

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM**
(Through web-based video conferencing platform)

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**I.T.A. Nos. 183 & 184/VIZ/2020
(Asst. Years : 2016-17 & 2017-18)**

The ACIT, Central Circle-2, Guntur.	vs.	M/s. Khan Mohammed Diamonds & Jewellery Pvt. Ltd., D.No. 5-37-221(A), 4 th Lane, Brodipet, Guntur.
(Appellant)		PAN No. AACCK 6467 A (Respondent)

**C.O.Nos. 18 & 19/VIZ/2020
(Arising out of I.T.A. Nos. 183 & 184/VIZ/2020)
(Asst. Years : 2016-17 & 2017-18)**

M/s. Khan Mohammed Diamonds & Jewellery Pvt. Ltd., D.No. 5-37-221(A), 4 th Lane, Brodipet, Guntur.	vs.	The ACIT, Central Circle-2, Guntur.
PAN No. AACCK 6467 A (Applicant)		(Respondent)

Assessee by	:	Shri M.V. Prasad, CA.
Department By	:	Shri D.K. Sonawal, CIT-DR
Date of hearing	:	26/11/2020.
Date of pronouncement	:	23/12/2020.

ORDER

PER BENCH:

These appeals by the Revenue and the cross objections by the assessee are directed against the separate orders of

Commissioner of Income Tax (Appeals)-3, Visakhapatnam, both dated 30/06/2020 for the Assessment Years 2016-17 & 2017-18. Since facts and the issues are common in both the appeals, they are clubbed and heard together and disposed of by way of this consolidated order.

2. All the grounds of appeal are related to the income estimated by the AO which was deleted by the Id. CIT(A).

3. Brief facts of the case are that the assessee is engaged in jewellery business. A search operation u/sec. 132 was conducted in the group cases of M/s.Khan Mohammed Diamonds & Jewellers Pvt. Ltd. on 20/09/2016. The company is incorporated in 2005 and is engaged in the business of gold jewellery, diamonds and silver articles. The assessee filed its original return of income u/s.139(1) declaring loss of Rs.4,25,19,151/- and Rs.45,81,242/- respectively for the A.Ys. 2016-17 and 2017-18. Subsequently in response to the notice issued u/sec. 153A, revised the return admitting total loss of Rs.2,96,32,471/- for the A.Y.2016-17 and Rs.45,81,242/- for the A.Y.2017-18. Thus, the assessee has reduced the loss of Rs.1,28,86,680/- for the A.Y 2016-17 and there was no change in the A.Y.2017-18.

3.1 During the assessment proceedings, the AO has observed that assessee's net profit was ranging from 11.67% to 5.52% for

the A.Ys. 2011-12 to 2015-16 and sharply decreased the net profit from A.Y. 2016-17 onwards. Assessee's net profit from A.Ys. 2011-12 to 2015-16 was worked out to 8.51% on an average and net profit for the A.Ys. 2016-17 & 2017-18 was (-) 7.09% & (-)1.19% respectively. Hence, the AO viewed that the reduction in the net profit was in order to pre-empt the declarations made by the assessee during the search and hence, issued the show cause notice proposing to estimate the income @ 8.51% (the average of the A.Ys. 2011-12 to 2015-16) and accordingly notice u/sec. 142 (1) also was also issued.

3.2 In reply to the show-cause notice, the assessee objected for the proposed addition and explained that there was tough competition from the big corporate players like Joy Alukas; Khajana, Malbar Gold, Jose Alukas, Kalyani Jewellers, GRT Jewellers and many other big players who opened branches throughout the state. Assessee further explained that to capture the market they started selling at lower margins and also spending more on advertisements, providing gifts for attracting good number of customers. The assessee is not in a position to compete and sustain in the market hence, it has no option except to reduce the margins in selling and thus incurred huge losses. The assessee also submitted that due to severe competition from

