

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI**

**BEFORE,
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.1537/Del/2022
(ASSESSMENT YEAR 2017-18)**

DCIT Central Circle-30 New Delhi	Vs.	M/s. J.H. Jewellers LLP Shop No.13 Sunder Nagar Market New Delhi-110 003 PAN-AACFJ 3285G
(Appellant)		(Respondent)

Appellant by	Ms. Banita Devi Neorem, CIT- DR
Respondent by	Mr. U.N. Marwah, CA & Mr. Parveen Goyal, Advocate

Date of Hearing	22/06/2023
Date of Pronouncement	05/09/2023

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal by Revenue is filed against the order of Learned Commissioner of Income Tax (Appeals)-30, New Delhi ["Ld. CIT(A)", for short], dated 29/04/2022 for Assessment Year 2017-18.

2. Grounds taken in this appeal are as under:

"1 Whether on the facts and circumstances of the case Rs. and the provisions of law the Ld. CIT(A) has erred in 4,24, not considering the statement of Shri Amit Sankhwal recorded during the course of Survey have no evidentiary value on standalone basis without reference to any other material discovered during the search and seizure. The case laws referred by the Ld. CIT(A) in this regard is not applicable in this case as the statement of Shri Amit Sankhwal is corroborated with the facts on record,

the documents found during the survey proceedings, and the glaring mistake as under:

a page No. 26 para 2.1.15, the Hon'ble CIT(A) has reduced the jewellery of 18 K of weighing 1620.506 given on approval for export from the actual jewellery 18K found at the time of survey whereas instead of reducing it should be added in the stock of the 18K jewellery found at the time of survey. Further in this paragraph 18 K jewellery as per page 8 of the valuation report of 1138 gm and as per page 9 of the valuation report of 1356.89 gm has been reduced from the jewellery of 18 K found at the time of survey and has been added in the 24 K gold.

b In this regard it is submitted that how the 18 K gold jewellery can be converted into 24 K gold which is against the usual practice. In the actual situation 24 K jewellery is issued to the Karigar to make 18 K jewellery not vice versa as in the 18 K jewellery the element of alloys has already been mixed which later cannot be separated.

c In addition, on page no. 27 of the order it has been alleged that diamonds of 4622.56 has been erroneously taken in 18 K jewellery. In this regard, it is submitted that the diamond is always in carats wherein the gold jewellery is weighed in grams so there is no question of any wrong interchange arises.

d Hon'ble CIT(A) has not considered the stock of the jewellery and diamond found at the time of survey and the stock as per the books of accounts on the basis of purity wise. If the Ld. CIT(A) could have considered the stock purity wise then there was no justification for deleting the addition.

e The CIT(A) has not considered the prima facie facts of the case and deleted the addition mere on the ground that statement u/s 133A has no evidentiary value. In this connection, it is stated that as per the provision contained in the Survey manual where it is clearly mentioned that power of survey u/s 133A is governed by Section 131 of the IT Act. It is further mentioned that the power u/s 131 of the IT Act is governed under civil procedure code 1908 where the authority has power of court. Therefore, statement recorded u/s 133A has also evidentiary value which is derived directly from Section 131 (1) of the Act.

2 Whether on the facts and circumstances of the case the Ld CIT(A) is erred in stating that the AO did not offer any adverse comments on the working/reconciliation submitted by the appellant. In this connection, it is stated that neither any specific comments has been asked by the Ld IT (A) from the AO vide the letter of the CIT(A) dated 11.03.2022 nor the AO has given any specific comments on the issue in remand report as case does not deserve under the clauses of Rule 46A(1) of Income Tax Rule 1962.

3 Whether on the facts and circumstances of the case and the provisions of law the Ld. CIT(A) has erred in deleting the addition of Rs. 12,27,16,006/- by adopting total weight of the gold and the diamond found at the time of survey and as per the books of account without considering the purity wise stock of gold.

4 Whether on the facts and circumstances of the case and the provisions of law the Ld. CIT(A) has erred in treating the diamond weighing 4622.56 as erroneously consider in the stock of 18 K gold which is not possible as the diamond is taken on carat basis and gold is on gram basis.

5 Whether on the facts and circumstances of the case and the provisions of law the Ld. CIT(A) has erred in reducing the stock of 18K jewellery weighing 1620.506 gram sent on approval for export instead of adding the same in the physical stock found at the time of survey.

6 Whether the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or during the course of hearing of the appeal.”

3. Brief facts of the case are that, a survey u/s 133A was conducted on 27/07/2016 in the premises of the assessee, an assessment order u/s 143(3) of the Act came to be passed concluding that the unaccounted stock found during the course of survey of Rs. 12,44,06,490/- held to be unexplained and added to the income of the assessee. Aggrieved by the assessment order dated 30/12/2019, the assessee preferred an Appeal before the CIT(A). The Ld. CIT(A) has called for the remand report from the A.O. and ultimately deleted the addition of Rs. 12,27,16,006/- and upheld the addition of Rs. 17,50,484/-. Aggrieved by the order of the CIT(A) dated 29/04/2022, the assessee preferred the present Appeal on the grounds mentioned above.

4. The Ld. Departmental Representative vehemently submitted that the order impugned is erroneous as the CIT(A) has recorded wrong findings and not considered the statement of Amit Sankhwal recorded during the course of

survey on the ground that the same has no evidentiary value on standalone basis without reference to any other material discovered during the search and seizure. Further submitted that, the CIT(A) also committed error observing that A.O. did not offer any adverse comments on the working/reconciliation submitted by the assessee during the remand proceedings, though the CIT(A) has not asked specific comment on the said issue in remand and the action of the CIT(A) does not deserve under Rule 46A(1) of the I. T. Rules. The Ld. Departmental Representative relying on the assessment order submitted that the order of the CIT(A) is requires to be reversed.

5. Per contra, the Ld. Assessee's Representative relied on the findings of the CIT(A) and contended that the assessee provided the reconciliation of stocks as on 27/07/2016 before the CIT(A), the CIT(A) called for Remand Report and after analyzing the working/reconciliation of the assessee rightly deleted the addition which requires no interference, by the Tribunal.

6. We have heard both the parties and perused the material available on record. The A.O. made addition of Rs. 12,44,66,490/- being unaccounted stock found during the course of survey held to be unexplained. The CIT(A) in the Appeal filed by the Assessee, while restricting the addition of Rs. 17,50,484/- and deleting Rs. 12,27,16,006/- has observed as under:-

“14.5. The appellant submitted details of stock during the appellate proceedings along with the working and requested for reconciliation with the impounded material/software submitted were forwarded

the AO for comments. The details submitted were forwarded the A.O. for comments.

15. The remand report has been submitted by the AO vide letter dated 15.02.2022. The reconciliation submitted by the appellant after the remand report has also been sent to AO for his comments, if any. The AO did not offer any adverse comments working/reconciliation submitted by the appellant.

15.1. Accordingly final working submitted by the appellant as reproduced below is accepted:

1. Reconciliation of stock as on 27.07.2016 Derived by adopting Accepted opening stock as at 1.04.2015 plotting all bills of Purchase/ sales WITH Stock as per Software /DVO REPORT .

Breakup of closing stock as per books as on 27.07.2016 is as under:

Particulars	Gold (nt wt in gms)	Diamonds (cts)	Value
Total Stock as on 27.07.2016 as per the software [C] -At cost.	41,681.75	17,099.21	341,035,992
Less: Goods sent abroad on consignment	7,384.43	3,616.70	70,193,895
Less: Goods with Customers for approval	4,038.27	1,685.31	16,598,681
Less: Gold with Karigar for Manufacture	8,370.21	-	23,410,554
Stock in Shop on 27.07.2016 as per Software	21,888.84	11,797.20	230,832,862
Stock as specified as at 23.07.2016 in Remand Report[25/26 July Net Purchase [198.13Gms / 109.53Cts	21691.60	11,687.36	
Stock purchase NET on 25/26 th July	198.13	109.53	
Stock as declared in Software	21889.73	11796.89	

27.07.16			
Jewellery Physically found at Showroom & valued by DVO as per Report Dt. 27.07.16			
@ 18KT 20251.364 + 14KT 1585.944 + 22KT 479.07 + 24KT 215.10	22,531.47	11,239.19	35,98,23,774
@@ 18KT 10569.60 + 14KT - 541.58 + 22KT - 128.06			
Less: Change in the weight of gold due to reclassification of raw gold from 18K, 22K jewellery to 24K jewellery ("Refer Table below)	(634.81)		
Jewellery as per the DVO Report after reclassification [A]	21,896.66	11,239.19	35,98,23,774
Difference C= [A-B]	7.82	(558.01)	

From the above it has been noted that the excess stock of gold on the date of survey was only 7.82 grams which comes out to Rs.2,39,948/- (6.93 grams x 30,684) which is sustained as undisclosed stock.

15.2 Further it has been observed that the stock of diamonds at the premise was found to be short by 558 cts. It is accordingly held that the appellant has made sales out of books. The income on which is worked out as under:

<i>Sale out of books</i>	<i>=558 cts diamond</i>
<i>Value@ 13,515 rate adopted by DVO</i>	<i>=Rs.75,41,370</i>
<i>G.P. @ 20.03%</i>	<i>=Rs.15,10,536</i>

The addition of Rs. 15,10,536/- is sustained on account of out of books sale made by the appellant.

Accordingly, the addition of Rs.17,50,484/- is upheld and balance amount of Rs. 12,27,16,006/- directed to be deleted.”

7. It is observed that the assessee had submitted details of stock during the appellate proceedings before the CIT(A) along with the working and requested for reconciliation with the impugned material/software. The A.O. filed Remand Report specifically contending that the assessee is not entitled to produce the documents other than the documents produced during the assessment proceedings and justified the finalization of valuation of the jewellery during the assessment proceedings.

8. The assessee has also filed additional evidence under Rule 46A of the I.T. Rules and the same is forwarded to the A.O. with a direction to verify/examine the petition of the assessee and called for the remand report. The Ld. CIT(A)

after analyzing the contentions and the Remand Report observed that “*the A.O. did not offer any adverse comment on the working/reconciliation submitted by the appellant.*” The said observation of the CIT(A) is erroneous since the CIT(A) has not at all ask the A.O. to make any specific comment on the working/reconciliation submitted by the assessee, therefore, the A.O. has not made either adverse or favourable comments during the remand proceedings, in so far as details of stocks and the workings produced by the Assessee. The CIT(A) committed grave error in recording the above erroneous findings and in deleting the addition. Therefore, we set aside the order impugned and remand the matter to the file of the A.O. for de-novo adjudication of all the issues involved in the present Appeal and also direct to verify the details of stock produced by the assessee before the CIT(A) and to reconcile the same with the impounded material/software. Accordingly, the Grounds of Appeal of the Revenue are partly allowed for statistical purpose.

9. In the result, the Appeal filed by the Revenue is partly allowed for statistical purpose.

Order pronounced in open Court on 05th September, 2023.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER
Dated: 05/09/2023
Pk/R.N, Sr ps

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI