re-adjudicate the matter, re-consider the factual aspects and accordingly, pass a final order. The said exercise was done in the present case. Thus, this Court do not find any error on the part of the Transfer Pricing Officer (TPO) in reconsidering the entire books of accounts submitted by the writ petitioner for the purpose of assessing the average rate of royalty payment in the industry. The findings made by the ITAT in the order need not be directly taken into account for the purpose of considering the average rate of royalty payment in the industry in view of the fact that, if that is taken into account, then there is no point in remanding the matter for reconsideration. The very purpose and object of the Courts/Tribunals to remand the matter is that the authorities must reconsider the case in all respects independently and pass a revised order on merits and in accordance with law. This being the scope of the order of remanding the contentions raised on behalf of the writ petitioner that the average rate of royalty payment in the industry was already fixed by the ITAT can have no sanctity. These all are the points raised by the respective parties before the ITAT and the same was recorded in the order passed by the ITAT . When the ITAT itself was not decided the issues raised before the Tribunal and remanded the case back for reconsideration, then there is no point in recording the findings of the ITAT by the Transfer Pricing Officer (TPO) at the time of exercising the powers of reconsideration of the entire issues. The very contention raised in this regard also deserves no merit consideration.”

9. Further, he relied on the judgement of Hon'ble Karnataka High Court in TCA No.138/2007 dated 7.2.2019 in the case of Principal CIT Vs. Motonic India Automatic Pvt. Ltd. in which it was held as under:

“7. This, in our opinion, frustrates the very purpose of remand for enquiry by the Transfer Pricing Officer into these three issues by the Transfer Pricing Officer, as directed by the Tribunal itself. Therefore, we allow the present appeal of the Revenue and while upholding the remand order passed by the Tribunal, we observe that the Transfer Pricing Officer will pass such fresh order in pursuance of the remand directions, uninfluenced by the observations of the Tribunal, on the merits of the case. It goes without saying that the Assessee will be again given the due opportunity of hearing to make

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out its case before the Transfer Pricing Officer and fresh orders may be passed by the Transfer Pricing Officer, after providing reasonable opportunity of hearing to the Assessee in this regard.”

10. Accordingly, he submitted that addition to be sustained.

11. We have heard the rival submissions and perused the materials available on record. The first issue before us is with regard to the contention of the assessee's counsel that books of accounts of the assessee has not been rejected by the AO so as to estimate the income of the assessee. On earlier occasion, the assessee came in appeal before this Tribunal in ITA No.858/Bang/2010, the Tribunal vide order dated 31.5.2016 remitted the issue to the file of AO for fresh consideration relating to rejection of books of accounts and making an addition for suppressed gross profit by claiming excessive wastage in jewellery making as follows:-

06. We have perused the orders and heard the rival contentions. Reasons mentioned by the AO in the assessment order shows that he had rejected the books of account for the following reasons :

i) The GP rate of the assessee concern was gone down from 4.05% in AY 2003-04 and 0.63% in the immediately preceding year to (-) 3% in this year and the assessee is not able to give any satisfactory explanation for such a steep fall in the GP rate.

ii) The assessee has claimed shortage of 630 Kgs. Of the gold in the process of manufacturing, which works out to about 0.93% of the total raw material consumed as against shortage of about 0.2% in the immediately preceding year and 0.4% in the immediately succeeding year and the assessee has failed to prove this shortage satisfactorily. In fact during the year, there has been almost nil shortage till 6.12.2004 and thereafter, there has been shortages/wastage of about 13 kg. of gold product which is quite surprising because shortage of about 13 kgs. On total consumption of about 500 kg of gold works out to about 2.6%. It has been gathered that no such shortages have been claimed by other assessees with similar business, viz. Navarathan Jewellers and Malabar Gems and Jewellery (P) Ltd.

iii) The cost of the goods sold, in respect of the Main unit was higher than the sales turnover by over Rs.45 crores and the assessee has no cogent reasons for such a sale below the cost price.

iv) The assessee has been debiting most of its expenses to the main unit in which huge losses were claimed and huge profits were being declared in the 100% EOU Unit to claim 10B deduction, by not providing the relevant expenses.