big players, assessee has closed down the branches at Bangalore and Visakhapatnam. The assessee further submitted that for the A.Y. 2015-16 turnover was Rs.64.26 crores and it has been reduced to Rs. 60.21 crores and 56.33 crores for the A.Ys. 2016-17 and 2017-18 respectively. The assessee also stated that gross profit was also reduced sharply. Apart from the above, the assessee submitted that demonetization and agitation for separate state of Andhra Pradesh and continuous protests have attributed for incurring huge losses. Fluctuation of prices also stated to be one of the reasons for lower margins. The assessee further submitted that they have purchased gold during the period of inflation which was reduced subsequently which resulted in incurring losses. The assessee further submitted that assessee maintained regular books of account which are regularly audited and filed its returns of income with the Registrar of Companies and Income Tax well within the time. The loss declared in the return of income was real loss thus, argued that there is no understatement of income in the assessee's case, however, the assessee in the same letter stated to have agreed for estimation of income at 5.52% for the A.Y. 2016-17 and 2017-18.

4. The AO has considered the objections, books of account and other details of the assessee carefully. Since the assessee could

not identify closing and opening stock details the AO viewed that the gross profit or net profit ratios cannot be relied upon for the year under consideration. The AO noticed that there was a shortfall of profit from the A.Y. 2015-16 onwards and accordingly estimated the income at 5.52% for which the assessee had agreed for the addition and filed notarized affidavit for the A.Ys. 2016-17 & 2017-18. Accordingly, computed the income for the A.Y. 2016-17 at Rs. 4,61,22,924/- and for the A.Y. 2017-18 at Rs.3,34,42,013/- as follows:-

For A.Y. 2016-17

<i>Income computed and accepted by the assessee's net profit @ 5.52% on G.T. of Rs. 602105879</i>	<i>Rs. 3,42,36,244</i>
<i>Add: undisclosed income declared during the course of search (on account of excess stock)</i>	<i>Rs. 1,28,86,680</i>
	<i>Rs. 4,61,22,924</i>
<i>Tax payable</i>	<i>Rs. 1,79,87,920</i>

For the A.Y. 2017-18

<i>Income computed and accepted by the assessee's net profit @ 5.52% on G.T. of Rs. 56,33,77,667</i>	<i>Rs. 3,14,09,432</i>
<i>Add: undisclosed income declared during the course of search (on account of excess stock)</i>	<i>Rs. 20,32,581</i>
	<i>Rs. 3,34,42,013</i>
<i>Tax payable</i>	<i>Rs. 49,45,830</i>

5. Against the order of AO, the assessee went on appeal before the Id. CIT(A) and filed an affidavit objecting for estimation of income stating that assessee has agreed for the addition due to pressure and on misapprehension of levying the penalty. The

Id.AR further submitted that AO did not complete the assessment on the basis of letter given by the assessee but completed the assessment only after giving affidavit. The assessee further submitted that the assessee has maintained regular books of account and all stock registers and the books of account are audited and no defects were noticed. Therefore, argued that the AO cannot resort for estimation of income. Ld.AR further argued that since the admission was given by the assessee on pressure and misapprehension the same is invalid and cannot be taken as the basis for estimation of income without having the material on record. The assessee further stated that the assessee's case was covered u/sec. 132 and no evidences were found with regard to suppression of income or any material to show that the assessee had understated the income for the impugned assessment years, therefore, argued that the addition made by the AO is bad in law, hence, requested the Id. CIT(A) to delete the addition.

6. With regard to admission given, Id.AR argued that under misapprehension of levy of penalty and on pressure the same is invalid. The Id.AR further argued that there is no provision in the Act to complete the assessment on agreed basis to make or delete the addition. If a particular item or receipt or a transaction is taxable as per the provisions of the Act the same has to be taxed,

otherwise not. The agreement or disagreement of the assessee does not come on the way of the revenue to tax the particular item which is taxable, Since, the AO has to collect legitimate taxes, hence, argued that legal position is clear that even though the assessee has agreed for some reason or the other the AO is not permitted to tax the item which is not taxable and even the assessee did not agree, the AO cannot be refrained from taxing the same. The assessee has taken number of case laws to support his contention which is discussed in para 14 to 17 of the Id.CIT(A)'s order. The assessee also filed an affidavit on 10/02/2020 before the Ld.CIT(A) stating that admission was given under the misapprehension and pressure. List of case laws reads as under:-

