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**(2014) 08 RAJ CK 0002**  
**In the Rajasthan High Court**  
**Case No : IT Appeal No. 12 of 2014**

CIT

APPELLANT

Vs

Vaibhav Gems Ltd.

RESPONDENT

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**Date of Decision :** 21-08-2014

**Acts Referred:**

Income Tax Act, 1961 — Section 145(3)

**Citation :** (2014) 08 RAJ CK 0002

**Hon'ble Judges :** Ajay Rastogi, J;J.K. Ranka, J

**Bench :** Division Bench

**Advocate :** Y.S. Meena, Advocate for the Appellant;

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## Judgement

J.K. Ranka, J.

1. Instant income-tax appeal is directed against the order dt. 18th Jan., 2013 passed by the Income-tax Appellate Tribunal, Jaipur Bench, "A", Jaipur (for short, "Tribunal") by which the Tribunal, while affirming the order passed by the Commissioner (Appeals), who had deleted the trading addition, has dismissed the appeals filed by the appellant-Revenue. It relates to the assessment year 2008-09.

2. Brief facts, as emerging on the face of record, are that the respondent-assessee is an exporter of cut precious and semi-precious stones (gems) and studded gold jewellery. During the previous year, relevant to the year under appeal, the respondent-assessee declared turnover in domestic tariff area (for short, "DTA") unit of Rs. 35,07,51,711 declaring gross profit of Rs. 17,027,739 with GP rate of 4.85 per cent. In the EOU the turnover disclosed was Rs. 2,52,61,24,396, declaring gross profit of Rs. 34,11,57,119 and GP rate of 13.51 per cent. The assessing officer raised certain queries to the respondent-assessee to produce relevant details and the production of stock register, item wise, colour, luster and size-wise as also day to day manufacturing and production register. However, the respondent-assessee claims to have furnished necessary records

but the assessing officer was not satisfied with the explanation so offered, particularly of the fact that the respondent-assessee is showing the production as per its sweet will as also the fact that details of quality-wise of rough or gem stones or diamonds etc. are not maintained. Accordingly, a show cause notice was issued as to why the provisions of section 145(3) be not invoked and addition be not made to the trading results as the results were not fair and reasonable. It appears that the respondent-assessee replied contending therein that the trading results declared in the past years have been accepted by the Department and the GP rate depends on combination of sales of different items i.e., if sale of gold jewellery is more, GP rate becomes lower and if sale of gem stones is more, GP rate becomes higher. The purchases, expenses and sales of the respondent-company are completely supported by bills and vouchers. It was further contended that item-wise/stone wise quantitative details have been maintained and as such the declared trading results are fully verifiable. It was further contended that the details have been properly maintained and there is no flaw in maintenance of the said details as the same accounts are being maintained regularly and have been found to be proper in the past years.

3. The assessing officer, while passing the assessment order, came to the conclusion that true profit of the firm cannot be deduced on the basis of non-maintenance of closing stock details as desired by the Department and accordingly in view of CBDT Instruction No. 2002 of 2008, dt. 22-2-2008, the assessing officer applied NP rate of 6 per cent on its turnover in the DTA unit where the GP rate was shown as 4.85 per cent and accordingly made trading addition of Rs. 2,07,00,805. The result, shown being fair in EOU account, was accepted.

4. Dissatisfied with the addition of Rs. 2,07,00,805, an appeal came to be preferred before the Commissioner (Appeals). Detailed explanation was offered by the respondent-assessee and it was reiterated that the results are fair and reasonable. It was further contended that on the basis of the same records in the earlier years" addition, if any, stands deleted. It was further contended that in the EOU account, the GP rate stands accepted as was declared and the order of the Commissioner (Appeals) became final. Insofar as the DTA account is concerned, it is a finding of fact that the addition, which was made in the immediately preceding year i.e., assessment year 2007-08, is concerned, the Tribunal upheld a GP rate of 2.60 per cent and since the GP rate in the DTA account this year is substantially better at 4.85 per cent, therefore, on this premise, the Commissioner (Appeals) deleted the addition and he justified the deletion by also applying the ratio decided by this Court in the case of Commissioner of Income Tax Vs. Gotan Lime Khanij Udhog, and Malani Ramjivan Jagannath Vs. Assistant Commissioner of Income Tax, .