A reading of the above reasons given by the AO for rejecting the books of account, at the first blush, appear to be too general in nature. No doubt AO had called for the books of account and examined it on test basis. Question is whether the reasons mentioned by the AO carry within them any specific defects in the books produced by the assessee. Statement recorded from Shri. Prashanth Sagar, General Manager of the assessee company during the course of survey on 02.07.2007 is very relevant here. There was a question numbered 4, in which said Shri. Prashant Sagar was queried on the difference in cash as found physically and as recorded in the cash book. Relevant question no.4 and answer is reproduced hereunder:

Q. 4 During the course of Survey an amount of Rs. 605100/- Rs.400470/-found in GM Room and Rs. 145100/- was found in MD's Room], as per the cash book wherein only day to day expenses are being recorded do not show any cash balance nor was there any regular cash book wherein this amount of cash balance could be found. In the absence of any details forthcoming from you after giving enough time of more than 6 hours this amount proposed to be treated as unaccounted and UNEXPLAINED. Please confirm.

A: This amounts represents partly the security deposits being 10% of the net wages recovered from the employees/workers at the time of paying their monthly salaries. This deposit amount is normally taken by the respective employees at time of their going to the native place. In the absence of any books accounts for these deposits the total of such accumulations cannot be given immediately.

07. A similar question regarding disparity between physical inventory found at the time of survey and recorded in the stock book was asked to the Chairman of the assessee company, namely Shri. Rajesh Mehta on 03.07.2007. Relevant question no.47 and his answer is reproduced hereunder :

Q.No. 47 : During the course of survey at your factory premises stock of gold weighing 204 kgs was found as per physical inventory prepared in the presence of your production manager. Sri Prasanth Sagar. As against this, book stock as per the regular register maintained was only 186 kgs. And thus. excess stock to the tune of 18 kgs was found. How do you explain this excess stock. ?

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Ans : The difference might be due to the receipt of some of the stock from the Head Office or due to some accounting reasons. After thorough investigations, I would submit the details to your goodself.

The above questions and answers do show that the books of account were not correct and complete in all respects. It may be true that AO had not specifically pointed out these or similar defects while rejecting the books of account. However it is also a fact that assessee had incurred a gross loss during the relevant previous year in its main unit. It is also not disputed that up to 6th Dec, 2004, assessee had 'Nil' wastage in its books and the wastage jumped from zero to 13 kgs in a span of few months. Cost of goods sold in the main unit was Rs.1563,34,41,29,491/- against the sales of Rs.11517,92,69,081/-. As per the assessee variation in gross profit when compared to the earlier years could not be a ground for rejection of books.. What we find is that it was not a variation simplicitor, but a variation whereby for the relevant previous year, there was a gross loss which was highly improbable in the nature of business of the assessee. Nevertheless after rejecting the books of account, AO had proceeded to assess the income of the assessee starting from the loss returned by the assessee in its profit and loss account. This approach was also not correct. In our opinion, a careful examination of the books of account which was required to be done considering the facts and circumstances of the case, was not done. No efforts was made to correlate the answers given to various questions by the General Manager of the assessee company and the Chairman of the assessee company, with the entries in the books of account. Especially so, since assessee had shown gross loss in its main unit and excessive wastage during the last few months of the relevant previous year. In such circumstances we are of the opinion that the question whether the books of account were to be accepted or rejected requires a fresh look by the AO. We therefore set aside the orders of authorities below and remit the issue whether books of the assessee for the relevant previous year could be accepted or not back to the file of the AO for consideration afresh in accordance with law. Grounds 2 and 3 of the Revenue are treated as allowed for statistical purpose.