1. CIT Vs. Malti Mishra (2013) 38 taxmann.com 160
2. Chhat Mull Aggarwal Vs. CIT (1979) 116 ITR 694
3. Bhandari Metals&State of Karnataka (2004) 136 STC 292
4. CIT Vs. Mr. P. Firm, Muar (1965) 56 ITR 67
5. Loni Enterprises Vs. ITO (TDS) [ITAT, Bengaluru Bench in ITA No.2787/Bang/2017]
6. ITO Vs. Shri Sidhivinayak Dyeing & Printing Mills (P)Ltd. (2009) 119 ITD 169
7. Dina Nath Prem Kumar Vs. ITO (1982) 13 TTJ 442 (ITAT, Delhi Bench)

7. The Id.CIT(A) forwarded the submissions made by the assessee to the AO and called for the remand report. In turn, the AO submitted remand report stating that there was a claim of loss sustained in the business and the assessee itself filed an affidavit to estimate the net profit @ 5.52% instead of 8.51% that was proposed by the AO. The Id. CIT(A) called for rejoinder and viewed that admission given by the assessee in the form of letter and affidavit was with misapprehension of law and facts. Relying on the case law of Hon'ble Allahabad High Court in the case of *CIT Vs. Smt. Malti Mishra* [(2014) 221 Taxman 25, the Id. CIT(A) held that without pointing out any defects in the books of account, concealment of transactions or concealment of income surrender letter or the affidavit has to be ignored as the letter and affidavit were given with misapprehension of law and facts. Taking support from the decision of the Hon'ble Punjab & Haryana High Court in the case of *Chhat Mull Aggarwal* (supra) and other case laws, Id. CIT(A) held that the AO is not permitted to make any addition by estimating the income without rejecting the books of account. Thus, deleted the addition made by the AO. The assessee raised additional ground before the Id. CIT(A) which was also allowed by her.

8. Against the order of Id. CIT(A), the Revenue has filed an appeal before the Tribunal.

9. During appeal hearing, Id.DR submitted that AO found that profit of the assessee was sharply declined for the A.Ys. 2016-17 & 2017-18 and against the net profit 11.67% in the A.Y. 2011-12, net profit was decreased to (-)7.09% in the A.Y. 2016-17 and for the A.Y. 2017-18 it was (-)1.19%. Thus, the assessee declared huge losses for both the assessment years, therefore, the AO has sufficient reason to believe that the assessee has declared the losses to set off the additional income admitted by the assessee during the search to pre-empt the declarations made during the search operations. The Id.DR further argued that assessee himself has agreed for the addition to estimate the income @ 5.52% and accordingly admitted the income of Rs.3,32,36,244/- and Rs.3,14,09,432/- for the A.Ys. 2016-17 & 2017-18 respectively. The AO has considered the submissions of the assessee and found that there were no details of opening stock and closing stock and in absence of such details it is very difficult to ascertain whether the assessee has sold old items or new items, therefore viewed that gross profit and net profit ratio cannot be relied on. Thus, accepted the estimation of income as agreed by the assessee and completed the assessment. Ld.DR further submitted that addition

was agreed by the assessee himself, therefore there is no reason to go back from the admission given by the assessee hence argued that the addition be sustained and requested to set aside the order of the Id. CIT(A).

10. On the other hand, Id.AR vehemently relied on the order of the Id. CIT(A) and argued that the admission given by the assessee was under mental pressure and lack of understanding and the AO made the addition without having any material solely on the basis of letter given by the assessee, therefore argued that there is no reason to interfere with the order of the Id. CIT(A) and the same required to be upheld.

