

**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI PAVAN KUMAR GADALE, JM

ITA No. 2051/Mum/2023

(Assessment Year: 2017-18)

M/s Shairu Gems Diamonds Pvt.
Ltd.
DE-9012A, Bharat Diamond
Bourse,
G-Block, Bandra Kurla Complex,
Bandra (East), Mumbai-400 051

Vs.

DCIT,
Central Circle 2(1)
Room No.804, 8th Floor,
Pratishtha Bhavan,
Old CGO Complex Annex,
M.K. Road, Mumbai-400 020

(Appellant)**(Respondent)****PAN No. AATCS5148R**

Assessee by : Shri Harsh Kapadia &
Ms. Ritu Punjabi, Adv
Revenue by : Ms. Bhumika Patel, DR

Date of hearing: 18.01.2024**Date of pronouncement :** 28.02.2024**ORDER****PER PRASHANT MAHARISHI, AM:**

01. This appeal is filed by assessee against the appellate order passed by Commissioner of Income-tax (Appeals)-48, Mumbai [the learned CIT (A)], for A.Y. 2017-18, wherein the appeal filed by the assessee against the assessment order passed by Dy. Commissioner of Income Tax, Central Circle 2(1), Mumbai, passed under Section 143(3) of the Act dated 7th December, 2018, was dismissed.
02. Assessee has raised following grounds of appeal:-



"Being aggrieved by the order of the Learned Commissioner (Appeals), the Appellant raises the following grounds of appeals, each of which are independent of and without prejudice to the one another:

1. ALLEGED UNEXPLAINED STOCK

1.1 On facts and circumstances of the case and in law, the Learned Commissioner (Appeals) erred in sustaining the addition made by the Respondent of Rs. 1,09,10,518 on account of alleged unexplained stock.

1.2 The Learned Commissioner (Appeals) failed to appreciate and ought to have held that there were no anomalies in actuality so as to warrant the addition made by the Respondent and the entire stock of diamonds was duly reconciled / reconcilable by the Appellant.

1.3 The Learned Commissioner (Appeals) further erred in rejecting the application for admission of additional evidences filed by the Appellant to support and substantiate its contentions.

1.4 Without prejudice, the Learned Commissioner (Appeals) also erred in sustaining the addition by accepting the Respondent's contention of adopting a rate of Rs. 1,34,764 per carat of polished diamonds to the alleged unexplained stock.

2. ALLEGED BOGUS SALARY EXPENSES

2.1 On facts and circumstances of the case and in law, the Learned Commissioner (Appeals) erred in sustaining the addition made by the Respondent of Rs. 13,44,058 on account of alleged bogus salary expenses. The Learned Commissioner (Appeals) failed to appreciate and ought to have held that all the salary expenses incurred and claimed by the Appellant were genuine and allowable as business expenditure.

3 The Learned Commissioner (Appeals) also failed to appreciate that the addition was made by the Respondent merely on the basis of surmises and conjectures and thus, the disallowance was unsustainable and liable to be reversed."

03. The brief fact of the case shows that assessee is a company engaged in the business of manufacturing, trading and export of polished diamonds. It filed its return of income on 18th November, 2017, on total income of ₹24,94,58,340/-. Search took place under Section 132 of the Act on 29th June, 2019. Subsequently, the return of income was picked up for scrutiny.
04. The learned Assessing Officer found that during the search it revealed that assessee has booked bogus salary expenses in the names of wives of employees and some incriminating documents of payments vouchers were found. Assessee was questioned by letter dated 17th October, 2017, to furnish the details of the employees along with their PF and ESIC payments and the register of employees along with the work done. The assessee filed

some details. on examination of the details, the learned Assessing Officer found that incriminating payment vouchers are available in seized documents. He issued summons under Section 131 to HR, Manager of the assessee and asked whether any wives of the employees is working in the company and why such vouchers are prepared. The HR manager stated that no wives of employees are working in the company. He further stated that, to help the employees to evade higher tax bracket and to inflate the expenses of the company some vouchers in the names of wives are prepared as per the direction of Mr. Siddharth Mehta. In answer to question no.14, gave the list of 14 persons for whom bogus vouchers are prepared. These 14 persons are the wives of the employees of the assessee. The above fact was confronted to the Director Mr. Siddharth Mehta who stated that he is not aware about the same and the verification of the employees is made by the HR department when the chart of the 14 wives of the employees was shown and assessee was show caused about the disallowance. The assessee asked copies of incriminating documents and further requested to ignore the statement of the HR department stating that it is contradictory. The learned Assessing Officer rejected the contention of the assessee and stated that the incriminating vouchers etc are in the possession of the assessee. The HR manager has given a complete statement stating the names of the wives, permanent account number, address, amount of salary and date of joining and date of leaving along with the address.

Therefore, it does not have any contradiction. Accordingly, for A.Y. 2017-18, it was found that ₹13,44,058/-, is the salary paid to the wives of the employees, which is bogus and it was disallowed.

05. The learned Assessing Officer further found that during the course of search stock of ₹41,534.60 carets of diamond was found and inventorized. As per the books of account, the stock of diamond was 45,435.76 carets for the different of Mr. Siddharth Mehta, was questioned. In his 132(4) statement, in reply to question no.40, he was unable to explain the difference. During the course of assessment proceedings, the assessee was asked about the difference of 61.84 carets, which was explained weighing difference of stock lying with more than 26 departments and with 1200 workers. It was further stated that there is also difference in valuation between polish diamond and rough diamond. The learned Assessing Officer rejected the contention of the assessee and found that polish diamonds as per books of accounts is 2,025.36 carets and as per physical verification 2,106.32 carets were found leaving a difference of 80.86 carets and further, the rate for caret is 1,34,764 and therefore, the addition of ₹1,09,10,518/- was made.
06. Accordingly, the assessment order was passed under Section 143(3) of the Act at ₹26,17,12,920/-.
07. The assessee preferred the appeal before the learned CIT (A), wherein the addition of ₹13,44,058/- as bogus expenditure on payment of salary to the wives of the

employees was confirmed. With respect to the difference in stock the assessee field an additional evidences which were rejected and the addition was confirmed. Therefore, the assessee is in appeal before us.