11.1 After set aside by the Tribunal for reconsideration, the AO observed in his order that the assessee has satisfactorily explained the reason for increased wastage and there was change in the product mix. After considering the assessee's explanation, AO was of the opinion that it is not sufficient ground for rejecting the books of accounts of the assessee. However, he observed that assessee has not explained satisfactorily the gross loss (operational loss) shown by the assessee. On this event, he observed as follows:-

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“10.2 However, the assessee has not explained satisfactorily the Gross Loss I (i.e. Operational Loss) shown. The then Assessing Officer, in Para 14 (iii) of the assessment order passed u/s 143(3) on 26.7.2007, has raised the following issue:-

“Cost of goods sold in respect of the Main Unit was higher than the sales turnover by over Rs.45 crores and the assessee has no cogent reasons for such a sale below the cost price.”

10.3 The assessee has submitted that the price of the raw material is subject to fluctuation in the international market and this has impacted the profitability of the Unit adversely. The assessee has only theorized about fluctuation of gold rates to explain the Operational Profits/Loss. It has not submitted any hard evidence to substantiate the Operational Losses of the Unit.

10.4 With reference to the purchase bills and sale invoices, the assessee has not demonstrated, on a consignment to consignment basis, how the fluctuation in the gold rates impacted it adversely, leading to the Cost of goods being higher than the Sale price of the goods. The assessee has not established a one-to-one correspondence between purchases and sales to establish how the purchase cost exceeded the sale price. In sum, the assessee has not proved that the average cost of purchases was more than the average cost of sales.

10.5 Therefore, the operational loss of Rs.45 crores of the Main unit is disallowed.”

11.2 Thus, it cannot be said that AO has not rejected the books of accounts. As seen from the above observation of AO, he was of the opinion that the assessee has not suppressed necessary details to explain the high operational loss sustained by the assessee. The assessee has also not established one to one correspondence between purchase and sales and also not explained that how the purchase cost was more than the sale price. It is the duty of the assessee to explain price charging pattern while making the sales. If there is a high fluctuation in the price of the gold, the assessee has to place the price at which it was purchased, the particular quantity of gold and corresponding sale price of the same. The assessee in a wholesome manner before the lower authorities explained that purchase price is

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higher than the sale price and also submitted that the wastage in the assessment year under consideration was higher than the earlier year. Hence, the AO has not accepted the book results shown by the assessee and estimated the wastage. Being so, we do not find any merit in the argument of assessee's counsel stating that AO has not properly rejected the books of accounts of the assessee. This ground of assessee is rejected.

11.3 Next issue for our consideration is with regard to wastage claimed by assessee in the assessment year at 0.945%. In earlier assessment year 2004-05, the assessee has claimed wastage at 0.165%. According to the AO, the wastage claimed by assessee in this assessment year is very high. On this reason, the assessee went in appeal before the Tribunal. The Tribunal remitted the matter to the AO for reconsideration with the following observations:-

“It can be seen that the latter statement is categorical and does not leave any room for doubt. AO had considered the upper limit as 0.3% as the possible wastage and worked out the excessive wastage. In the circumstances of the case, we are of the opinion that a deeper study is required to ascertain whether the large variation in the product mix between various years, claimed by the assessee is correct or not. Unless assessee can show positive evidence to substantiate the huge change in product mix, the claim of wastage cannot be allowed. In the facts and circumstances of the case we are of the opinion that this issue can also be looked into by the AO while considering the acceptability of the books of account of the assessee. Ground 4 of the Revenue is treated as allowed for statistical purposes.”

11.4 While framing the assessment consequent to the remand by Tribunal, the AO observed that the cost of goods sold in respect of main unit was higher than the sales turnover by over Rs.45 crores and the assessee has no cogent reason for such sale below the cost price and made addition of Rs.45 crores. In our opinion, the AO has to follow direction of the Tribunal while passing the consequent order. The issue before lower authorities on remanding by Tribunal