11. We have heard both the parties and perused the material placed on record.

12. For the A.Y. 2016-17, the assessee filed return of income disclosing loss of Rs. 4,25,19,151/- u/s 139(1) and subsequently revised the loss to Rs. 2,96,32,471/- duly decreasing the loss to the extent of Rs.1,28,86,680/- which was admitted as undisclosed income during the course of search. Similarly, for the A.Y. 2017-18, the assessee filed return of income declaring loss of Rs.45,81,242/- and even in response to the notice issued u/sec. 153A the assessee filed return of income admitting the same loss and no change. A search u/sec. 132 was conducted in the case of

the assessee and during the course of search, no evidence was found with regard to concealment of income as seen from the assessment order. The assessee has incurred the loss of Rs.4,26,59,680/- for the A.Y. 2016-17 and Rs.67,47,869/- for the A.Y. 2017-18 as per the profit & loss account. For the sake of convenience and clarity, we extract the tabulation of gross turnover and the net profit declared by the assessee for the A.Y. 2011-12 to 2017-18 which is tabulated in assessment order at page No.2 and reads as under:-

A.Y.	Gross turnover	Gross profit	GP to GT%	Net profit	NP to GT%	Stock in trade	ST to GT%
2011-12	25,73,27,534	16,10,84,829	62.6	3,00,22,134	11.67	9,63,39,235	37.44
2012-13	36,91,10,331	8,17,46,251	22.14	3,74,27,834	10.14	12,41,36,154	33.63
2013-14	39,04,02,446	8,89,57,438	22.78	4,06,08,055	10.40	17,63,06,785	45.16
2014-15	53,52,23,151	8,25,72,504	15.43	2,58,21,843	4.82	19,59,38,106	36.61
2015-16	64,26,65,699	9,68,56,172	15.07	3,54,72,394	5.52	22,57,59,248	35.13
2016-17	60,21,05,879	7,62,18,755	12.66	-4,26,59,687	-7.09	16,78,32,753	27.87
2017-18	56,33,77,667	5,33,92,062	93.47	-67,47,869	-1.19	11,17,08,308	19.83

13. The AO did not find any defect in the books of account and no evidence also was found during the search with regard to concealment of income. However, the AO observed that there was decline in profit, therefore arrived at the average profit at 8.51% taking the profits from the A.Ys. 2011-12 to 2015-16 ignoring the losses incurred by the assessee for the impugned assessment years and issued show cause notice to estimate the profit at 8.51%. In response to the notice the assessee explained the reasons for shortfall in the profit in detail which was discussed

earlier in this order. The AO found that the assessee could not furnish the details of closing and opening stocks and in the absence of such details the AO viewed that it is very difficult to verify whether the stock which was put to sale consists of old items or items purchased during the year. Thus, viewed that gross profit or net profit cannot be relied upon for the current year, therefore accepted the estimation of income at 5.52% as agreed by the assessee. Accordingly, completed the assessment estimating the income at 5.52% of the gross turnover.

14. From plain reading of the assessment order we find that the AO has not applied his mind and did not give logical reasoning for resorting to estimation of income. In the instant case, a search u/sec. 132 was conducted in the business premises of the assessee as well as residential premises and the entire material is available with the Income-tax Department i.e. stock books, registers, books of accounts. No evidence was found with regard to understatement of income. The reason given by the AO for resorting to estimation of income is neither convincing nor logical. As per the affidavit filed by the assessee before the Id. CIT(A), Investigation Wing has seized the stock registers and the valuation was also done by the panel valuer with regard to stock

available in the business premises. Thus, the basis for resorting to estimation of income on non-identification of the items that was sold were old stocks or new stocks by the AO is unacceptable. In the instant case, the assessee has explained the reasons and circumstances for accepting the additional income in his affidavit filed before the Id. CIT(A) and the same was accepted by the Ld.CIT(A). The assessee placed number of decisions where it is viewed by the judicial precedents that mere admission cannot be basis for taxing the income which is not taxable. The department has to collect legitimate taxes and bring the material to support their case. In the instant case, the AO neither brought the material nor rejected the books of account and brought any material to resort for estimation of income. The profit of earlier years cannot be only indicator for estimation of income, since, there may be lot of changes financially in the business environment. The contention of the assessee is that the admission was given on pressure and under misapprehension. If the admission is given on misapprehension or pressure, the assessee is permitted to retract from the admission and the AO is bound to make the assessment on the material gathered. In the instant case, no defect was detected and purchases and sales were accounted and the expenditure was accounted and the AO did not