5. Aggrieved by the deletion of the trading addition, the Revenue filed an appeal before the Tribunal and the Tribunal, vide order impugned, upheld the order of the Commissioner (Appeals) where the trading addition was deleted by observing

that the facts are almost similar to that of past years where the additions have been deleted and further that the GP rate, insofar as the current year is concerned, is better than the immediate past assessment year where even the Tribunal accepted the rate of 2.60 per cent and accordingly the addition was deleted. It was further observed that the CBDT Instruction No. 2 of 2008, dt. 22-2-2008 [(2008) 3 DTR (St) 235 : (2008) 215 CTR (St) 211] is applicable for the financial year 2008-09 relevant to the assessment year 2009-10 and not for the year under appeal.

6. Mr. Y.S. Meena, Dy. CIT, appearing for the appellant-Revenue, contended that various defects were noticed and the respondent-assessee was not able to satisfactorily explain the maintenance of stock register as well as the stock details in the manner desired by the assessing officer and the details were maintained in accordance with the sweet will of the assessee, then certainly true profit cannot be deduced from such accounts. He further contended that once all the three authorities affirmed the view that provisions of s. 145(3) are applicable, then reasonable estimate was required to be made. He further contended that once the provisions of section 145(3) are invoked, it necessarily means that the results shown by the respondent-assessee are not fair and reasonable and true profit cannot be deduced out of such accounts. He further contended that merely because better GP rate has been shown as compared to the preceding year/years, it cannot be said that no further addition can be made. He further contended that the CBDT Instruction No. 2 of 2008 dt. 22nd Feb., 2008 was applicable and was retrospective in nature and therefore, the Tribunal is unjustified in coming to a conclusion that it was prospective in nature. He contended that substantial question of law arise out of the order of the Tribunal.

7. We have considered the arguments advanced by the officer, appearing on behalf of the appellant-Revenue and perused the impugned order as also the order of the Commissioner (Appeals) and the assessing officer.

8. It is true that both the appellate authorities have come to a conclusion that on the basis of records maintained by the respondent-assessee, particularly, non-maintenance of quality-wise/quantity-wise details of opening stock, closing stock and day to day manufacturing activities as also records having been maintained in the manner, not in accordance with the accounting systems, therefore, provisions of section 145(3) have been invoked and affirmed and thus books have been held to be rejected.

9. In the present case, what is required to be seen is that once the provisions of section 145(3) have been invoked, what should be the fair profits. While the past history becomes relevant basis in a case like this but if the assessing officer wishes to tinker with the basis of past records, then some flaw has to be found by the assessing officer in making some addition. In the present case, the assessing officer simply observes that the gross profit rate is not proper and once the results have been rejected, therefore, the addition was required to be made. However, the Tribunal has come to a conclusion that in the immediate past

assessment year, the Tribunal itself had applied GP rate of 2.60 per cent whereas in the present year under consideration, the GP rate has been declared as 4.85 per cent. The Tribunal, while deleting the addition, further observed that when there are no distinguishing facts and features in between the year under appeal and the immediate past assessment year and in comparison to the immediate past assessment year, the results are fair and reasonable, the Tribunal dismissed the appeal of the Revenue. Therefore, in our view, the Tribunal, after analyzing the material on record and on appreciation of evidence, deleted the addition. The officer, appearing on behalf of the Revenue was unable to contend as to what are the distinguishing features in between the two assessment years i.e., immediate preceding year vis-a-vis the present year. He further failed to point out other/additional defects which were not in the assessment year 2007-08. The assessment for the assessment year 2007-08 has become final and attained finality as the officer was unable to point out as to whether further appeal was preferred by the Revenue before this Court or not. Thus, in our view, the Tribunal has reached its conclusion on appreciation of evidence.

10. Invoking provisions of section 145(3) or making/non-making of trading addition is essentially a finding of fact and the Hon"ble apex Court as well as this Court, in similar cases, have come to the conclusion that if the addition/deletion is on the basis of appreciation of evidence, then no question of law, much less substantial question of law, can be said to be involved in a case like this.

11. We do not find any infirmity or perversity in the order of the Tribunal so as to call for any interference of this Court. In our view, no substantial question of law arise out of the order passed by the Tribunal.

12. Consequently, the appeal, being devoid of merit, is hereby dismissed in limine.