

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"C " BENCH, AHMEDABAD**

**BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER AND**

**SHRI RAJPAL YADAV, JUDICIAL MEMBER**

**I.T.A. No. 2163 /Ahd/2011**

**धरुण वरुष/Assessment Year: 2008-09**

Dhami Brothers, 33-34 Jivandhara Society, Opp. Chowpaty, Varachha Road, Surat.  <b><u>PAN AABFD 4987E</u></b>	Vs	The Deputy Commissioner of Income Tax, Circle-9, Aayakar Bhavan, Majura Gate, Surat.
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<b>अपीलरुथी/ (Appellant)</b>		<b>प्रतुतरुथी/ (Respondent)</b>
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By Appellant :	Shri R.N. Vepari.
By Respondent. :	Shri M.K. Singh, Sr.D.R.

सुनवरुई की तरुख/**Date of Hearing** : 10/06/2015

घुषणरु की तरुख /**Date of Pronouncement**: 19 / 6/2015

**आदेश/ORDER**

**PER N.S. SAINI, ACCOUNTANT MEMBER:**

This is an appeal filed by the assessee against the order of the CIT (A)-V, Surat dated 17-5-2011.

2. Ground No.1 of the assessee is directed against the order of the CIT (A) confirming the disallowance of loss of Rs.1,45,08,970/-.

3. Brief facts of the case of the case are that he assessee is engaged in the business of import, manufacturing and export of diamonds. During the year under consideration the assessee did not do any business activity except selling closing stock of diamond lying with it. Assessing Officer found that the assessee had not maintain qualitative details of the stock of diamond and diamonds sold, he rejected the books of account by invoking section 145(2) of the Income tax Act. The Assessing Officer observed that the turnover of the assessee was Rs.2,40,08,065/- and the assessee had shown gross loss of Rs.1,45,08,970/-. The assessee could not explain the reasons for incurring the business loss claimed by the assessee.

4. On appeal, the CIT (A) held that the Assessing Officer had rejected the books of accounts mainly because of the fact that the assessee did not maintain qualitative details of neither stock of diamonds nor of the diamonds sold by it. He held that on the basis of the submissions of the assessee and the decision relied on by the assessee, he was of the view that books of accounts cannot be rejected on the ground taken by the Assessing Officer.

5. As regards the loss of Rs.1,45,08,970/- CIT (A) observed that during the course of assessment proceedings neither any satisfactory explanation was given nor any documentary evidence was produced to justify for incurring of so much of loss. He observed that in assessee's own case in Assessment Year 2007-08 similar loss of Rs.6,36,72,996/- on turnover of Rs.11,72,77,128/- was disallowed and no appeal was filed against the said assessment order. He observed that in the

assessment proceedings of A.Y. 2007-08 even the statement of one of the partners Shri Parsottambhai R. Dhami was also recorded. He was asked whether there were any compelling reasons like labour problem, medical problem, financial problem or any other problem which led him to sale the diamond @ 50% of the cost price. He denied of the existence of such extreme situation. The CIT (A) further observed that during the course of appeal proceedings the A.R. of the assessee submitted not preferring appeal for A.Y. 2007-08 though on the same issue addition was made cannot be the reason. CIT (A) observed that the he was fully agreed with regard to the following the decision of the previous year for making addition but he was not inclined with A.R's view so far as additions made are concerned, he on the basis of other facts mentioned that reasons like non satisfactory explanation, no documentary evidence and partner's statement are sufficient and valid ground to disallow the loss claimed. Hence the disallowance made by the Assessing Officer was confirmed and the ground of appeal of the assessee dismissed.

6. Before us the A.R. of the assessee relied on the decision of this Bench of the Tribunal in the case of M/s. Dhami Brothers vs. ACIT Cir-9, Surat for A.Y. 2004-05 in ITA No.2309/Ahd/2008 order dated 6-8-2010 wherein the Tribunal has held as under:-

“ In this case, there is no dispute about the correctness of the assessee's accounts. As per the A.O. 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 A.O. 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 to the A.O. 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 to maintain such books of accounts as will enable the A.O. 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 detail of each piece of diamond is 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 A.O. that there is defect in the system of method of accounting of the assessee which requires rejection of the book results under Section 145(2) of the Act and estimation of the G.P."

7. He further relied on the decision of this Bench of the Tribunal in the case of I.T.O. vs. M/s. B. Sureshkumar & Co., in ITA No.2632/Ahd/2003 for A.Y. 2000-01 order dt. 19-12-2007 wherein the Tribunal has held as under:-

*"4. We have considered the rival submissions and the facts and circumstances of the case. After careful consideration of the totality of the facts and circumstances of the case, we are of the opinion that the assessee having furnished the quantity-wise and rate-wise details of closing stock of finished diamonds, there was no question for the Assessing Officer to arrive at the conclusion that the assessee inflated the value of cost price without bringing any evidence to show that the rate adopted by the assessee for every quality of diamond was more than the cost price or the market price. Simply, relying on one sale bill without verifying the quality of diamond sold under that bill, in our opinion, was not the right course to arrive at the conclusion that the assessee had inflated its closing stock. The fact that the assessee had sold 175.18 carat of diamonds @ Rs.14,705/- as per invoice No.2 dated 29-5-01 (in the copy submitted by the assessee, the date is appeared as 29-5-02, but when the Ld. Counsel for the assessee asked to clarify he submitted that the correct date is 29-5-2001 and may be read accordingly), which was out of closing stock as*

*on 31-3-2000 and the Id. DR having not disputed this fact, the assessee's plea that valuation of closing stock as on 31-3-2000 was as per method followed by it consistently, i.e. cost price or market price whichever was less gets supported. It is an admitted fact that so far as diamond industry is concerned, each and every piece of polished/finished diamond has got to be of different quality and fetches different price in the market and since the Assessing Officer had not brought any material to deal with this aspect of the issue, we are in agreement with the submission of the assessee as well as the finding and the CIT (Appeals) that application of average method on the basis of one sale bill was not justified on the part of the Assessing Officer."*

8. He further relied on the decision of this Bench of the Tribunal in the case of M/s. Pankaj Diamond vs. ACIT in ITA No.555/Ahd/2008 for A.Y. 2005-05 order dt. 5-9-2008 wherein the Tribunal has held as under:-

*"16. We find that the book result was rejected by the lower authorities only on the ground that quality-wise details of diamonds were not kept by the assessee. Further, the addition was made merely on estimate basis without bringing on record any material to show that the assessee has earned any income in excess of the amount disclosed in the return. It is an established position of law that even after rejecting the book result if the assessing authority add any income to the income declared by the assessee, then, the said addition has to be based on some material and the same cannot be added on the whims or caprice of the assessing authority. In the instant case it is observed that the trading result shown by the assessee compares favourably with the past accepted position in the case of the assessee itself. Therefore, merely rejecting the book result on the ground that quality-wise deals of diamonds has not been maintained will not empower the A.O. to add any income to the income shown by the assessee. We also observe that no material could be brought on record by the Revenue to show that the value of closing stock of diamonds shown by the assessee at Rs.16,25,60,000/- was incorrect or the method of valuation consistently adopted and followed by the assessee was incorrect. In the absence of any material to show that the actual value of closing stock possessed by the assessee as on 31-3-2004, was more than the value shown by the assessee. In our considered opinion, the A.O. was not justified in making trading addition of Rs.53,07,218/-. Further, it is observed that none of the lower authorities have found that the various expenses claimed by the assessee in its P & L A/c were*

*not supported by vouchers or not verifiable or were not genuine. In the above circumstances, the Ld. CIT (A) was not justified in rejecting various expenses disclosed by the assessee's day-to-day maintained books of account. Further, in business, profit is a result of various dynamics. The result of two different businessmen doing the business in the same line may defer greatly because of various reasons for e.g. the value of plant and machinery employed in the business, the ratio of own capital verses borrowed capital employed in the business, time devoted by the owner of the business, risk taking capacity of the owner, etc. Thus, merely because the profit disclosed by the other businessmen in terms of the turnover of its business defers with the rate of profit disclosed by the assessee in terms of his turnover will not, by itself, empowers the Ld. CIT (A) to add any amount to the income of the assessee. The Ld. CIT (A) has brought no material on record to show that the rate of net profit of the assessee should be the same as that in the case of other assessee, which considered by him. We are confident that he Revenue authorities must have come across the case of other assessee's whereby securing similar or more turnover the assessee suffers a loss in the business or secured lesser profit than the assessee. In the instant case, as no specific defect in the various expenses claimed by the assessee in the P & L A/c could be pointed out by the Revenue, the Ld. CIT (A) was not justified in arbitrarily applying the rate of net profit of 3% in making addition of Rs.2,19,33,591/-. As the addition of Rs.53,07,218/- and Rs.2,19,33,591/- are found to be not based on cogent and relevant material and are based merely on the surmises and conjectures, the same are found unsustainable on the facts of the instant case. We, therefore, delete the addition of Rs.53,07,218/- and Rs.2,19,33,591/-."*

9. He further relied on the decision of this Bench of the Tribunal in the case of ACIT vs. M/s. Gami Exports in ITA No.3146/Ahd/2007 for A.Y. 2004-05 order dt. 12-2-2010 wherein the Tribunal has held as under:-

*"8. We have heard the rival submissions and perused the orders of the lower authorities and the materials available on record. We find that in the year under appeal, the turnover of assessee exceeds Rs. 466 lacs. The assessee has processed more than 16000 carat of rough diamonds during the year and exported over 4500 carat of diamonds. It is admitted fact that in this line of business till the rough diamonds are processed, the quality of the diamonds manufactured is not known. Even after the diamonds*

*are processed, the quality will depend upon various factors, such as, colour, clarity, cut and carat. Therefore, in terms of these factors, each diamond manufactured is different from the other. Considering the volume of business, it is impracticable to have qualitative as well as quantitative records of the total stock in possession of the assessee. Such stock has to be grouped together so as to find common value for the group of diamonds. As per the valuation report obtained from approved valuer, he has bifurcated the valuation in 31 groups having different rates. As contended this is the usual practice in the Industry and which the assessee follows. This contention is not found to be incorrect."*

10. He further relied on the decision of this Bench of the Tribunal in the case of ACIT vs. M/s. D. Nitin & Co., in ITA No.4008/Ahd/2008 for A.Y. 2005-06 order dt. 9-9-2011 wherein the Tribunal has held as under:-

*"5. We have carefully considered the arguments of both the sides and perused the material placed before us. We find that the A.O. has rejected the assessee's books of accounts mainly on the ground that the assessee has maintained the quality-wise quantitative details which he failed to produce before the A.O. From the perusal of the assessment order, it is evident that such finding of the A.O. is based purely on presumption. The assessee's counsel has made a statement at the time of hearing before us that the assessee has maintained the quantitative details of the rough diamonds as well as polished diamonds, but the quality wise quantitative details has not been maintained. He also stated that it is impossible to maintain the quality wise details of the diamond because almost each diamond is of different quality. After considering the arguments of the both the sides, we find that the finding of the A.O. is based purely on the presumption without any material or evidence in support of such finding. We therefore accept the assessee's contention that the assessee has not maintained the quality-wise quantitative details."*

11. The Departmental Representative supported the orders of the lower authorities.

12. We have heard the rival submissions, perused the material available on record.

13. In the instant case, the assessee sold the diamonds worth Rs.3,76,70,953/- out of the opening stock of the year for an amount of Rs.2,40,08,065/- and had claimed loss of Rs.1,36,62,888/-.

14. Before the Assessing Officer the assessee filed the copies of sale bills, names of the purchasing parties, its address and PAN, weight and weight of polished diamond sold etc., and submitted that genuineness of lower sales realisation can be verified from the parties who had purchased the polished diamonds from the assessee. The Assessing Officer disallowed the loss claimed by the assessee on the ground that the same has not been proved by the assessee. According to the Assessing Officer mere issuing of invoices for sale of diamond mentioning quality does not prove the loss of the assessee. He also observed that the similar loss disclosed by the assessee in the immediately preceding Assessment Year 2007-08 of Rs.6,36,74,996/- on the turnover of Rs.11,72,77,128/- was disallowed and the assessee did not file appeal there against. In that year also the assessee had sold only the sock lying with it and there was no manufacturing activity or trading. The assessee had shown the stock of polished diamond for the opening and closing stock. Hence he held that loss due to so-called lower realisation on sale of opening stock of polished demand claimed by the assessee is rejected.

15. On appeal, filed by the assessee the CIT (A) confirmed the action of the A.O. on the ground that no satisfactory explanation of loss incurred was given by the assessee and no documentary evidence in support of the loss was filed by the assessee.

16. We have heard the rival submissions and perused the orders of the lower authorities and material available on record. In the instant case the assessee sold diamond out of its opening stock brought-forward from earlier years costing Rs.3,76,70,953/- for Rs.2,40,08,065/- and claimed loss of Rs.1,36,62,888/-. The A.O.



observed that the assessee has not maintained quality-wise details of diamonds. The assessee could not explain the reasons for incurring of the loss on sale of diamonds. In the immediately preceding Assessment Year 2007-08 loss claimed by the assessee of Rs.6,36,74,996/- on turnover of Rs.11,72,77,128/- on account of sale out of stock lying with it was disallowed and the assessee accepted the same and did not file any appeal there against to any higher authority. Therefore he disallowed the loss of Rs.1,36,62,888/-.

17. On appeal, the CIT (A) confirmed the order of the A.O. by observing that no satisfactory explanation for the loss was given by the assessee and no documentary evidence was also filed for the same. The contention of the assessee is that not preferring an appeal in A.Y. 2007-08 against the disallowance of claim of loss cannot be a ground for making disallowance in the year under appeal as each assessment year is a different assessment year. Further, it is also the contention of the assessee that non maintenance of quality-wise details of diamonds does not allow the A.O. to disallow the loss claimed by the assessee. He submitted that the A.O. in the assessment order himself has stated that the assessee has valued the opening stock and closing sock of diamonds at an average cost of Rs. 9904 per karat. It is also the contention of the assessee that the assessee filed copies of sales invoices with complete address and PAN Nos. of the parties to whom the diamonds were sold. No inquiry was made by the A.O. as well as by the CIT (A) before disallowing the claim of loss to the assessee. Thus it was the submission that the disallowance made should be deleted.

18. We find force in the contention of the assessee that disallowance of loss cannot be made on the ground that in the preceding assessment year, the assessee accepted the disallowance of loss on sale of diamonds as each assessment year is a separate unit of assessment. The Assessing Officer is expected to carry out verification

of the claim of the assessee with the evidences produced before him and thereafter arrive at the independent conclusion about the allowability or disallowability of the claim expenditure or loss. Further, in the year under consideration the assessee filed copies of sales invoices with the complete address of the parties and their PAN Nos., No adverse material was brought on record by making due inquiry. Further the contention of the assessee is also that the sale consideration was received by the assessee through banking channel. The A.O. has brought no material on record after examining the parties to whom the sales were made by the assessee to show that the assessee has under invoiced the sale of diamonds or that the sales invoiced do not reflect the correct sale-price of the diamond. In absence of any such material being brought on record in our considered view the A.O. as well as the CIT (A) were not justified in disallowing the loss of Rs.1,36,62,888/- to the assessee. On a similar facts this Bench of the Tribunal in the case of Shri Asokkumar H. Kothari vs. ITO in ITA No.386/Ahd/2009 A.Y. 2005-06 order dated 16-1-2015 deleted the addition for the reason that the name and address of the parties to whom the diamonds in question were sold were made available to the A.O. by filing copy of the bills for sale of diamond and the Revenue did not bring any material on record to show that the rough diamonds of 1240.10 kts was not sold on 4-4-2005 for Rs.18,40,177/- and the same in fact was sold at a higher value. We therefore, set aside the orders of the lower authorities and direct the A.O. to allow the loss of Rs.1,36,62,888/- on sale of diamonds claimed by the assessee.

GroundNo.2 of the appeal is that CIT (A) has erred in confirming the addition of Rs. 2,83,775/- under section 50C of the Act.

19. The brief facts of the case are that the assessee sold a property during the year under consideration and the sale proceeds of capital gain was taken at Rs.55,000/-. As per sale deed the value as per the Stamp Valuation Authority valued the same at Rs.3,38,775/-. Hence the A.O. invoking the provisions of Sec. 50C adopted the sale value as per Stamp Valuation Authority and accordingly made the additional difference at Rs.2,83,775/-.

20. On appeal, the CIT (A) held that the A.O. had rightly adopted the sale value as per provisions of Section 50C of the Act. As the assessee did not submit the sale-deed despite opportunity given by the Assessing Officer to submit the same A.O. made a reverse calculation by taking the percentage of stamp duty at 4.9% as based in Sale as per the Stamp Valuation Authority. He observed that there is no need to disturb the decision taken by the A.O. hence dismissed the ground of appeal. However, he directed the A.O. to take the correct figure of sale value as per the Stamp Valuation Authority if it has been received from the concerned authority. As it was seen from the order that for this purpose a notice u/s. 133(6) was issued to the concerned party and at the same time the assessee was directed to submit the copy of the sale deed so that correct figure is adopted.

21. Before us the only argument of the A.R. of the assessee was that no show cause notice was issued before adopting the Stamp Duty Valuation for the purpose of calculating capital gain to sale of property.

22. On the other hand, the Departmental Representative supported the order of the lower authorities.

23. After considering the rival submissions we find that the A.O. made an addition of Rs.2,83,775/- u/s. 50C on the ground that the assessee sold property during the year and the sale proceeds was shown at Rs.55,000/-. A.O. observe that the assessee did not submit copy of sale

deed and therefore, he made a reverse calculation by taking the percentage of Stamp Duty at 4.9% as based in sale as per Stamp Valuation Authority and arrived at the value of Rs.3,38,755/- and thereby made addition for difference amount of Rs.2,83,775/-. We find that the contention of the assessee was that no show cause notice was issued to the assessee and therefore, the assessee was prevented from explaining its case before the A.O. It was the argument that there was violation of principle of natural justice by the A.O. and hence the addition made by the A.O. and confirmed by the CIT (A) was not justified in the above facts and circumstances of the case we are of the considered opinion that the matter should be restored back to the file of the A.O. to readjudicate the issue afresh after allowing reasonable and proper opportunity of hearing to the assessee. The assessee is also directed to file all the relevant details and documents before the A.O. as and when called upon by the A.O. Thus this ground of appeal is allowed for statistical purpose.

24. In the result, appeal is allowed as above.

**Order pronounced in the Court on Friday the 19<sup>th</sup> day of June, 2015 at Ahmedabad.**

Sd/-

**(RAJPAL YADAV)  
JUDICIAL MEMBER**

Sd/-

**( N.S. SAINI)  
ACCOUNTANT MEMBER**

Ahmedabad Dated 19 /6 /2015

Patki

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A) V, Surat.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT,
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad

1. Date of dictation- : 10, 12, 16-6-2015
2. Date on which the typed draft is placed before the Dictating Member 11, 12, 16-6-2015
3. Date on which the approved draft comes to the Sr.P.S./P.S. 18-6-2015
4. Date on which the fair order is placed before the Dictating Member for Pronouncement 19-6-2015.
5. Date on which the file goes to the Bench Clerk 19-6-2015
6. Date on which the file goes to the Head Clerk.....
7. The date on which the file goes to the Assistant Registrar for signature on the order.....
8. Date of Despatch of the Order.....