find any inflation of expenditure, suppression of sales, inflation of purchases. Thus, there is no case for estimation of income and the AO simply computed the average net profit of the earlier years and issued show cause notice for estimation of income, the assessee explained the reasons for declining profit. Without rejecting explanation offered by the assessee with cogent evidence/material, the AO simply resorted for estimation of income. In his explanation, the assessee stated that there is huge competition from the corporate players. The assessee further stated that to attract the customers they are forced to reduce the margins and from the F.Y. 2015-16 the turnover was reduced. The assessee further stated that due to introduction of Central Excise Act from the A.Y. 2015-16 shops were closed for 45 days and the assessee has paid excise duty on the stocks which was not collected from the customers and business was interrupted frequently due to separate state agitation during the F.Y. 2014-15. Demonetization is one of the reasons stated to be for reduction of turnover and the profit drastically. The assessee has stated that slow and obsolete items were sold reducing the prices from 1% to 4% per gram. The assessee further stated that gold prices fluctuated considerably and many a times gold was purchased at higher rates. The assessee has maintained regular books of

account and all the above contentions are verifiable facts. Since the books of account, stock registers were seized by the department, the AO ought to have verified the above facts and the items sold, instead of resorting for estimation of income. All the reasons for shortfall in profit appears to be reasonable. From the tabulation of turnover given in the Assessment order, it is seen that the turnover has reduced from Rs. 64.26 crores to Rs.60.21 crores for the A.Y. 2016-17 which was further reduced to Rs.56.33 crores for the A.Y. 2017-18 and the gross profit also reduced. Thus assessee's sales have been decreased which resulted in huge losses since the fixed cost cannot be reduced. Further on going through the paper book page No.88 we find that on 16.11.2018, the AO had issued the notice u/s 142(1) along with show cause letter proposing to make estimation of income @8.51% and the case was posted for hearing on 27.11.2018 at 3.30PM. Simultaneously one more notice u/s 142(1) was placed in paper book page No.91 to 94 calling for various details vide notice dated 16.11.2018 posting the case for hearing on 27.11.2018 at 3.30 P.M. Thus, it is observed that the AO even without verifying the details prejudiced to estimate the income @8.51% and landed in wrong conclusion that the assessee had understated the income without any basis. On verification of the assessment order, it is

also seen that the last date of hearing was 15.12.2018 which shows that the assessment proceedings were completed by 15.12.2018. The assessee also placed copy of letter dated 15.12.2018 objecting for the proposed addition for estimation of income @8.51%. There was no indication of agreement for estimation of income in it's letter dated 15.12.2018. It is also seen that the assessee has furnished the affidavit on 26.12.2018 before the AO, though there was no hearing. The above material placed in the paper book shows that there was undue pressure on the assessee as stated by him in the affidavit filed before the Ld.CIT(A) for agreeing the addition. Thus, we are of the considered opinion that the admission was given on undue pressure and the same cannot be basis for addition. In this connection we, extract the order of Id.CIT(A) in page No.22 from Para No.18.4 to 18.7 which reads as under:-

18.4) On careful consideration of the material facts, it is clear that the appellant vide the affidavit has agreed to disclose the regular income towards net profits based on immediate previous year's net profit ratio. This affidavit was filed on 26/12/2018, i.e., at the fag end of the time barring period. The appellant submitted that no addition was agreed as alleged by the AO in the assessment order. It was also contended that the affidavit filed does not give any right to the AO to estimate the income. The appellant also stated that no revised computation was filed before the AO, before finalizing the assessment, incorporating the estimated income. Having regard to these facts the issue has been examined. The appellant vide the affidavit has only agreed to disclose the income on estimate basis but not filed revised computation accepting the said estimated income. A bear reading of the affidavit show that the appellant has not agreed for the addition

as mentioned by the AO in his order. Considering the affidavit as a consent for the addition made by the AO, appears to be incorrect. Even in the remand report the AO considered the affidavit given by the appellant as the basis for agreed addition, which also appears to be incorrect. In view of the above discussion, having regard to the material facts it is clear that the appellant has not given consent for the addition proposed by the AO. At any stretch of imagination the addition made by the AO cannot be construed as an addition made on agreed basis keeping in view the words/language used in the affidavit, which has been considered by the AO for completing the assessment.

18.5) On examination of the notice U/s 142(1), the Assessing Officer has not pointed out any defects in the Books of accounts and simply questioned about the reason for the loss incurred, and further asked as to why the net profit should not be adopted @ 5.52% when compared with the previous asst year. For questioning this estimation, the Assessing Officer should bring the defects in the Books for which he could not be able to deduce the profit from the Books of accounts produced. In normal situations, the assessee usually give affidavit to confirm the company in showing the loss. According to the human probability theory when the assessing officer has not shown the default, why the appellant company will come forward to admit the income which is prejudice to his own. On perusal of the assessment order and the notices issued in the course of assessment proceedings, it is found that the Assessing Officer has not found any fault in the Books of account. Hence without defects in the Books of accounts mere admission will not, have the evidentiary value.

18.6) During the course of assessment proceedings, books of account were examined in depth. The stock records were seized /impounded and are very much with the Department. The Assessing Officer allegation that the appellant company could not specifically identify the closing and opening stock details is without jurisdiction because the details are available in Form 3CD annexed to the audit report and also in the seized record. The reason quoted by the Assessing Officer does not in any way come to his rescue to estimate the profit and also to take the admission in the form of letter and affidavit.

8.7) The Assessing Officer has not drawn any conclusion in the assessment order whether any material has been seized which shows that the appellant company has siphoned the profit out of the company books. The appellant contended that on the date of search itself i.e. 20.09.2016, which as per the Books of account there is a loss which was also taken note of by the Investigation Department was examined. In such a case, there is no scope to allege that the appellant company has shown loss to mitigate the admission given during search proceedings. Assessing Officer has not disproved purchases and sales when comparing with Statutory records like VAT

returns. Hence the admission given by the appellant in the form of letter and affidavit is with misapprehension of law and fact.

15. The Id. CIT(A) deleted the addition observing that the AO is not permitted to make the addition without rejecting the books of account. For the sake of clarity and convenience we extract the relevant part of the order of the Id. CIT(A) in para No.28 which reads as under:-

"I have carefully considered the facts of the case, assessment order passed by the AO and the submissions/judicial pronouncements filed by the Authorised Representative of the appellant and also gone through the reply to the remand report furnished by the AO and also the counter comments given by the Authorised Representative of the appellant against the remand report. The issue to decide here is that whether the AO is justified in making the addition on estimate basis without rejecting the books of account and without pointing any defects in the books of account or method of account followed by the appellant is correct or not.

I am of the view that even in the cases of disclosure made by the appellant at the time of search proceedings, it is necessary for the Assessing Officer to justify such admission with facts and figures and with proper verification of the documents filed by the appellant as required u/s.145(3) of the Income tax Act, 1961. It is more pertinent to mention here that this being a case of estimation of profit, the responsibility is cast upon the Assessing Officer to establish with proper evidence that the books of account of the appellant are defective and hence deserve to be rejected u/s.145(3) of the Income-tax Act, 1961 before estimation of profit. As submitted by the appellant, A.O.'s observation that the appellant failed to substantiate the valuation of opening and closing stocks, is found to be acceptable as the valuation has been reflected in Form 3CD of audit report and also in the Trading account. In order to fulfill the Assessing Officer could have carried proper verification/examination of the books of account on the basis of the information furnished by the appellant. The most essential requirement for the Assessing Officer before resorting to estimation of net profit, profit, is to reject the books of account, point out the defects in the books

of account u/s. 145(3), irrespective of the fact that whether the appellant made case, the Assessing Officer's action in making the addition of Rs. 3,32,36,244/- by estimating the net profit @ 5.52% on the gross of Rs.60,21,05,879/- could have gained some strength. Further, it is an undisputed fact that the appellant furnished Audit Report as required u/s. 44AB enclosing thereto the details of sales and purchases, closing stock etc. Except estimating the net profit @ 5.52% on the gross turnover of Rs.60,21,05,879/- as per the consent given by the Authorised Representative of the appellant by way of an affidavit filed during the course of assessment proceedings, the Assessing Officer has not made any worth-mentioning effort/independent verification and pointed out any defects in the appellant's books of account. The Assessing Officer simply gathered the particulars of turnover, gross profit and net profit from the records for the preceding five years i.e. AYs 2011-12 to 2015-16 (11.64 + 10.14 + 10.40 + 4.82 + 5.52 = 42.55/5 = 8.51), declared by the appellant in the return of income filed prior to date of search, and arrived at the average net profit 8.51% which was proposed to apply to the appellant's case, was also not adopted but a profit ratio of 8.51% was taken into consideration with the consent of the Authorised Representative of the appellant by way of an affidavit, but has not made any other worth mentioning exercise. The above exercise does not itself lead to estimation of income, as it is inevitable for the A.O. to reject the books of account u/s.145(3), if the profit is to be estimated, in other words, estimate of profit by comparing the profit admitted in the year under consideration with that of the earlier years, is not permissible as per law, as before resorting to such estimate of profit the A.O. should reject the books of account u/s 145(3) of the Income-tax Act, 1961 pointing out certain defects. As regards the A.O's observation that rejection of books of account of the appellant is not necessary as the profit was estimated as per the appellant's own admission, I am in disagreement with the A.O's observation as the provisions of sec.145 have not provided any such clause thereby making the intention of Legislature is crystal clear that rejection of books of account is mandatory in all the cases including the cases where the profit is to be estimated as per the admission given by the appellant."

- 16.** In the instant case, it is clear from the discussion that there was no material and no defects were pointed out by the AO. Even

though search was conducted no evidence was found by the AO evidencing the suppression of income or the inflation of purchase or inflation of expenditure. The assessee has maintained regular books of account which are duly audited. A search u/sec. 132 was conducted but no evidence was found indicating concealment of income. The assessee relied on the decision of ITAT, Rajkot Bench in the case of *ACIT Vs. Rushabh Vatika* (2013) 35 taxmann.com 383 wherein the coordinate bench has held that without rejection of books of account question of application of net profit does not arise. In the case of *Pr.CIT Vs. Marg Ltd.* (2017) 84 taxmann.com 52 the Hon'ble Madras High Court held that profits of the assessee cannot be estimated without rejection of books of account. In the case of *Dhakeswari Cotton Mills Ltd. Vs. CIT*(1954) 26 ITR 775 the Hon'ble Supreme Court held that AO is not entitled to make a pure guess work or suspicion without any reference or without any material at all. Taking into consideration of all the above aspects, in the instant case, there is no basis for estimation of income, therefore, estimation of income without having any seized material or any material is bad in law, Hence, we uphold the order of the Id. CIT(A) and dismiss the appeal of the Revenue.

17. The cross objections are filed to support the orders of the Id.CIT(A). Since appeals of the Revenue are dismissed, the cross objections become infructuous and hence dismissed.

18. In the result, appeals of the Revenue and the cross objection of the assessee are dismissed.

Order Pronounced in open Court through video conference on this 23rd day of Dec.,2020.

Sd/-
(D.S. SUNDER SINGH)
Accountant Member

sd/-
(V. DURGA RAO)
Judicial Member

Dated: 23rd Dec., 2020.

vr/-

Copy to:

1. *The Assessee -M/s. Khan Mohammed Diamonds & Jewellery Pvt. Ltd., D.No. 5-37-221(A), 4th Lane, Brodipet, Guntur.*
2. *The Revenue -The ACIT, Central Circle-2, Guntur.*
3. *The Pr.CIT (Central), Visakhapatnam.*
4. *The CIT(A)-3, Visakhapatnam.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Visakhapatnam.