

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

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 1279/MUM/2015  
Assessment Year: 2010-11**

DCIT CIR 29(3)  
4<sup>th</sup> Floor, R. No. 402  
C-10 Bldg, Pratyakshkar Bhavan  
BKC Bandra (E)  
Mumbai - 400051

Vs. Mr. Raj Girish Karia  
Prop. Rajgiri Marmo  
Garage No. 3, Vasudha  
BPS Road, Mulund (West)  
Mumbai - 400080

**PAN No. AHXPK7597E**

**ITA No. 1037/MUM/2015  
Assessment Year: 2010-11**

Mr. Raj Girish Karia  
3 Vasudha B.P.S. Road,  
Mulund (W)  
Mumbai - 400080

Vs. JCIT 23(3)  
BKC, Bandra (E)  
Mumbai - 400051

**PAN No. AHXPK7597E**

**(Appellant)**

**(Respondent)**

Revenue by: Shri Arun Shenoy, DR  
Assessee by: Shri Dharmesh Shah, AR

Date of Hearing : 07/02/2017  
Date of pronouncement: 28/04/2017

**ORDER**

**PER N.K. PRADHAN, AM**

These two cross appeals – one by the Revenue and the other by the assessee – for the assessment year 2010-11 involve some

common issues. As such we are proceeding to dispose them off by this consolidated order for the sake of convenience.

2. The assessee filed his return of income for the A.Y. 2010-11 on 29.09.2010 showing income of Rs. 68,55,600/-. The assessee trades in marble, granite, tiles etc. He also imports raw materials and sells them on high seas. We begin with the grounds of appeal filed by the Revenue which reads as under:

i. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs. 19,23,050/- made on account of difference in debtors, in contravention of provisions of Rule 46A of I.T. Rules, 1962.

ii. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs. 1,04,08,270/- made on account of unproved purchases, in contravention of provisions of Rule 46A of I.T. Rules, 1962.

iii. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs. 5,00,000/- made u/s 68 on account of unproved loans of 2 loan lenders, in contravention of provisions of Rule 46A of I.T. Rules, 1962.

iv. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs. 4,57,977/- made on account of disallowance of interest attributable to the investment in plots which is not put into use for the business in contravention of provisions to section 36(1)(iii) of the Income-tax Act, 1961.

v. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs. 14,17,335/- on account of 40(a)(ia) without appreciating the fact that the Hon'ble ITAT 'D' Bench vide their order dated 25.06.2014 in the assessee's own case for A.Y. 2008-09 has set aside the issue to the file of the A.O. for re-examination and therefore, the issue is not decided in assessee's favour.

3. We begin with the 1<sup>st</sup> ground of appeal. The Assessing Officer (A.O.) made an addition of Rs. 19,23,050/- being the difference in

value of receivables shown to the bank and that shown in the books of account. During the course of assessment proceedings, the A.O. observed that the receivables shown to the bank were Rs. 4,54,31,109/- whereas the receivables has shown in the books were Rs. 4,35,08,059/-. When asked to explain by the A.O., the assessee filed a reconciliation statement before him. The A.O. held that no such reconciliation had been filed by the assessee before the Bank. The A.O. took note of the fact that the books of account are already rejected, therefore, he made an addition of Rs. 19,23,050/- (Rs. 4,54,31,109/- minus Rs. 4,35,08,059/-).

3.1 Aggrieved by the order of the A.O., the assessee filed an appeal before the learned CIT(A). The assessee filed copy of account of the said parties along with a reconciliation statement, showing the receipt of payment from the concerned parties and how it was accounted for in their respective ledger account. The assessee also submitted that the list of receivables submitted to the Bank was not fully updated and did not incorporate the part payments received from the said parties. The learned CIT(A), having gone through the submission made by the assessee held that 'just because books of account are rejected due to non-maintenance of quantitative records of stock, it does not automatically mean that all figures recorded in books are unreliable/incorrect.' Therefore, the learned CIT(A) directed the A.O. to delete the addition of Rs. 19,23,050/-.

3.2 Before us, the learned DR relied on the order of the A.O., whereas the learned counsel of the assessee relied on the order of the learned CIT(A).

3.3 We have heard the rival submissions and perused the relevant material on record. We find that there was no contravention of the

provisions of Rule 46A of the Income Tax Rules, 1962 by the learned CIT(A) as no new material or evidence was filed by the assessee before him. It is found that the assessee filed a reconciliation statement before the A.O. on 05.12.2012. The A.O. did not accept it on the ground that such a reconciliation statement has not been filed before the Bank. Unless there is a requirement, the assessee need not file a reconciliation statement before the Bank. As asked by the A.O., the assessee filed a reconciliation statement. The A.O. should have gone through it and in case of any doubt, he should have asked the assessee to reconcile the same. He has not done so. The other reason on which the A.O. has relied is that the books of accounts of the assessee are already rejected. This may not be a reason to make an addition of Rs. 19,23,050/-. As the addition made by the A.O. is bereft of any material evidence, we uphold the order of the learned CIT(A). Thus the 1<sup>st</sup> ground of appeal is dismissed.

4. Now we deal with the 2<sup>nd</sup> ground of appeal. During the course of assessment proceedings the A.O. issued notices to certain parties from whom the assessee had shown purchases. In response to it, no details / confirmations were filed from M/s. Stoneman Royale Ltd. (SRL) for purchase of Rs. 1,44,45,463/- shown by the assessee from the said party. When asked to explain, the assessee stated that notice u/s 133(6) had been duly served on the said party and the payments to them have been made by account payee cheques. The assessee filed before the A.O. copy of SRL's account as appearing in the books of the assessee along with copies of bills, LR and bank statement highlighting the payments made to the said party. However, the A.O. held that the purchases shown by the assessee have not been confirmed by the other party. The A.O. also noted that as the assessee was not maintaining quantitative details of stock, the purchases

shown in the books from SRL could not be verified. Accordingly, the A.O. held Rs. 1,44,45,463/- as unverified purchases. However, since addition had already been made for excess stock of Rs. 41,69,363/- and unaccounted receivables of Rs. 19,23,050/-, the A.O. allowed set off for these amounts and made an addition of Rs. 1,04,08,270/- treating the purchases as unaccounted / unverified u/s 69A of the Act.

4.1 In appeal, the AR submitted before the learned CIT(A) that the assessee discharged his onus by furnishing the correct address of the party, on which notice u/s 133(6) was duly served. The assessee submitted that after constant follow up, the said party relented and provided confirmation of the purchases shown by the assessee in his books as also the sales made by the assessee to that party during the year. The assessee filed before the learned CIT(A) copy of confirmation for the purchases and sales made along with copy of SRL's return of income and balance sheet etc. for the year. The learned CIT(A) held that (i) purchases of Rs. 1,44,45,463/- are duly shown in the books of the assessee, for which payment are also duly recorded in the books of account, (ii) the discrepancy in the figures appearing in the books of the assessee and the books of SRL is because of the fact that the assessee was maintaining two separate accounts in the name of the said party – one for purchases and another for sales, which were merged during the year. SRL, on the other hand was maintaining three accounts in the name of the assessee in their books. When the entries in all these accounts are merged, the figures in the books of both the parties tally. Therefore, the learned CIT(A) deleted the addition of Rs. 1,04,08,270/- made by the A.O.

4.2 Before us, the learned DR stated that the assessee filed before the learned CIT(A) confirmation from SRL along with copy of acknowledgement of return of income and balance sheet etc. These documents, it was stated by him, were not filed before the A.O.

4.3 On the other hand, the learned counsel of the assessee relied on the order of the learned CIT(A). He also stated that copy of SRL's account as appearing in the books of the assessee along with bills, LR and bank statement were filed before the A.O.

