

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE NARENDRA KUMAR BILLAIYA, AM
AND
SHRI SUNIL KUMAR SINGH, JM

ITA No. 4033/MUM/2023

(Assessment Year: 2017-18)

Rajgir Gems LLP,
EW-5190,
Bharat Diamond Bourse,
Bandra East,
400051

Vs.

Assistant Commissioner of
Income Tax,
Circle 23(3),
104, 1st Floor,
Matru Mandir,
Tardeo Road,
Mumbai 400007

(Appellant)

(Respondent)

PAN No. AASFR9480R

Assessee by : Ms. Vasanti B.Patel (AR)
Revenue by : Smt. Mahima Nair- (SR. DR)

Date of hearing: 24.04.2024

Date of pronouncement : 13.05.2024

ORDER

PER SUNIL KUMAR SINGH, JM:

1. This appeal has been preferred against the impugned order dated 8th September, 2023 passed by the learned CIT(A) confirming the additions in the total income of the assessee to the extent of Rs. 1,75,56,107/- made vide assessment order passed Under Section 143(3) r.w.s.144 of the Income Tax Act, [Hereinafter referred to as "Act"] related to the assessment year 2017-18.
2. The brief facts under appeal state that the appellant assessee, a firm carrying of business of trading and manufacturing of diamonds, filed its return of income on

27th September, 2017 declaring total income of Rs. 4,47,66,180/-. The assessee's case was selected for scrutiny under CASS. In response to the statutory notices, assessee submitted the details of the stock book of polished diamonds date wise, sale/purchase based on the quantity in carat with opening and closing stock quantity wise. The response of the assessee could not satisfy the Assessing Officer to his expectation in respect of the details of stock of diamond piece wise, color wise, date wise and carat wise. Being aggrieved from the assessment order, appellant assessee preferred an appeal before learned CIT(A), who estimated an increase of GP @ 5.12% on the basis of GP shown by the appellant in last 5 years against the GP estimates made by Assessing Officer @ 5.55% (4.05% shown by the appellant plus increase of 1.5% made by the Assessing Officer).

3. Assessee has filed the appeal on the following grounds:

**"I. ADDITION ON ACCOUNT OF GROSS PROFIT
RS. 1,75,56,107/-:**

- 1.1.] *On the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals), the National faceless Appeals Centre, New Delhi, [CIT(Appeals)], erred in confirming the addition to the extent of Rs.1,75,56,107/- made by the learned Assessing Officer by invoking provisions of Section 145(3) of the Act, though not applicable, and thereby estimating the Gross Profit for the above year*
- 1.2.] *The learned CIT(Appeals) failed to appreciate the explanations/submissions furnished by the Appellant. The appellant has explained as to why the details called for by the learned Assessing Officer could not be furnished due to non-availability of Inward/Outward data in the manner as asked for by the learned Assessing Officer*

- 1.3.] *It is submitted that the lower authorities have resorted to the rejection of books of accounts and estimation of gross profit without going into the data/details/documents furnished by the Appellant for Sales, Purchases and inventories which are available on records.*
- 1.4.] *The learned CIT(Appeals) failed to appreciate that the rejection of books of account and estimation of Gross Profit cannot be sustained as there is no defect in the books of accounts maintained as alleged by the learned Assessing Officer and upheld by the CIT(Appeals).*
- 1.5.] *It is submitted that the lower authorities erred in invoking the provisions of Section 145(3) of the Act on the basis that the Appellant failed to furnish details of diamond stock piece-wise, carat-wise and grade-wise. It is submitted that the lower Authorities failed to appreciate that neither there is any requirement to maintain stock records to fetch such information nor the Appellant could compile the same in the absence of complete Inward/outward data. The lower authorities failed to appreciate the business practice and nature of activities involved in the trade, typical to the diamond trade and industry as a whole. ...2.*
- 1.6.] *The learned CIT(Appeals) (failed to appreciate that the learned Assessing Officer during the course of assessment of the Appellant for Assessment Year 2018-2019 (the immediately succeeding year) had specifically issued a show cause notice in proposing rejection of books of account and addition to gross profit as in the Assessment Year 2017-18 (the year under Appeal) vide Para 4 of the Scrutiny Notice under Section 142 (1) of the Act dated 16.12.2020 and has finally accepted the submissions made by the Appellant and did not consider any additions.*
- 1.7.] *The lower authorities failed to appreciate that the method of accounting has been accepted by the Department in earlier years as well as in the immediately succeeding year and hence the principles of consistency do apply in the case of the Appellant.*
- 1.8.] *The learned CIT(Appeals) has not considered/dealt with various judicial pronouncements referred to and relied upon by the Appellant in written submissions furnished before him and has not discussed as to why the same have not been applied to the facts of the case."*



4. Consequent upon the notice, learned Departmental Representative (DR) appeared and presented herself for the final arguments in this appeal.
5. Perused records and heard representatives for both the parties.
6. On the basis of the aforesaid grounds, the following points emerge out for consideration under appeal:
 1. Whether the addition of Rs. 1,75,56,107/- in the total income of the assessee for the Assessment Year 2017-18 by the Assessing Officer, merely on the basis of estimation for want of details of assessee firm's diamond stock – piece wise, color wise, data wise and carat wise, and grade wise, is not legally tenable?
 2. Whether the maintenance of assessee's books of accounts for the relevant Assessment Year 2017-18, is in accordance with the provision of the Act?
7. Both the aforesaid issues, covering almost all the grounds of appeal, are inter-related, Hence, these issues are being taken together for the sake of convenience.
8. Learned representative for the appellant assessee has argued that assessee's books of accounts have been audited Under Section 44AB of the Act. There is no requirement for maintenance of register on the basis of quality of stock of each and every diamond. It is sufficient to maintain stock of diamond on the basis of quantity

mentioned in carat. He has referred order dated 30th November, 2015 passed in ITA no. 3257/Ahd/2011 Dy. CIT Vs M/s Nevil Gems in support of his argument.

9. Per contra learned DR has supported the impugned order and referred Kachwala Gems V Joint Commissioner of Income-tax, Jaipur [2007] 158 Taxman 71 (SC) and Oopal Diamond vs. ACIT-19(2) Mumbai [2022] 1971TD827/144 Taxmann.com 184 (Mumbai- Trib) in support of impugned order.
10. The relevant paras 7 and 8 of the aforesaid order dated 30th November, 2015 passed by the coordinate Ahmedabad Bench of the Tribunal read as under:

"7.The assessee who is engaged in the business of manufacturing of polished diamonds has maintained regular books of accounts, financial statements, are duly audited under section 44AB of the Act, complete quantity details have been maintained and have been reported by the auditors in the Tax Audit report, no specific mistake has been reported in the purchase and sales of the assessee, GP rate for the year under appeal shown at 6.38% which is higher than the GP rate of 2.67% declared by assessee in the immediately preceding year. The only reason for which the Assessing Officer has rejected the books of accounts is for non- maintenance of qualitywise and piecewise detail of polished diamonds and has prepared vouchers for payment of labour charges. We find that similar issue came up before the Tribunal in the case of in the case of M/s Dhani Brothers vs. ACIT, in in ITA Assessing Officer 2309/Ahd/2008, wherein the Tribunal has decided the issue vide its order dated 6.8.2010 by observing as under :-



7.
8. *From the above, it is evident that if the Assessing Officer is not satisfied about the correctness or the completeness of the accounts of the assessee, he may make an assessment in the manner provided in section 144. In this case, there is no dispute about the correctness of the assessee's accounts. As per the Assessing Officer for want of qualitative details of the processing of diamonds, the accounts of the assessee cannot be said to be complete. We are unable to agree with the above views of the Assessing Officer. Section 44AA provides for maintenance of the books of accounts. As per the sub-section (2), every person carrying on business or profession is required to keep and maintain such books of accounts and other documents as may enable the Assessing Officer to compute the total income of assessee in accordance with the provisions of this Act. Sub-section (3) of section 44AA empowers the Central Board of Direct Tax to prescribe by rules the books and other documents to be kept and maintained by the assessee. The CBDT as per rule 6F has prescribed the books of accounts and other documents to be kept and maintained by the persons carrying on certain specific profession. However, no books of accounts are prescribed for the person carrying on business. Thus, the assessee carrying on business are required maintain such books of accounts as will enable the Assessing Officer to compute the income of the assessee. The present assessee has maintained the regular books of accounts which*



were duly audited. The sale and purchase of the assessee is vouched and verifiable. The assessee has also maintained quantitative details in respect of diamonds purchased and sold by it as well as for processing of diamond. There is no adverse comment from the auditor that the profit cannot be computed from the books of accounts maintained by the assessee. In our opinion, the qualitative details of each piece of diamond are not necessary for computation of the income of the assessee. Income of the assessee can be very well computed on the basis of accounts already maintained by the assessee. In view of the above, we are unable to agree with the Assessing Officer that there is defect in the system of method of accounting of the assessee which requires rejection of the book results under Section 145(3) of the Act and estimation of the GP."

11. In the facts of the present case in hand, assessee has filed stock book of polished diamonds-date wise and carat wise. Details of sale/purchase and the reconciliation with trading account and sample invoices for agency commission along with the invoices in respect of import of the purchases, have also been filed with the assessee's paper book from page 92 to 170. Audit report also does not disclose any defect in such maintenance of books of accounts by the assessee. The gross profit can easily be ascertained on the basis of the aforesaid documents filed by the appellant. This apart, the Assessing Officer has accepted the similar explanation of the appellant assessee

for the assessment year 2018-19 after issuing the similar show-cause notices with the draft of rejection of books of accounts. It is also undisputed fact that the revenue department has been accepting assessee firm's method of accounting in earlier years as well. It is also pertinent to mention that the Assessing Officer has not brought on record any other comparable case. The assessee has maintained quantitative details of diamonds. The facts of the present case are similar to the facts of M/s Nevils Gems (Supra). We, therefore hold that the qualitative details of stock of diamonds piece wise, color wise, data wise and carat wise are not required to be maintained under the Act and rule as referred by the coordinate bench of this tribunal.

12. The facts of Kanchwala Gems (Supra) are in respect of bogus purchases and non maintenance of quantitative details of stock. The facts of Oopal Diamonds (Supra) are related to the purchases of diamonds from certain tainted dealers, thus the facts of both the cases referred by Ld. DR are not identical to the facts of the present case, hence for no avail to the department.
13. In view of aforesaid discussion we hold that the learned CIT(A) has failed to appreciate the facts in the light of relevant law. Aforesaid both the issues are thus decided is positive in favor of the appellant/assessee and against the revenue department.



14. In the result, the appeal is allowed. Impugned order passed by Ld. CIT(A) dated 8th September, 2023 and Assessment order dated 24th December, 2019 are set aside.

Order pronounced in the open court on 13.05.2024.

Sd/-

Sd/-

(NARENDRA KUMAR BILLAIYA)
(ACCOUNTANT MEMBER)

(SUNIL KUMAR SINGH)
(JUDICIAL MEMBER)

Mumbai, Dated: 13.05.2024

Anandi Nambi, Stenographer

Copy of the Order forwarded to:

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

BY ORDER,

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