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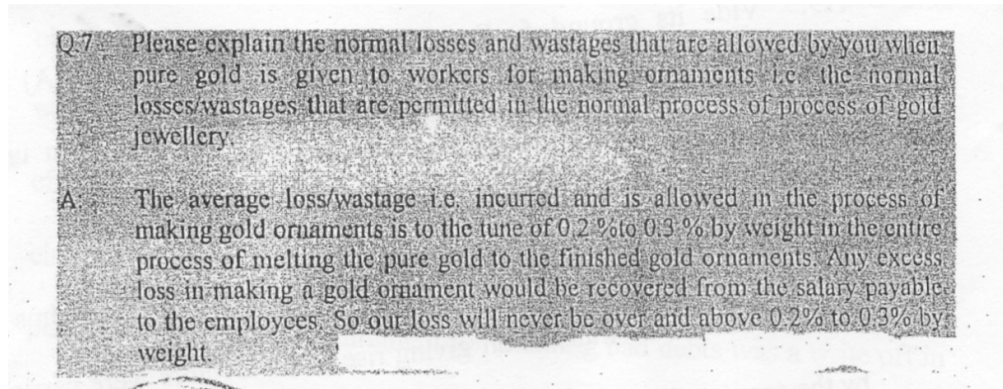
is with regard to rejection of books of accounts and estimation of the wastage (i.e. Ground Nos.2, 3 & 4 before ITAT on earlier occasion) and thereby deletion of the addition of Rs.23,19,34,808/-, which was discussed in paras 5 to 8 of Tribunal order cited (supra). On remand by Tribunal, the lower authorities has to confine to the direction to the extent of issue remitted by Tribunal to them for fresh consideration. However, in the present case, the AO has taken new issue comparing the cost of goods sold in respect of the main unit and corresponding sales turnover, which was in excess of Rs.45 crores. Needless to say that the AO has to confine his decision to the issues set aside by the Tribunal vide order cited (supra). In the event if the assessee is unable to explain the loss in its main units and claim of excessive wastage, by producing the proper books of accounts, then he has to estimate the income of assessee considering the statement given by the Chairman and General Manager of assessee company at the time of survey. Chairman of the assessee company Shri Rajesh Mehta had in answer to question No.58 stated as under:-

Q.No. 58 : How do account for the wastage in the domestic unit and for the wastage in the EOU unit. ?

Ans : In the EOU unit we do not incur any significant wastage because we mainly manufacture 24 ct products in the EOU. We have an initial stock in the EOU which has been purchased by us in the local market and stocked at the EOU. Whatever wastage is incurred in the imported shipment is replaced from the stock and accounted in the EOU register. Ultimately, the average is reflected in the lower closing stock of the EOU.s4:12 the Domestic unit, we follow various systems and as per the current system, we issue gold to the unit of 92% and receive ornaments of 91.67%. The manufacturing unit manages its wastage account within this approximately 0.3%. whenever there are any extraordinary items like new product development, new machinery testing or spillage or theft, the same is accounted as wastage separately.

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General Manager of the assessee. Shri. Prashanth Mehta had, in answer to question no.7 in the statement taken from him on the date of survey, mentioned as under:



11.5 As recorded by Tribunal on earlier occasion, the statement of Chairman is categorical and does not leave any room for doubt. As such, AO must have considered the upper limit of wastage in jewellery section at 0.3% in the absence of assessee's failure to substantiate the loss claimed by assessee in the books of accounts.

11.6 Contrary to this, AO considered the difference between the cost of goods sold in main unit was higher than the sales turnover by Rs.45 crores and made addition. As we have observed earlier, the reason given by the AO found to be not correct. Accordingly, we vacate these findings and direct the AO to consider the wastage in jewellery section at 0.3%, if the assessee failed to establish the actual wastage in the jewellery section with supporting documents. Similarly, he has to determine the wastage in medallions also as emanated from the records produced by the assessee, if it is supported by the proper documents. If the assessee fails to substantiate the wastage in Medallions at 0.196%, the AO is at liberty to consider it at appropriate rate. With these observations, we remit this issue in dispute to the file of AO with the above directions.

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11.7 To sum up, ground Nos.2 & 4 of the assessee's appeal are rejected. Ground Nos.3, 5 & 6 are partly allowed for statistical purposes and Ground No.7 is allowed.

12. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 12th Sept, 2022

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 12th Sept, 2022.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.