08. The claim of the learned Authorized Representative with respect to the bogus salary expenditure that all the salary payments are genuine. Further, the addition is made purely on the basis of statement of the HR manager, assessee has also submitted that no incriminating material such as voucher etc, was provided to the assessee. Therefore, the addition in the hands of the assessee is incorrectly made. It was further stated that the addition is merely made on the basis of the statement of the HR Manager and therefore, same without granting assessee cross examination it cannot be used.
09. With respect to the addition on alleged unaccounted stock, he submitted that the assessee has given Annexure A to Annexure M along with the screen shots and payments to show that if these evidences are not examined there is no difference in the stock. The learned CIT (A) did not allow to admit those evidences.
010. The learned Departmental Representative supported the orders of the lower authorities.
011. We have carefully considered the rival contentions and perused the orders of the lower authorities.
012. Ground no.1 is with respect to the alleged unexplained stock addition of ₹1,09,10,518/-. During the course of



assessment proceedings, it was found that there is a difference of 80.96 carats of polish diamonds between stock as per books of accounts and physical verification. The difference is more than 4% of the stock which is according to the learned Assessing Officer is highly impossible in the field of diamond market. Therefore, the addition of ₹1,09,10,518/- was made. Before the learned CIT (A), assessee filed additional evidence stating that the assessee could not produce the difference for the reason that during the assessment stage assessee migrated two different software than the software used at the time of search. It also states that those diamonds are only rough diamonds and not the polish diamonds. The assessee also further stated that there is a reconciliation according to which the difference would be only of 8.79 carats which is due to the reason that the diamond looked like polish diamonds and spread along with 1,000 workers. Assessee submitted several annexure which are stated to be additional evidences. Same were not admitted by the learned Commissioner of Income-tax (Appeals). As the assessee has given a reason that there is a migration of software from time of search and at the time of assessment. Therefore, the assessee could not submit the additional evidences with reconciliation, hence, there is a sufficient cause for not producing such evidences. We find that migration of the software as stated by the assessee is a point of verification that needs to be examined to determine whether there is a sufficient cause or not for adducing additional evidences. In the order of

the learned CIT (A), he did not mention that if there is a migration of software why it is not the sufficient cause which prevented assessee from producing the details. However, we are concerned that how merely because of migration of software difference between book stock and physical funds books does not obliterate. However, there is no harm in looking at the explanation of the assessee. Accordingly, this ground of appeal of addition of unexplained stock of ₹1,09,10,515/- is restored to the file of the learned Commissioner of Income-tax (Appeals). The learned CIT (A) may examine the issues of admission of additional evidence and decide issue on the merits afresh.

013. The ground no.2 is regarding addition of ₹13,48,058/- on account of alleged bogus salary expenses. The learned Assessing Officer made the addition for the reason that search and seizure reveals such information. Further, as per letter dated 17th October, 2017, the learned Assessing Officer asked certain information. The learned Assessing Officer also issued summons to Mr. Priyank Sukhawada, HR manager of the assessee on 30th June, 2016. In his reply, in question no.14, he specifically stated the name of wives of 14 different employees to whom bogus vouchers are prepared. The explanation is so detailed, stating the name of the bogus employees, permanent account number, their date of joining, their date of leaving and address of the parties. In question no.15, he explained that the vouchers are specifically prepared to reduce tax liability in the hands of the employees and also to book expenses of the company. He also explained the modus



operandi that vouchers are prepared in the names of wives of the employees and relatives and by taking signature of those individuals. In actual no extra payment is given but merely vouchers are prepared to authenticate the proof of payment. In answer to question no.12, he specifically states that the wives of the employees are paid to inflate the expenses and to reduce the tax bracket of the employees. These payments are made on the instruction of the management Mr. Siddharth Mehta. Such bogus vouchers are also made on his instructions. When Mr. Siddharth Mehta was confronted with the statement, his answer is that he is not aware and verification of the employees is made by the HR department. Based on this, assessee was asked to produce the details of salary paid to wives of these 14 employees. It was found that such practice is from F.Y. 2011-12 to the date of search. The total salary paid to such person is of ₹64,83,365/- for various assessment years. For this assessment year such payment is ₹13,44,058/-. The assessee tried to find fault with the statement of the HR Manager but did not give the concrete evidence. Therefore, disallowance was made. Before us assessee could not substantiate that payment to the wives of these employees are for work carried out by those ladies. Statement of H R manager is categorically shows the details and the reason for the same. Mr Sidharth also confirmed that only H R department know the facts. H R head has categorically submitted such information. Now assessee wanted to get shelter under opportunity of cross examination of H R head, who is the



employee of the company and worked under the instruction of Mr Sidharth . Details of expenses are tabulated in the order is not proved to be incorrect. The modus operandi is employed for last many years is shown by the statement of H R head. Merely because all the employees whose wives are paid bogus salaries have left the job is not material. Thus we do not find any infirmity in the order of lower authorities in confirming the disallowance of bogus salaries to wives of employees. According ground no 2 fails and dismissed.

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

Order pronounced in the open court on 28.02. 2024.

Sd/-
(PAVAN KUMAR GADALE)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 28.02.2024

Sudip Sarkar, Sr.PS



Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai