

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 639/JP/2023
निर्धारण वर्ष / Assessment Years : 2016-17

Precious Jewels Corporation, C-Scheme, Jaipur	बनाम Vs.	ACIT, DCIT Cir-6, Jaipur, C- Scheme, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABFP 3798 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Pramod Patni (CA)
राजस्व की ओर से / Revenue by : Sh. A. S. Nehra (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 04/04/2024
उदघोषणा की तारीख / Date of Pronouncement: 27/05/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by assessee is arising out of the order of the National Faceless Appeal Centre, Delhi dated 23/08/2023 [here in after (NFAC)/ Id. CIT(A)] for assessment year 2016-17 which in turn arise from the order dated 21.12.2018 passed under section 143(3) of the Income Tax Act, by ITO, Ward 5(3)(4), Noida .

2. In this appeal, the assessee has raised following grounds: -

"1. The Learned CIT(A) NFAC, Delhi has eared in fact and in law in wrongly

allocating all expenses whether direct or indirect and including even unrelated expenses in such wrongly applied approach of allocating all expenses on turnover basis and in doing so,

i. neither appreciating the assessee having factually accounted for all direct expenses on cost center basis in respective accounts maintained unit wise for regulatory compliances with such fact of cost center basis and transaction linked evidences & supporting confirming the said cost center basis accounting.

ii. Wrongly alleging in the process without going into the back ground facts of the case that the assessee to have adopted the allocation / apportionment of expenses only at such time and stage when attention with respect to not similarly apportioning expenses under some minor expense heads such eligible units in the course of the assessment proceedings, however while doing so on the basis of unit wise turnover, ignoring the fact that the assessee having already done its accounting on 'cost center Basis' both in respect of direct cost and expenses as well as in respect of material indirect expenses on the basis of a logical mathematical calculation applied to factual transaction data.

2. The Learned CIT(A)- NFAC, Delhi by passing the sanctity of audited books of accounts which having been maintained in regular course of business on the basis of actual transaction values supported by underlying supporting documents which having been subjected to audit and ratified by an independent firm of auditors of repute and seniority much before even to the process of ITR filing and assessment proceedings having been taken. On the contrary, the CIT(A) endorsing the allegation wrongly made by the AO as that of no such apportionment or allocation to have been made by the assessee upfront and CIT(A) further alleging that such apportionment and allocations being made only post the AO detecting the lapses and alleging same not having been done merely on account of certain minor admin costs having not been considered for such apportionment / allocation being non material in value terms. And consequent to such finding overlooking and ignoring the otherwise systematically done apportionment by the assessee in place of that doing adopting the basis of turnover of respective units which is considered to be an arbitrary method compared to cost center based accounting. [Section 10AA]"

3. The learned Learned CIT(A) - NFAC, Delhi has erred on facts and in the law in sustaining the wrongly calculated the Profits of the two SEZ Units for the purposes of determination of eligible quantum of Deduction u/s 10AA in respect of the Two SEZ Units by ignoring and replacing the actual direct manufacturing cost along with the other material indirect expenses which were booked on "Cost

Center' basis by the assessee applying an arbitrary approach of apportionment on turnover basis which does not factor individual units and products profitability which can vary on product to product, customer to customer and quality to quality as also from time to time and hence inappropriate when accounting already having been done adopting a systematic cost center basis accounting both from commercial approach basis as also for regulatory compliances by the respective units. Thus by adopting such ad hoc and arbitrary approach wrongly calculating the deduction u/s 10AA of ITA in respect to the two eligible SEZ Units on the basis of such assumptions and not on the basis of the factual accounting of transactions in accordance with the rule of law. [Section 10AA]

4. The learned Learned CIT(A)- NFAC, Delhi has erred on facts and in law in adopting a baseless approach in applying the principals of turnover based apportionment to entire pool of expenses on account of his finding w.r.t. the assessee having not made apportionment of expenses amongst units all of which being of non material and insignificant values totaling in all to Rs. 36,36,581/- or 6.97% of the total expenses under Four Expense Accounts Groups out of the total direct and indirect expenses groups amounting in all to Rs. 5,21,82,928/- and based on the bias arising on account of such faulty approach, disregarding the entire cost center basis accounting supported by underlying documents having already been carried out at the time of occurrence of the transaction to reflect the true correct commercial profits of each unit considering the same as an independent Unit. [Section 10AA]

5. The learned AO has further erred in law and on facts in wrongly calculating Higher tax by Rs. 96,35,163 and Interest under different sections of the act totaling in all to Rs. 45,15,671 additionally payable by the assessee firm based on such aforesaid wrong approach and application of law in the impugned order. [General Ground]

6. The assessee reserves its rights to raise additional grounds of appeal or alter or modify any ground/s of appeal before the date of hearing of appeal. [General Ground]"

3. Succinctly, the fact as culled out from the records is that the return in this case was filed on 17.10.2016 declaring a total income of Rs. 3,82,48,000/-. The case was selected under complete scrutiny through CASS. Notice u/s 143(2) was issued on 18.07.2017, which was duly served upon the assessee. In response to the statutory notices issued during the

proceedings, the assessee filed reply and submitted necessary details and explanation called for from time to time. The assessee has shown income from manufacturing and trading of gems and jewelry. Details pertaining to the issues were called for and examined by the Id. AO. Based on the submission, verification and factual position as per record, the Id. AO noted that assessee has shown export sales during the year, including sales from two units in the case of which deduction u/s 10AA has been claimed. The assessee entity has claimed to have a total of four units out of which two units in SEZ's and claimed to be engaged exclusively in export sales. The assessee was asked to furnish a unit wise breakup of all the expenses claimed by it during the year. In response the assessee furnished a detailed chart regarding the amount of expense allocated under each head in each unit.

3.1 The Id. AO noted that since the assessee has not allocated all the expenditure. Therefore, he derives a ratio of SEZ sales vis a vis non- SEZ sales and the same was derived at 62% of non-eligible unit and 38 proportionate to eligible 2 eligible unit. Based on that finding he arrived at the conclusion that expenses of Rs. 1,57,63,792/- have been allocated in excess to non eligible unit and accordingly he has added the said amount

and deduction u/s 10AA was reduced to that extent. During the assessment proceedings, the assessee contended that they have allocated all the expenditure as per the regular method accounting of followed. Only the corporate expenditure is incurred at head office and the same was not allocated. The assessee has submitted all the 4 unit separate accounts duly audited wherein the assessee has submitted that the same has been allocated based on the regular method accounting of followed by the assessee. While doing so the assessee was guided by the decision of Hon'ble Madras High Court in the case of Gimpex Ltd., 46 taxmann.com 13 (Madras). Based on the finding given in that case the assessee has systematically done working of cost and its allocation of finance cost based on actual usage of fund and other expenses on actual basis. However, the Id. AO did not consider the submission of the assessee and has based on the percentage of 62 to non eligible unit and 38% to eligible unit the apportioned the expenditure without appreciating the basis of the assessee for allocation of expenses and thereby addition of Rs. 1,57,63,792/- was made in the hands of the assessee.

4. Aggrieved from the order of the assessment, assessee preferred an appeal before the Id. CIT(A)/NFAC. Apropos to the grounds so raised the relevant finding of the Id. CIT(A)/NFAC is reiterated here in below:

“5. I have gone through the assessment order and the submissions made by the appellant. Ground No. 1 to 3 are all relating to addition made by the AO to the income of the non-eligible units by treating the expenditure debited in non-eligible units pertaining to the eligible units u/s. 10AA of the Act. The facts of the case are that the appellant is having four units in all, out of which two units are SEZ units and other two are normal units. The contention of the AO in making the addition is that out of the total turnover of the appellant of Rs.44.97 crore, 63% turnover is from non-eligible units and only 37% of the turnover is from eligible units. The AO held that the indirect expenses such as travelling, administrative and selling expenses, export expenses etc. should have been allocated between the eligible units and non-eligible units in proportion to their turnover. However, it was found by the AO that most of the indirect expenses have not been apportioned on the basis of the turnover. The AO has verified the books of the appellant and came to a conclusion that the manufacturing expenses, vehicle insurance, staff travelling, administrative expenses (excluding rent, security and VAT) legal charges, staff welfare, bank charges, interest and bank charges and mobile expenses have not been apportioned on the basis of the turnover or income generated by different units. Hence, the AO has apportioned various indirect expenses in Table - II reproduced on page 3 & 4 of the assessment order wherein all the indirect expenses which should have been apportioned on the basis of the turnover / income earned and has worked out that the indirect expenses to the tune of Rs. 1,57,63,792/- has been allotted in excess to non-eligible units and which actually should have been allocated to eligible units. As a consequence of this treatment, the income of eligible units which is exempt from taxation as per the provisions of section 10AA of the Act has been reduced and the income of which is chargeable to tax has been increased. The AO has also pointed out that there were certain expenses incurred by the main unit which are common to all the units, such main office/corporate office / registered office expenses, finance expense shave not been allocated to the eligible units even though they are common expenses for eligible units as well and should have been allocated by the appellant.

5.1 The AO has relied upon the decision of Hon'ble Madras High Court in the case of CIT vs. Gimpex Ltd. 231 Taxmann 904. In the said decision, which is on section 801B which is similar to section 10AA of the Act, the Hon'ble High Court

held that the AO has to see whether the assessee has disproportionately allocated the common expenses to arrive at more profits for the "eligible units" in order to claim more relief under Section 801B of the Act. This being a factual issue the assessee was bound to place before the Assessing Officer necessary documents to establish that the common expenses have not been disproportionately allocated so as to claim more relief under Section 801B of the Act. Thus, the Courts have held that the assesseees have to maintain proper records to show that the allocation of expenditure has been done appropriately between the units else the assessing officer can make proper allocation which may result in addition to the income declared. In the instant case, as seen from the assessment order, the appellant has not given the proper allocation between the eligible units and non-eligible units which has resulted in the AO making addition.

5.2 During the appellate proceedings, the appellant has given various reasons for non- allocation of indirect expenses to the eligible units. The reasons being independent operations, independent material movement, independent stock records, customs controls etc. However, these reasons are not convincing as to why the indirect expenses cannot be debited on proportionate basis to the eligible units and why they are to be debited only in the non-eligible units. Even the appellant stated that the actual finance cost incurred by the main unit (non-eligible unit) for the eligible units is Rs.20,39,923/-. Then the question arises as to why this amount was not allocated to the eligible units before filing the return and why this plea is taken only when the AO has made the addition. At the same time, it is seen that the appellant does not have a proper system of allocation of indirect expenses against all the units by applying proper criteria of using particular facility or on the basis of turnover etc. When the appellant has not done the allocation by applying proper criteria, the AO was constrained to apply the criteria of turnover which resulted in the allocation and addition. The submissions made by the appellant are not at all convincing and hence the addition made by the AO which is after allocating indirect expenditure amongst all the four units on the basis of turnover is found to be the correct criteria. Accordingly, the addition made by the AO of Rs.1,57,63,792/- is hereby sustained. Ground No. 1, 2 and 3 are dismissed.”

5. As the assessee did not find any favour, from the appeal so filed before the Id. CIT(A)/NFAC, the assessee has preferred the present appeal before this Tribunal on the ground as reproduced hereinabove. To support

the various grounds so raised, the Id. AR of the assessee, has filed the written submissions in respect of the various grounds raised by the assessee and the same is reproduced herein below:

Ground no. 1 to 4. – Deduction u/s 10AA be allowed in accordance with the cost centre based accounting and audited results as also following the systematic basis of apportionment w.r.t. certain material indirect cost

1. It has been the contention of the appellant assessee firm that it has voluntarily on its own and since beginning from the stage of the incurrance and accounting of all the direct costs of operations as well as other material expenses in its books of accounts either on cost centre basis and when determination of that on cost centre basis is not possible, based on a systematic logical working of the accounting data from its accounting software itself.

2. The audited grouping of expenses forming part of Audited Balance sheet and Profit & Loss Account (the Financials) attached with the Tax Audit Report of the Auditors confirms which fact and contains columnar Unit wise or Cost Centre wise Grouping of each such Unit featuring the totals of expenses under respective heads of expenses to support the contentions of the appellant assessee [refer to pages 52 to 56 of the Paper Book] that all material/ major expenses have been accordingly booked and accounted for on voluntary basis by the appellant firm.

3. Accordingly, the AR outright refutes and rejects the findings by the CIT(A)/ NFAC in his Order dt. 23.08.23 in Para 5.2. at Page 14 holding as under to be factually incorrect and wrong, misleading and solely directing to a baseless bias in the mind of the CIT(A):

“... Even the appellant stated that the actual finance cost incurred by the main unit (non-eligible unit) for the eligible units is Rs.20,39,923/-. Then the question arises as to why this amount was not allocated to the eligible units before filing the return and why this plea is taken only when the AO has made the addition. At the same time, it is seen that the appellant does not have a proper system of allocation of indirect expenses against all the units by applying proper criteria of using particular facility or on the basis of turnover etc.

When the appellant has not done the allocation by applying proper criteria, the AO was constrained to apply the criteria of turnover which resulted in the allocation and addition.

The submissions made by the appellant are not at all convincing and hence the addition made by the AO which is after allocating indirect expenditure amongst all the four units on the basis of turnover is found to be the correct criteria.

Accordingly, the addition made by the AO of Rs.1,57,63,792/-is hereby sustained. Ground No. 1, 2 and 3 are dismissed.”

4. The AR accordingly vehemently submits and argues against the biases of both the CIT(A) as well as the AO who have not even bothered to or taken pains of going through the financial statements with its Unit wise Groupings as well as the various submissions made with utmost clarity and simple approach by way of written submissions time and again and more then once both before the AO as well as the CIT(A) explaining the basic approach of the appellant firm in booking expenses on cost centre basis, in apportionment of major element of cost determined after a detailed and methodical working on the data derived from the accounting software used for maintenance of accounts by the firm considering the actual usage of funds by the respective units and by doing so, the appellant firm has not overlooked or fathered in its onerous task of apportionment and allocation of all direct and material cost amongst the benefitted respective units.

5. The casual or irresponsible approach of each of reviewer whether the AO and/ or the CIT(A)'s is evident and they have therefore faltered in not properly understanding and considering and dealing with both the centre based accounting evident from the Grouping to the audited balance sheet (the financials) which specifically deal with accounting done at respective location and at timing of their incurrance at their respective location and separately maintained books of accounts at each Units location and as well as not even taking the pains and efforts in reading and understanding the methodically done exercise by the appellant firm in determination and apportionment of such common cost which could not be so booked on cost centre basis viz., the finance cost consisting of interest on its secured and unsecured borrowings and the bank interest which due to their peculiar nature is initially booked in the main unit and later apportioned amongst the different units based on actual usage of funds all of which working furnished both to the AO as well as to the CIT(A)'s and all of which also elaborately extracted and reproduced in the body of the impugned CIT(A)'s Order dt. 23.08.23 itself at Pages 8 to 10 and closed in the following manner at the top of page 10 of the CIT(A)'s Order:

x.	<i>Average rate of the two assumed for applying to Funds used by the Two SEZ Units calculated on daily product basis as per working sheet attached Marked Annex. 11</i>		@ 13%
xi.	<i>Interest applied to SEZ- G1_41 Unit &</i>	<i>Rs. 12,91,094</i>	
xii.	<i>Interest applied to SEZH1-72 Units</i>	<i>Rs. 7,48,829</i>	
xiii.	<i>Total Interest as above correspondingly credited in Main Unit</i>	<i>Rs. 20,39,923</i>	
			<i>Rs. 20,39,923</i>

The aforesaid working at Annex.11 was explained to the AO and working sheet for determination of 2 SEZ Units cost of funds @ average rate of 13% was shared with the AO in the course of assessment proceedings, but was ignored without giving any adverse finding w.r.t. the same as to why same not considered. (Annex. 7-10)

Further extracts from the order dt. 23.08.23 of CIT(A):

From Page 10.....Manufacturing Exp.

.. these expenses primarily represents Labour Charges paid to Job Workers on work basis booked separately for each nature of processing / manufacturing separately at each Unit for production of

1. For processing of precious and semi precious stones
2. For Diamond processing
3. For Gold Jewellery making

1. It may be noted that no activity of Diamond and Gold Jewellery carried out by the 2 SEZ Units and hence such cost cannot be allocated to the said SEZ Units by any rationality.

2. Further the same is linked to specific goods processed at respective Unit and Attendance Register maintained for such labour at each Unit.

Thus the cost as booked and audited, should be accepted without any changes, as done by the AO.

From Page 11.....

1. Internet and Mobile Exp.

Though the same included in the group, "Administrative and Selling Exp. Excluding Rent+ Security+ Vat. " for allocation of proportionate turnover basis by the AO, the same has wrongly been once again considered for such proportionate allocation separately in the Table II of the Order of the AO and thus amounts to double adjustment.

Same thus need to be rectified and not duplicated, as done by the AO.

1. Interest and Bank Charges .

The Interest cost as allocated for each unit on the basis of systematic working explained above and should be so restricted in place of turnover basis allocation by the AO.

Similarly, the cost under the Group heading "Bank Charges", though presently booked on cost centre basis by the "A", we may in the larger interest as stated above, may agree to same being also apportioned in same ratio as the Interest Charges since generally linked to the same. Thus applying the same ratio as

that in case of Interest cost, the Bank charges total may be so allocated as explained below:

..... table not extracted here since not required....

From Page 12.....

Further, while calculating the individual proportion of individual Units including the SEZ., Unit the AO has erred in wrongly calculating the proportions of SEZ Units at 38% of the total as against the actual 35.71% as calculated below based on audited Unit Wise Grouping which turnover figures were also considered by the AO.

Thus an error in calculations, which is explained by the chart below:

Unit wise Profit & Loss Groupings for the Year 2015-16

PARTICULARS	Main	EPIP	SEZ G1-41	SEZ -H1-72	2015-2016
Actual Proportion	63.40%	0.89%	15.50%	20.21%	100.00%
			Together 35.71%		
Proportion considered by the AO in her Order	62.00%		Together 38%		

From Page 13.....

Para 5. “..... The AO held that the indirect expenses such as travelling, administrative and selling expenses, export expenses etc. should have been allocated between the eligible units and non-eligible units in proportion to their turnover. However, it was found by the AO that most of the indirect expenses have not been apportioned on the basis of the turnover.....

..... Hence, the AO has apportioned various indirect expenses in Table – II reproduced on page 3 & 4 of the assessment order wherein all the indirect expenses which should have been apportioned on the basis of the turnover / income earned and has worked out that the indirect expenses to the tune of Rs.1,57,63,792/- has been allotted in excess to non-eligible units and which actually should have been allocated to eligible units.”

6. From all the aforesaid, the Groupings of the Profit & Loss A/c ; maintaining separate books of accounts at the respective location of the respective units, maintenance of separate stock register Unit wise at respective locations physically located separately, separate workers for each location for whom separate attendance register and payrolls

maintained, cost centre wise booking of all direct expenses at each location, incurring and booking of export expenses at respective cost centre units from where the consignment of goods took place, the requirement and monitoring of stock movements under the SEZ regulations for the two SEZ units and further the finance cost of the firm consisting of interest on borrowings and the bank charges determined based on elaborate working on the basis of actual usage of funds by the respective units derived on the basis of accounting entries made in accounting software and logically sequentially explained by the assessee firm at all stages, it is more than clear that except minor nature or indirect expenses either direct cost centre based exp. Booking done by the firm or when same not possible due to peculiarity of exp. Such as the finance cost exp., same being material in nature has been apportioned into various Units based on respective Units usage of funds determined on the basis of actual transaction wise entries in the accounting software.

7. The aforesaid explained approach is not just evident from the manner in which the unit wise grouping furnished with the audited financials of the firm [pages 52 to 67 of the paper book] as also from the written submissions made by the firm before the authorities and which have also been reproduced in the body of the Order by the CIT(A), and from Para 5 of his Order with repeated emphasis to ' indirect expenses' which alone also so admitted by the AR in the course of assessment proceedings. Furthermore, the AR also drawing our attention to the Asst. Orders u/s 143(3) of ITA for Asst. Years 2017-18 and 2018-19 [Pages 77 to 91C] in which asst. years the respective AO's accepting firms claim for Deduction u/s 10AA based on similar method of accounting and approach for allocation of material indirect cost without any changes.

8. It is also evident from the extracted para 5 of the impugned order quoting the AO that all along while the point of disagreement was primarily w.r.t. 'indirect expenses and their apportionment', *all of which totalled to a mere Rs. 49,94,866/- as detailed at page 76 of the paper book and not Rs.1,57,63,792/- as noted above by the AO and on which issue and figure no application of mind made by the CIT(A) in respect to which at most the apportionment may be further possible or done in the ratio of turnover of the respective Units .*

9. Furthermore, as argued and submitted by the AR relying upon various decisions of the courts holding that any systematically adopted method of accounting and allocation of expenses followed by assessee should not be replaced or substituted by another method without dealing with the objections and submissions made by the appellant and doing otherwise would be biased and perverse, placing reliance upon the Judgements of :

- i. Divine Chemtec Ltd. v. IT Dept. NFAC [2023] 153 taxmann.com 528 (A P & Telangana)
- ii. Sreeleathers [2022] 143 taxmann.com 435 (Calcutta)
- iii. [2022] 141 taxmann.com 305 (Allahabad) S.R. Cold Storage v. UOI
- iv. [2019] 103 taxmann.com 424 (Madras) CIT V. Swelect Energy Systems Ltd.
- v. Jayanthi Natarajan v. ACIT [2018] 100 taxmann.com 511 (Madras)

10. Attention also drawn by the AR in his submissions that the proportion of Turnover of the Two SEZ Units totalled to Rs. 16,46,65,819/- or just 35.71% of the Total turnover and other incomes collectively of all Four Units of Rs. 46,11,51,088/- and not 38% as wrongly determined by the AO in her Order and followed without being disturbed in the appeal order. Accordingly referring to the quantum of not apportioned minor indirect exp. of Rs. 49,94,866/- and calculating 35.71% of same which is the proportion of turnover could at most be further allocated/ apportioned to the exempted units and nothing more since same have already been duly made by assessee on voluntary basis and should not be disturbed.

Thus 35.71% of Rs. 49,94,866/- or Rs. 17,83,667/- alone be disallowed out of the claim by the firm of Rs.2,34,86,328/- on the basis of the two separate Unit wise Audit Certificates furnished in Form no. 56 with the ITR filed by the appellant firm.

11. The appellant accordingly deserves to get a total Relief to the said extent of Rs. 1,57,63,792/- Less Rs. 17,83,667/- or Rs. 1,39,80,125/- as Deduction U/s 10AA of ITA based on the aforesaid.

Ground No. 5- Wrongly levying Interest under different sections on the income determined.

Interest total tax determined giving effect of the deduction u/s 10AA claimed and determined as above be charged in accordance with the applicable provisions of the act. Relief under this ground of appeal is therefore consequential.”

6. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

Sr.	Particulars	Page Nos.
1.	Assessment Order- Sec.143(3) dt. 21.12.2018 for AY 16-17	1-6
2.	Rectification Order u/s 154 by AO dt. 20.02.2019	7-9
3.	CIT(A)/ NFAC Order dt. 23.08.23	10-24
4.	Written Submissions to NFAC/CIT(A) on 11.02.21 and Resubmitted on 27.06.22* with Annexures as under:	25-39
	i. Development Commissioner SEZ LOP/LOA's and their Renewals H1-72	40-51
 doG1-41	
	ii. Unit wise/Cost Centre wise Columnar Grouping of P&L items attached with Audit Report u/s 44AB of ITA	52-56
	iii. Working of Interest on Unsecured and Secured Borrowings with month wise transaction totals from accounting software to arrive at Average rate of Borrowings of total funds	57
	iv. SEZ Unit wise summarised day wise totals with period of use of such funds to determine cost of funds used by the respective Two Nos. of SEZ Units with individual entry wise Ledger account containing each transactions made as featuring in Main Units Ledger maintained on accounting software.	58-66
	v. Unit wise Gross Profit working with total GP for the year and preceding year.	67
	<i>Written Submissions made multiple times, first time during physical hearing on hearing on 08.11.19; then on 18.12.19; then on 08.01.21 then on 11.02.21 and then finally on 27.06.22.</i>	

5.	Unit wise Stock Summary details (opening+ purchases+ production+ sales+ closing stocks) for FY 2015-16 as submitted with 3CD particulars as well as on 26.11.18 before the AO	68-71
6.	Debtors Columnar Summary of respective Units for FY 2015-16 reflecting Party wise Sales by each Unit.	72-75
7.	Table - II from Pages 3 & 4 of Asst. Order dt. 21.12.2018 Extracted and Analysed.	76
8.	Assessment Order u/s 143(3) dt. 17/12/2019 with Income Tax Computation for AY 2017-18	77-81
9.	Assessment Order u/s 143(3) dt. 15.03.21 with Income Tax Computation for AY 2018-19	82-87
10	Unit wise Grouping of P&L items for FY 2017-18	88-91
11	Written Submissions and Cases relied in Support	92-98

7. The Id. AR of the assessee in addition the written submission so relied vehemently argued drawing our attention to page 76 of his paper book that separate set of records are maintained unit wise. The cost allocated to unit wise based on cost center is Rs. 4,71,88,062/- out of total expenditure in question for an amount of Rs. 5,21,82,928/-. Thus, the actual difference of Rs. 49,94,866/- was not charged based on the decision of Hon'ble Madras high court cited here in above. Even though he fairly admitted that he has not grievance if that amount of Rs. 49,94,866/- is distributed in the same ratio as decided by the AO which will render justice to the both assessee and revenue.

8. Per contra, the Id. DR is heard, who has relied upon the finding recorded in the order of the lower authority and submitted that the assessee failed support the working with tangible material more particularly assessee failed to demonstrate about the finance cost which is the higher and therefore, the addition made is based on the percentile of sales is appropriate and thereby there is no faults in the findings of the lower authority.

9. We have heard the rival contentions and perused the material placed on record. The apple of discord in this case is whether the assessee has allocated the cost of exempted unit and non-exempted unit properly or not. The facts as emerges from the order of the lower authority is that the assessee has 4 four units for which 2 are exempted units. The Id. AO did not consider the explanation of the assessee and has based on the percentage of 62 % to non-eligible unit and 38% to eligible unit being the percentage of sale, apportioned the expenditure without appreciating the basis of the assessee for allocation of expenses and thereby addition of Rs. 1,57,63,792/- was made in the hands of the assessee. The matter was carried before the Id. CIT(A) who also confirmed the addition taking the view that the assessee has not done the allocation by applying proper

criteria. Before us the Id. AR of the assessee placed reliance on the chart at page 76 of the assessee's paper book which is reproduced here in below;

Precious Jewels Corp. IT Asst. Order dt. 21.12.18 -- Table - II at Pages 3 & 4Extracted and Analysed							Difference in Allocation by AO	Remarks
Head of Expense	Total Expense Claimed (Rs.)	Non eligible Units - I & II		Eligible Units III & IV				
		Claimed	Allotted at 62%	Claimed	Allotted at 38%			
1 Manufacturing Expense	47,15,632	34,19,788	29,70,848	12,95,844	17,44,784	4,48,940	Unit wise Expense accounting pre-existing on Cost Center basis in respective Units which were also audited.	
2 Insurance Vehicle & Staff	1,91,154	1,91,154	1,20,427	-	70,727			
3 Travelling Expenses	25,33,953	25,33,953	15,96,390	-	9,37,563			
4 Adm. & Selling excluding Rent, Security, VAT	17,85,192	17,78,932	11,24,671	6,260	6,60,521	6,54,261do.....	
5 Legal & Professional charges	2,77,332	2,62,332	1,74,719	15,000	1,02,613	87,613do.....	
6 Staff Welfare	2,07,235	2,07,235	1,30,558	-	76,677			
7 Export Expenses	8,73,493	7,50,095	5,50,301	1,23,398	3,23,192	1,99,794	Unit wise Expense already booked on the basis of actual consignment shipped in the respective Unit & accounts audited.	
8 Finance Charges	4,03,50,803	3,83,10,880	2,54,21,006	20,39,923	1,49,29,797	1,28,89,874	Adjustments already done on the basis of Cost of Funds determined for each Unit as per accounting software actual entries & data	
9 Bank Charges	5,43,895	4,80,429	3,42,654	63,466	2,01,241	1,37,775do.....	
10 Internet and Mobile Exp.	7,04,239	7,04,239	4,43,671	-	2,60,568	2,60,568	Duplication of Adjustment since this item already forming part of Item / Sr.No. 4 above under 'Adm. & Selling excluding Rent, Security, VAT'.	
11 Total (1 to 10)	5,21,82,928	4,86,39,037	3,28,75,245	35,43,891	1,93,07,683	1,46,78,826		
As determined by AO in her Order				a	b			
				c = (b-a)	1,57,63,792			
12 Total of 5 Rows for which already accounted for on Cost center basis. [1+7+8+9+10]	4,71,88,062	4,36,65,431	2,97,28,479	35,22,631	1,74,59,583			
13 Balance [11-12]	49,94,866	49,73,606	31,46,766	21,260	18,48,100			
				d	e			
				f = (e-d)	18,26,840			
Effective difference on account of expenses heads which remained to be accounted for in audited financials								
Total Debit side of P&L					55,01,59,506			
Minor Expense heads in respect to which no apportionment/ allocation made to respective sub Units considering the same to be HO Exp. to maintain the other sub Units.					49,94,866			
Proportion of aforesaid Minor Exp. Heads remaining unadjusted as a percentage of total Debit side of P&L					0.91%			

On perusal of the above chart comparing with the tabulated profit and loss account submitted by the assessee in his paper book page 54 to 56 the bench noted that manufacturing expenses, Insurance Vehicle & Staff, Travelling Expenses & Adm. & Selling excluding Rent, Security, VAT, Legal & Professional charges, staff welfare, Export Expenses, Finance Charges, Bank Charges & Internet and Mobile expenses are directly attributable to

represent unit and allocating the same on the percentage basis is not correct approach when the separate set of books are maintained by the assessee, get them audited by an independent chartered accountant and the same being regularly and consistently maintained. Those book results were not rejected. The Id. AR of the assessee fairly admitted that the assessee under the bona fide belief has not apportioned the expenditure to the extent of Rs. 49,94,866/- to the exempted unit and he has consented that if the same is allocated in the same ratio as decided by the Id. AO i.e. 68% to the non-eligible unit and 32% to eligible unit. Therefore, based on these observations, the Id. AO is directed to make suitable addition @ 32% of Rs. 49,94,860/- less if any amount already allocated by the assessee if demonstrated by assessee at the time of passing appellate order and the balance amount is directed to be deleted. In terms of these observations, the appeal of the assessee is partly allowed. Since all the grounds of appeal are related to apportion of expenditure and since we have partly considered plea of the assessee. We have not decided each ground of separately and the appeal of the assessee is thus partly allowed.

In terms of this observation the appeal of the assessee is partly allowed.

Order pronounced in the open court on 27/05/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 27/05/2024

*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Precious Jewels Corporation, , Jaipur
2. प्रत्यर्थी / The Respondent- ACIT DCIT, Circle-06, C-Scheme, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 639/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar