

IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.2534/Mum./2021

(Assessment Year : 2014-15)

Asstt. Commissioner of Income Tax
Circle-32(1), Mumbai

..... Appellant

v/s

Glitter Jewels
120/B, Mandepashwar Industrial Estate
Opp. Prem Nagar, Borivali (West)
Mumbai 400 092 PAN – AAAFG5495R

.....Respondent

Assessee by : Shri Paresh Gohil
Revenue by : Shri A.K. Das

Date of Hearing – 14/11/2022

Date of Order – 17/01/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the Revenue challenging the impugned order dated 17/08/2021, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2014-15.

2. In its appeal, the Revenue has raised the following grounds:-

"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition of Rs 2,50,01,328/- being the difference

in stock taken physically during survey proceedings and stock as per books of account on the basis of subsequent explanation which are not verifiable?

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in rejecting the Valuation Report of the Government Approved Valuer when during the course of survey, the partner of assessee firm, Shri Amit Patel, well versed in valuation of diamonds and gold himself examined the Departmental Valuer's report with the aid of his staff members and records, emphatically confirmed and categorically submitted his satisfaction to the correctness of the valuation?

3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not remanding the matter back to the file of assessing officer for further fact finding?

4. The appellant prays that the order of Ld (A) on the above ground be set aside and that of the assessing officer be restored.

5. The appellant craves leave to amend or to alter or add a new ground which maybe necessary."

3. The only grievance of the Revenue is against deletion of addition on account of difference in stock taken physically during the survey proceedings and stock as per the books of account on the date of the survey.

4. The brief facts of the case as emanating from the record are: The assessee is a partnership firm and is engaged in the business of manufacturing and trading in gold and diamond jewellery. For the year under consideration, the assessee filed its return of income on 30/11/2014 declaring a total income of Rs.1,37,35,880. The assessee was subjected to a survey operation conducted on 10/12/2013. During the survey operation, a statement under section 133A of the Act of one of the partners of the assessee was recorded on 10/12/2013 and 11/12/2013. The difference of value in the stock recorded in the books and the value of the stock as per the valuation report of Rs.2,50,01,328 was offered to tax as undisclosed income for the relevant assessment year in the statement recorded. During the assessment

proceedings, the assessee was asked to show cause as to why the amount offered for taxation in the statement recorded under section 133A of the Act be not added to the total income of the assessee. In reply thereto, the assessee submitted that discrepancy has arisen due to some cash purchases and certain purchases made from its sister concern, which were not recorded in the books of accounts of the assessee firm till the date of the survey. It was submitted that after the survey, the partners of the firm went through the relevant records and made detailed verification of facts, and then they found that there was no difference as per the books of account of the firm as compared to the goods found as per the valuation report. It was also submitted that it was found that the approved valuer too had committed many mistakes while preparing the valuation report. The assessee provided the details of the reconciliation of the stock of diamond and gold found and as recorded in the books. The Assessing Officer ('AO') vide order dated 29/12/2016 passed under section 143(3) of the Act did not agree with the submissions of the assessee and held that the partner of the firm in his statement recorded during the survey had clearly stated that he has gone through the valuation report and has found that stock inventory and valuation has been done in just and proper manner. The AO further held that the partner in his statement unequivocally confirmed that the unaccounted stock has been introduced in the firm from the sister concern. The AO held that the assessee cannot turn around now and claimed that there were some infirmities in the valuation report. Thus, based on the statement recorded during the survey and the valuation report, the AO made an addition of Rs.2,50,01,328.

5. The learned CIT(A), vide impugned order, after taking into consideration information available on the web portal of the Bureau of Indian Standards ('BIS') agreed with the submissions of the assessee that the difference in weight of gold between the stock book of the assessee and the valuation report is due to the fact that in the process of making jewellery there is a mixture of alloy, which are in line with the usage of alloy as per the BIS standards. Further, the learned CIT(A) also agreed with the submission of the assessee regarding the reconciliation of the stock of diamonds and precious stones. The learned CIT(A) directed the AO to restrict the addition to 1 gram of 24 karat gold value and 2 carat diamond value, being the difference the learned CIT(A) calculated between the stock book and the valuation report, to the total income of the assessee. Being aggrieved, the Revenue is in appeal before us.

6. During the hearing, the learned Departmental Representative by vehemently relying upon the order passed by the AO submitted that the partner of the assessee firm was provided sufficient opportunity to go through the statement recorded during the survey, which was conducted on 2 days at the assessee's premises and the partner of the assessee firm found the valuation report to be just and proper.

7. On the contrary, the learned Authorised Representative placed reliance upon the order passed by the learned CIT(A) and explained the reconciliation of gold jewellery and stock of diamonds. The learned AR submitted that apart from the mere difference in the stock as recorded in assessee's books and

valuation report there is no other basis to make the addition in the present case.

8. We have considered the rival submissions and perused the material available on record. In the present case, the survey operation was conducted at the premises of the assessee firm. During the survey operation, the statement under section 133A of the Act was recorded of one of the partners, Mr. Amit Patel, on 10/12/2013 and 11/12/2013. From his statement, forming part of the paper book from pages no. 60 – 65, it is evident that the partner provided the stock details on an approximate basis. The partner also submitted that some cash purchases of stock from the market as well as from sister concerns are yet to be recorded in the books of account of the assessee firm. It is undisputed that during the survey proceedings, the inventory of stocks available at the assessee's premises was taken by the government-approved valuer. A copy of the valuation report was provided to the partner of the firm, whose statement was recorded during the survey and he was asked to inform if there is any discrepancy in the inventory of the valuation of stocks. After perusing the valuation report in reply to question No. 22, the partner of the firm submitted that the stock inventory and valuation has been done in a just and proper manner, and no stock has been taken twice and no stock has been left over for valuation purpose. Since there was a difference in stock i.e. gold and diamond to the tune of Rs.2,50,01,328, the partner of the assessee firm voluntarily offered the same as undisclosed income over and above the regular income/profit of the business for the year under consideration. During the assessment proceedings, the assessee submitted the reconciliation of stock

found and as recorded in the books in respect of gold jewellery and diamonds. The assessee also pointed out the mistakes committed by the approved valuer while preparing the valuation report.

9. As regards the diamonds, in his preliminary statement recorded during the survey, we find that the partner of the assessee firm submitted that as per stock position, there are 300 carats approximately of diamonds in the stock. However, the Department valuer quantified the stock of diamonds at 1200.45 carats, which is on page 45 of the paper book. Thus, resulting in a difference of 879.33 carats in the stock of diamonds. In this regard, it is the submission of the assessee that 823.60 carats of diamonds were purchased from Khodiar Impex and Jebel Gems Int-Imports, which were not recorded in the books of accounts to reflect the same in the stock register found at the time of the survey, which at that time only showed the stock of diamond as per books at 312.12 carats. In support of its submission, the assessee placed on record a copy of the purchase bills of diamonds from Khodiar Impex and Jebel Gems Int-Imports. Copy of ledger account of aforesaid parties in its books of accounts, bank statement reflecting payments to aforesaid parties, copy of stock statement up to 10/12/2013 including the purchase of diamonds from aforesaid parties. Copy of ledger confirmation from Khodiar Impex confirming the sale made to the assessee. Copy of the custom invoice of Jebel Gems Int-Imports reflecting the import of diamonds made by the assessee firm was also placed on record and forms part of the paper book. It is evident from the record that the Revenue has not disputed any of the aforesaid document submitted by the assessee in support of its claim that stock of 823.6 carats of

diamond was purchased from Khodiar Impex and Jebel Gems Int-Imports. Merely on the basis that all these transactions were conducted before the date of the survey i.e. 10/12/2013, and therefore it is not a small amount to have escaped the attention of the partner, the AO rejected the submission of the assessee. We are of the considered opinion that once the assessee has duly substantiated the quantity of diamonds to an extent of 823.6 carats with supporting documents as mentioned above, rejection of assessee's submission, merely due to non-recording in its books, without bringing any material on record to controvert the evidence submitted by the assessee does not justify the addition made by the AO on this aspect.

10. Further, as regards the balance difference of 55.73 carats (i.e. 879.33 - 823.60), the assessee submitted that the Department valuer at various places has wrongly considered precious stones viz. pearl, greenstone, coral stone, red stone, etc. as diamonds. In this regard, the AO rejected the submission of the assessee on the basis that the partner of the assessee firm in his statement accepted the correctness of the valuation report and therefore now the assessee cannot turn around and claim that there are some discrepancies in the valuation report. The learned CIT(A) vide impugned order noted that the government-approved valuer has wrongly considered precious stones weighing 56.94 carats as diamonds and thus, directed the AO to make an addition equivalent to 2 carats of Diamond value to the total income of the assessee. The relevant findings of the learned CIT(A) in this regard are as under:

"Considering the purchases the difference between the Stock book of the appellant and the Government Approved Valuer reduces to 55.73 carats.

The Appellant has stated in the appeal proceedings that the government approved valuer has wrongly considered the precious stones as Diamonds. On detailed analysis of the valuation report by the government approved valuer it is clear that in the Particulars Column the government approved valuer has stated other precious stones however the value of the same has been calculated as Diamonds.

The detailed list of the gross errors made by the government approved valuer are stated as below.

Sr. No. of Valuation Report	Page No. of Valuation Report	Description	Qty. (In carats)
7	1	1 Drop Pedant with Green Stone and Pearl	1.36
9	1	1 Pair tops with Pearl	1.56
32	2	1 Ring with Red Stone	1.80
33	2	1 Pair of Tops with Red Stone	0.49
34	2	1 Pedant with Red Stone	0.70
38	2	1 Pair Tops with Red Stone and Pearl	0.89
40	2	1 Pair Earring with Red Stone and Pearl	1.80
42	2	1 Pcs Pedant with Stone and Pearl	1.33
44	2	1 Pair tops with Pearl	0.80
63	3	1 Lot of 6 Pair of earring with col stone	4.46
64	3	1 Lot of 6 Pedant set with stone	2.15
67	3	1 Lot of 4 Pedant set with stone	3.22
71	3	1 Necklace and earring with green stone	8.05
74	3	1 lot of 5 Pcs ring with Col stone	1.89
81	4	1 Lot of 4 Pedant set with Stone	5.16
84	4	1 Lot of Tops and Pedant with Pearl	12.23
89	4	1 Necklace, Bangle, 1 Pair Earring with Stone	9.05
Total			56.94

In the above mentioned Table the following items are precious stones wrongly treated as value wise as Diamonds. There is an error of identification and valuation as Diamonds. The weight of the Precious stones is treated as 56.94 Carats. The Description in the item list is as Stone, pearl, Green Stone, Coral Stone, Red Stone etc.

From the above list the final difference of Diamonds between the stock book and the valuation report between the government approved valuer is 1.21 carats, rounded off to 2 carats."

11. From the relevant entries in the valuation report, as noted in the impugned order, it is evident that the government-approved valuer has also taken into consideration the items of jewellery, which are having precious stones like green stone, pearl, red stone, coral stone, etc. Thus, merely because in his statement recorded under section 133A of the Act, the partner of the assessee has stated the valuation report to be just and proper cannot lead to the conclusion that these items of jewellery are in the nature of diamond jewellery, particularly when the description of each item of jewellery has been clearly mentioned in the valuation report. Thus, in view of the above, we find no infirmity in the impugned order passed by the learned CIT(A) on this aspect.

12. As regards the difference in stock of gold, the assessee submitted that it is a manufacturer of gold jewellery and purchases raw gold or gold of high purity and utilises the same to make jewellery after mixing gold with a certain prescribed amount of alloy. Because of this process, gross weight as per the books of account would not tally with the gross weight of gold as per the stock as there will be an element of mixing of alloy that requires to be considered. The AO rejected the submission of the assessee merely on the basis that the assessee did not make a similar claim at the time of the survey and

preparation of the valuation report, therefore, this fact cannot be verified now at the time of assessment. The learned CIT(A) allowed the appeal filed by the assessee on this aspect after considering the BIS standards, in which it was provided that in the process of making 22 karat, 18 karat, 14 karat and 10 karat gold jewellery, there is a mixture of alloy. The relevant findings of the learned CIT(A) in this regard are as under:

"In the Appellate Proceedings it was noticed that there was a difference in weight of gold between the stock book of the appellant and the valuation report by the government approved valuer of 2162.3 grams. From the valuation report of the government approved valuer total weight of 18kt / 14kt and 10 kt has been taken by government approved valuer as the total weight of pure gold and the percentage of alloy has been ignored. However from the BIS standards it is clear that in the process of making 18 kt., 14 kt. and 10 Kt. Jewellery there is a mixture of Alloy.

As per the submissions of the appellant 2162.76 gms. of alloy was used in the manufacturing of the 18kt, 14 and 10 kt jewellery which is in line with the usage of alloy as per BIS standards.

If the above mentioned 2162.76 gms is added to the weight as per the stock book of the appellant of 11891.13 grams, the difference between the total weight as per the stock books of the appellant and the weight as per the government approved valuer is matching with a difference of only 0.46 grams which is rounded off to 1 grams approx."

13. It is evident from the record that the process of manufacturing of gold jewellery from raw gold or gold of high purity as explained in assessee's submission is not disputed. In its submission, the assessee has categorised the percentage of actual gold as well as the percentage of the material used for manufacturing of 24 karat, 22 carat, 18 karat, 14 karat and 12 karat gold jewellery. As noted above, the learned CIT(A) after considering the manufacturing process as explained by the assessee, in view of the BIS standards, concluded that the total weight as per the stock books of the assessee and weight as per government-approved valuer is matching with the

difference of 0.46 g which is round of to 1 gram approximately. Further, from the valuation report, which is on pages no. 45-51 of the paper book, it is also evident that the gold jewellery noted by the government valuer is of varying purity levels, i.e 18 karat, 14 karat, etc. Thus, in view of the above, we find no infirmity in the impugned order passed by the learned CIT(A) on this aspect.

14. Therefore, in view of the above, we are of the considered opinion that merely on the basis of the statement recorded during the survey, and the difference in stock as per books and valuation report, the addition cannot be sustained unless the same is supported with some credible evidence being brought on record. Accordingly, the impugned order passed by the learned CIT(A) is upheld and grounds raised by the Revenue are dismissed.

15. In the result, the appeal by the Revenue is dismissed.

Order pronounced in the open Court on 17/01/2023

Sd/-
S. RIFAUH RAHMAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 17/01/2023

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

By Order

Assistant Registrar
ITAT, Mumbai