4.4 We have heard the rival submissions and perused the relevant material on record. We find that the assessee filed for the first time before the learned CIT(A) confirmation of SRL along with return of income and balance sheet. These documents were not filed before the A.O. In our view, the learned CIT(A) should not have granted relief to the assessee relying upon fresh evidence without giving opportunity to the A.O. To that extent, there is violation of rule 46A. For proper appreciation of the facts, we set aside the order of the learned CIT(A) in respect of the above ground of appeal and restore the same to the file of the A.O. for making an order afresh as per the provisions of the Act after giving a reasonable opportunity of being heard to the assessee. The assessee is directed to file the above documents before the A.O. Thus the 2<sup>nd</sup> ground of appeal is allowed for statistical purposes.

5. Now we come to 3<sup>rd</sup> ground of appeal. During the course of assessment proceedings, the A.O. noted that the assessee had taken loans of Rs. 2,00,000/- from Savitaben G. Patel and Rs. 3,00,000/- from Ratilal B. Patel, in respect of which confirmations were not filed. The A.O. held that the assessee was not able to prove the identity and

credit worthiness of the above creditors. Therefore, he made an addition of Rs. 5,00,000/- u/s 68 of the Act.

5.1 In appeal the assessee submitted before the learned CIT(A) that the above two creditors had furnished to the A.O. the details called for u/s 133(6) of the Act through a courier. The learned CIT(A) deleted the addition made by the A.O. on the reason that (i) both the loan creditors have confirmed having given loan to the assessee, which are duly debited in their respective bank account, (ii) both the loan creditors are assessed to tax and have filed return of income for the year under consideration and (iii) confirmations were apparently dispatched by courier to the A.O. The learned CIT(A) found that the identity and credit worthiness of the above two creditors had been sufficiently established as also the genuineness of loan transactions. Therefore, he directed to A.O. to delete the addition of Rs. 5,00,000/-.

5.2 Before us, the learned DR relied on the order of the A.O. stating that no confirmation was filed before him by the assessee in respect of the above two loan creditors.

5.3 The learned counsel of the assessee relied on the order of the learned CIT(A).

5.4 We have heard the rival submissions and perused the relevant material on record. We find that the learned CIT(A) has taken into account the fact that (i) the loan creditors are assessed to tax, having filed their return of income for the year under consideration, (ii) the amount of loan are duly debited by them in their respective bank accounts. The above findings of the learned CIT(A) are based on documents. We uphold the same and dismiss the 3<sup>rd</sup> ground of appeal.

6. We now come to the 4<sup>th</sup> ground of appeal. During the assessment proceedings, the A.O. noted that the assessee had debited interest expense of Rs. 38,16,473/-. On the other hand, the assessee had made investment of Rs. 23,52,000/- for purchase of a plot which was shown as an investment. No business activity had started yet on this plot. Accordingly, the A.O. considered it as a non-business asset and disallowed 12% of the total interest expenses which comes to Rs. 4,57,977/-.

6.1 In appeal before the learned CIT(A), the assessee explained that the said plot at Silvassa was purchased for business purpose only but no business could be started as the necessary permission was not received from the local authorities. He filed copy of the application dated 25.04.2009 filed before the 'Administration of Dadra & Nagar Haveli, District Industries Centre, Silvassa' asking for necessary permission. The learned CIT(A) held that (i) the said plot of land was purchased by the assessee for the purpose of setting up a unit for sawing and cutting of marble blocks, (ii) since necessary permission has not been granted by the local administration, the assessee could not use the plot for the stated purpose and has been storing his stock on the said plot of land, (iii) nothing has been brought on record to establish that the plot has been purchased with the intention of resale or for using it for any non-business purpose. That being the situation, interest expenses proportional to cost of the land cannot be considered as non-business expenses and cannot be disallowed. Therefore, the learned CIT(A) deleted the disallowance of interest expense of Rs. 4,57,977/-.

6.2 Before us, the learned DR relied on the order of the A.O. On the other hand, the learned counsel of the assessee relied on the order of the learned CIT(A).

6.3 We have heard the rival submissions and perused the relevant material on record. It is found that the assessee purchased the said plot at Silvassa for business purpose only. It is evident from the application dated 25.04.2009 filed before the 'Administration of Dadra & Nagar Haveli, District Industries Centre, Silvassa' asking for necessary permission. Under section 36(1)(iii), interest paid in respect of capital borrowed for the purpose of business is a permissible deduction. Section 36(1)(iii) does not make any distinction between interest paid on capital utilised in acquiring a capital asset or a revenue asset. It has been held so in *India Cements Ltd. vs. CIT* (1966) 60 ITR 52 (SC). Nothing has been brought on record by the A.O. to establish that the said plot has been purchased by the assessee with the intention of resale or for using it for any non-business purpose. Therefore, we uphold the order of the learned CIT(A) and dismiss the 4<sup>th</sup> ground of appeal.

7. We now come to the last ground of appeal of the Revenue. During the assessment proceedings, the A.O. observed that the assessee had debited Rs. 14,17,335/- as payment of freight charges to shipping company without TDS. The assessee explained before the A.O. that this issue was part of the assessment order for the A.Y. 2008-09 and reiterated the same explanation. The A.O. did not accept the submission made by the assessee and disallowed Rs. 14,17,335/- u/s 40(a)(ia) of the Act.

7.1 In appeal, the learned CIT(A) observed that imports have been done by 14 invoices, out of which freight charges, etc. have been paid

by the assessee to the non-resident shipping companies or their agents in 3 cases only. In the remaining 11 cases, freight charges etc. have been paid by the parties purchasing those marbles / granites from the assessee on high seas, directly to the shipping company or to their local agents and have debited the said amounts to the assessee. Thus in respect of 11 purchases, the freight and insurance charges have only been reimbursed by the assessee to those purchasers and since the assessee has not paid them directly, there is no question of any deduction of TDS. For the 3 remaining cases, a certificate from the local agent MSC Agency India Pvt. Ltd. of the foreign shipping company has been submitted regarding provision of section 172. The learned CIT(A) held that in view of the freight and insurance being paid to foreign shipping companies or their local agents covered u/s 172, TDS was not required to be deducted by the assessee on payments made either directly or through the purchasers. Therefore, he deleted the disallowance of Rs. 14,17,335/- made by the A.O.

7.2 Before us, the learned DR submits that the ITAT 'D' Bench, Mumbai in the case of the assessee for the A.Y. 2008-09 (ITA No. 7232/Mum/2011) has set aside the issue to the file of the A.O. for re-examination on similar facts.

7.3 On the other hand, the learned counsel of the assessee submits that the learned CIT(A) has taken into account the order of the ITAT in his order. He relied on the order of the learned CIT(A).

7.4 We have heard the rival submissions and perused the relevant material on record. There is merit in the order of the learned CIT(A) that in view of the freight and insurance being paid to foreign shipping companies or their local agents being covered u/s 172 of the Act, TDS was not required to be made by the assessee on payments

made either directly or through the purchasers. We also find that the learned CIT(A) has taken into account the order of the ITAT . Therefore, we uphold the order the learned CIT(A) and dismiss the last ground of appeal of the Revenue.

8. In the result, the appeal filed by the Revenue is partly allowed.

**ITA No. 1037/MUM/2015**  
**Assessment Year: 2010-11**

9. The grounds of appeal filed by the assessee read as under:

- i. On the facts and in circumstances of the case and in law, the learned CIT(A) was erred in confirming the rejection of books of account u/s 145 of Income-tax Act without appreciating the fact that Assessing Officer has not brought any discrepancy in the books on record.
- ii. On the facts and in the circumstances of the case and in law, the learned CIT(A) was erred in confirming the additional of Rs. 41,69,363/- on account of difference in valuation of stock statement in the books of account and that submitted to the bank without appreciating the fact that appellant has reconciled the same.
- iii. On the facts and in the circumstances of the case and in law, the learned CIT(A) was erred in partly confirming the estimation of net profit without appreciating the fact that the report of ward inspector was not precise and silent on volume of the sales of the party.
- iv. The appellant prays that the additions / disallowances made in respect of difference in valuation of stock statement in the books of account and that submitted to the bank and estimating the net profit be deleted.

10. We begin with the 1<sup>st</sup> ground of appeal of the assessee. The A.O. noted that the assessee was not maintaining quantitative and qualitative details of stock. The argument of the assessee is that since he is in the business of trading in marble, it was not possible to maintain item-wise quantitative details. The A.O. held that since quantitative details are mentioned in the purchase bills and since

most of the purchases were made from the limited number of parties, this was possible. The A.O. also held that material was purchased from M/s. R.R. Developers, in which the assessee was a partner. This fact was not disclosed in the audit report. The A.O. relied on the order of the ITAT, Mumbai in the case of *Wall Street Construction Ltd. vs. DCIT* 87 ITD 47 and rejected the books of accounts of the assessee u/s 145(3) of the Act.

10.1 In appeal the learned CIT(A) upheld the rejection of books of accounts made by the A.O. u/s 145(3) on the ground that (i) the so-called stock register prepared and produced during appellate proceedings does not show quality-wise / grade-wise item of stock of marble and (ii) there is a discrepancy between the stock reported to the bank both in terms of quantity and value from the stock shown in the books.

10.2 Before us, the learned counsel of the assessee submits that the A.O. has not pointed out any discrepancy in the books of accounts and, therefore, he is not correct in rejecting the same.

10.3 *Per contra*, the learned DR supports the order passed by the A.O. as well as the learned CIT(A).

10.4 We have heard the rival submissions and perused the relevant material on record. There is merit in the finding of the learned CIT(A) that admittedly the assessee was not maintaining quantitative records of each item of stock on a day to day basis i.e. proper stock register was not maintained during the relevant period and there was difference between the quantity of stock shown in the books and that reported to the bank (which has not been disproved) and the books of accounts clearly were faulty at least to that extent. There is merit in

the finding of the A.O. that the assessee could have maintained item-wise quantitative details as these are reflected on the purchase bills and most of the purchases were made from limited number of parties. Taking into account the nature of business of assessee, we find that maintenance of quantitative details is an important one. Without the same it would not be possible for anyone to make proper verification. Therefore, we agree with the findings of the learned CIT(A) that the A.O. has rightly rejected the books of accounts u/s 145(3) of the Act. Thus the 1<sup>st</sup> ground of appeal is dismissed.

11. Now we take up the 2<sup>nd</sup> ground of appeal. During the course of assessment proceedings, the A.O. noted that the stock of material as on 31.03.2010 disclosed before the bank was Rs. 2,79,64,238/- whereas the stock as per books on that date was only Rs. 2,37,94,875/- leaving a difference of Rs. 41,69,363/-. When asked to explain, the assessee submitted before the A.O. that the value of stock submitted to the bank was at market price whereas the stock shown in the books was at cost price. The assessee submitted before the A.O. no purchases were returned. In view of the above, the A.O. made an addition of the difference of the stock of Rs. 41,69,363/-.

11.1 In appeal, the learned CIT(A) held as under:

“I have considered the submission and find that the contention of the assessee is not acceptable. It is seen that (as admitted by the Authorised Representative during appellate proceedings) the stock statement submitted by the assessee to the bank as on 31.03.2010 not only differed with the book stock in terms in value, but also in terms of quantity. It was admitted that the quantity of stock shown to the bank was Rs. 1,93,943 sq. ft. whereas quantity shown in the book was only Rs. 1,35,128 sq. ft. Since there is a difference in quantity of stock as on 31.03.2010, it cannot be pleaded that the value of stock shown to the bank was inflated artificially only for obtaining high credit facility. The assessee cannot take advantage of this plea and the cited case laws in the light of the difference in the quantity of stock reported by him to the

bank and that shown in the books. In the absence of any purchase returns as admitted by the Authorised Representative / Appellant, the quantity of stock shown to the bank has not been proved to be incorrect. The appellant has failed to bring out anything to establish that the stock shown in the books was correct and the stock shown to the bank was incorrect, in quantitative terms. That being the situation, the difference in value of stock shown to the bank also cannot be taken to be incorrect, being only for the purpose of obtaining high credit facility. In the light of these facts, it is held that the stock as on 31.03.2010 declared before the bank is to be treated as correct and the difference between that value and the value shown in the books i.e. Rs. 41,69,363/-, is to be treated as unaccounted stock, as has been held by the Assessing Officer. Accordingly, the addition of Rs. 41,69,363/- made by the Assessing Officer is correct and is hereby upheld and Ground of Appeal No. 2 is dismissed. “

11.2 Before us, the learned counsel of the assessee filed a reconciliation chart of stock statement submitted to the bank and as per books of accounts. He also relied on the decision in the case of *CIT vs. Vrundvan Roller Floor Mill* (2016) 72 taxmann.com 250 (Guj), *CIT vs. Acrow India Ltd.* (2008) 298 ITR 447(Bom), *CIT vs. Relaxo Footwear* (2003) 259 ITR 744 (Rajasthan), *CIT vs. Khan & Sirohi Steel Rolling Mills* (2006) 200 CTR (All) 595, *CIT vs. N. Swamy* (2000) 241 ITR 363 (Mad),

11.3 *Per contra*, the learned DR supported the order passed by the learned CIT(A) confirming the addition of Rs. 41,69,363/- made by the A.O. on account of difference in stock statement.

11.4 We have heard the rival submissions and perused the relevant material on record. We begin with the decisions relied on by the learned counsel of the assessee. In *Vrundvan Roller Floor Mill* (supra), the A.O. found a difference between the stock as per books of accounts and the stock statement submitted to the bank. He made an addition and treated the difference as unaccounted investment in stock. The Hon'ble High Court held that since inflated statement was

furnished to banking authorities for availing of higher credit, difference of stock shown in books of accounts and in statement furnished to banking authorities could not be treated as undisclosed investment.

In *Acrow India Ltd.* (supra), it has been held that the burden is on revenue to prove the valuation as incorrect and the revenue cannot rely on statement by assessee to its bank.

In *Relaxo Footwear* (supra), it has been held that the finding of the Tribunal on valuation of stock submitted to bank was motivated to avail of higher limits of credit, the same being finding of fact, no question of law arises.

In *Khan & Sirohi Steel Rolling Mills* (supra), it has been held that the Tribunal was justified in accepting the explanation of the assessee that in view of the prevailing practice, the value of stock hypothecated to bank was inflated to avail of more overdraft facilities and deleting the addition on account of difference between stock shown to bank and the stock shown in the books of the assessee.

In *N. Swamy* (supra), the Hon'ble High Court held that the burden of proof is on revenue and the same could not be discharged by merely referring to statement of the assessee to third party.

11.5 We find that the instant case is distinguishable from the above decisions relied on by the learned counsel as per discussion below.

11.6 In the instant case, admittedly the quantity of stock shown by the assessee was 1,94,019 whereas quantity shown in the books of accounts was only 1,35,128. There is merit in the finding of the learned CIT(A) that 'since there is a difference in quantity of stock as on 31.03.2010, it cannot be pleaded that the value of stock shown to

the bank was inflated artificially only for obtaining high credit facility'. We find that the assessee vide letter dated 15.12.2012 has submitted before the A.O. the following explanation:

“Regarding purchases return during above year, it is submitted that our client has not return any goods purchases during above year. Further, it is stated that there is no goods return against sale during above year”.

In the reconciliation statement filed before the Tribunal, the learned counsel of the assessee has stated (i) the difference in quantity(69) and amount(- Rs. 2,260/-) in respect of Mumbai Marble because of sales invoice No. 14/09-10 issued to M/s Della posted in accounts after submitting statement to Bank, (ii) the difference in quantity(75.64) and amount( Rs. 10,44,420/-) in respect of Sil Marble Block because of sales bill No. HSS/14/09-10 and HSS/13/09-10 w.r.t high sea sale bills were posted in accounts after submitting statement to Bank (iii) the difference in quantity (54482) and amount (Rs. 63,99,370/-) in respect of Sil Marble OMS because of purchase return. The above submission runs counter to the explanation filed before the A.O. on 15.12.2012. Also the instruction of the Karnataka Bank Ltd. is that 'valuation of stocks should be on the same basis as adopted for balance sheet of the borrower/purchase invoice'. Thus the revenue has discharged the burden of proof.

11.7 The claim that a stock statement made for the bank should be ignored because of the practice to inflate stock so as to get larger credit from the bank cannot be lightly accepted as was decided by the Hon'ble Madras High Court in *Coimbatore Spinning and Weaving Co. vs. CIT* (1974) 95 ITR 375 (Mad). Following the said decision, it was held that in similar circumstances, the addition was justified. We may refer to the decision in the case of *Dhansiram Agarwalla vs. CIT* (1993) 201 ITR 192 (Gau) assessee's SLP dismissed in (1993) 204

ITR St. 45 (SC). In *Ramanlal Kacharulal Tejmal vs. CIT*(1983) 12 Taxman 130 (Bom.), the assessee obtained loans from banks for financing certain firms by pledging goods which were found in excess of stock . The Hon'ble Bombay High Court held excess stock represented assessee's property assessable as unexplained investment .

11.8 In view of the above reasons we uphold the order of the learned CIT(A) in confirming the addition of Rs. 41,69,363/- made by the A.O. Thus the 2<sup>nd</sup> ground of appeal is dismissed.

12. We come to the 3<sup>rd</sup> ground of appeal of the assessee. During the course of assessment proceedings, the A.O. noted that the assessee had shown net profit @ 10.74% on sales of Rs. 6,19,09,000/-. The A.O. deputed the Inspector of Income Tax to find out the net profit in similar line of business. Relying on the report of the Inspector, the A.O. estimated the net profit @ 20% and made an addition of Rs. 57,34,141/-.

12.1 In appeal, the learned CIT(A) has found that after considering the addition for the difference in stock, the net profit percentage comes to 17.47% which appears reasonable even going by the report of the ward Inspector. Therefore, he directed the A.O. to restrict the estimation of net profit @ 17.47% of the total turnover and allow set off for the difference in stock of Rs. 41,69,363/-.

12.2 Before us, the learned counsel of the assessee relies on the decision in the case of *Jaytick Intermediates (P) Ltd. vs. ACIT* (2016) 73 taxmann.com 195 (Guj), *CIT vs. Jasjack Elegance Exports* (2010) 324 ITR 95 (Del) and *ITO vs. M/s. Neelam Industries* (ITA No. 8133/Mum/2011) – order of the ITAT 'B' Bench Mumbai. He also submits that the Inspector's report regarding comparable cases does

not give out the volume of business and how it is applicable to the case of the assessee.

12.3 On the other hand, the learned DR relies on the order of the learned CIT(A).

12.4 We have heard the rival submissions and perused the relevant material on record. We find that the Inspector of Income Tax deputed by the A.O. has made a general enquiry and found the average profit in similar line of business at 20%. The enquiry made by the Inspector does not give the volume of business in comparable cases and how it is applicable to the case of the assessee. All the more as the difference in stock shown to the bank and that in the books of accounts amounting to Rs. 41,69,363/- has been sustained, there is no merit in the order of the learned CIT(A) in partly confirming the estimation of net profit. Thus the 3<sup>rd</sup> ground of appeal is allowed.

13. As we have dealt with 2<sup>nd</sup> and 3<sup>rd</sup> ground of appeal, we need not deal the 4<sup>th</sup> ground of appeal which relate to the same issues.

14. In the result, the appeal filed by the assessee is partly allowed.

15. To sum up, the appeal filed by the Revenue and the assessee are partly allowed.

**Order pronounced in the open Court on 28/04/2017**

Sd/-

(SAKTIJIT DEY)  
JUDICIAL MEMBER

Sd/-

(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai:

Dated: 28/04/2017

*Biswajit, Sr. P.S.*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**