

**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.181 & 182/VIZ/2020
(Asst. Years: 2016-17& 2017-18)**

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| The ACIT, Central Circle-2, Guntur. | vs. | M/s. Deccan Jewellers Pvt. Ltd., D.No. 27-16-65, Besant Road, Governorpet, Vijayawada. |
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| PAN No. AACCD 1524 H (Appellant) | (Respondent) |
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**C.O.Nos. 16 & 17/VIZ/2020
(Arising out of I.T.A. Nos. 181 & 182/VIZ/2020)
(Asst. Years :2016-17 & 2017-18)**

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| M/s. Deccan Jewellers Pvt. Ltd., D.No. 27-16-65, Besant Road, Governorpet, Vijayawada. | vs. | The ACIT, Central Circle-2, Guntur. |
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| PAN No. AACCD 1524 H (Applicant) | (Respondent) |
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| Assessee by | : | Shri M.V. Prasad, CA. |
| Department By | : | Shri D.K. Sonawal, CIT-DR |

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| 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 Years2016-17& 2017-18. Since facts and the issues are common, the appeals are clubbed and heard together and disposed of by way of this consolidated order.

2. All the grounds of appeal 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 carried out in the group cases of M/s. Deccan Jewellers Pvt. Ltd., on 20/09/2016. The assessments involved are 2016-17 and 2017-18. The company is engaged in the business of gold jewellery, diamonds and silver articles having branches at Rajahmundry, Kakinada and Visakhapatnam. The assessee filed its original return of income declaring loss of Rs. 8,06,87,262/- and Rs.9,43,92456 respectively for the A.Ys 2016-17 and 2017-18. Subsequently in response to the notice issued u/sec. 153A, the assessee filed the revised the returns and declared the loss of Rs.6,30,90,927/- and Rs.9,43,92456/- for the said A.Ys. Thus, the assessee has reduced the loss of Rs. 1,75,96,335/- for the A.Y 2016-17 and there was no change in the return for the A.Y. 2017-18.

3.1 During the assessment proceedings the AO has observed that assessee's net profit was ranging from 9.04% to 9.91% for the A.Ys. 2011-12 to 2013-14 and sharply decreased the net profit from A.Y. 2014-15 onwards. Assessee's average net profit from A.Ys. 2011-12 to 2015-16 was worked out to 6.26% and the net profit of A.Y. 2016-17 & 2017-18 declined to -8.27% & -18.34% respectively. The AO viewed that reduction in the net profit was in order to pre-empt the declarations made during the search admitting additional income and hence, issued the show cause notice proposing to estimate the income @ 6.26% (the average for the A.Ys. 2011-12 to 2015-16) and accordingly the notice u/sec. 142 (1) was also issued.

3.2 In reply to the show-cause notice, the assessee objected for 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 the gold 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, he has no option except to reduce

the margins in the business and 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.121.96 crores and it has been reduced to Rs. 100.35 crores and 85.19 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 reduction of turnover and 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 and resulted in incurring losses. The assessee further submitted that assessee maintained regular books of account which are audited and filed the returns of income with the Registrar of Companies and Income Tax well within the time. The loss declared in returns are real losses, and thus, argued that there is no understatement of income in the assessee's case.

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 with the identification of sold items 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 he estimated the income at 2.15% for which the assessee has agreed for the addition and filed notarized affidavit for the A.Ys. 2016-17 & 2017-18. Accordingly, the AO estimated the income @ 2.15% on the total turnover and computed the income for the A.Y.2016-17 at Rs.3,91,24,072/- and for the A.Y. 2017-18 at Rs. 7,95,21,933/- as follows:-

For A.Y. 2016-17

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| <i>Income computed and accepted by the assessee's net profit @ 2.15% on G.T. of Rs. 100,35,28,688/-</i> | <i>Rs. 2,15,27,737</i> |
| <i>Add: undisclosed income declared during the course of search (on account of excess stock)</i> | <i>Rs. 1,75,96,335</i> |
| <i>Assessed income</i> | <i>Rs. 3,91,24,072</i> |
| <i>Tax Payable</i> | <i>Rs. 1,51,43,710</i> |

For the A.Y. 2017-18

| | |
|---|------------------------|
| <i>Income computed and accepted by the assessee's net profit @ 2.15% on G.T. of Rs. 85,19,587/-</i> | <i>Rs. 1,82,75,649</i> |
| <i>Add: undisclosed income declared during the course of search (on account of excess stock)</i> | <i>Rs. 6,12,46,284</i> |
| <i>Assessed income</i> | <i>Rs. 7,95,21,933</i> |
| <i>Tax Payable</i> | <i>Rs. 2,39,59,900</i> |

The AO stated in the assessment order that the assessee has agreed for the addition and filed the affidavit.

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 the addition due to pressure and on apprehension of levying the penalty. The assessee further submitted that the assessee has maintained the regular books of accounts and all the stock registers and the books of account are audited and no defects were found by the AO. Therefore, argued that the AO cannot resort for estimation of income. Id.AR further argued that the admission given by the assessee cannot be taken as the basis for estimation of income without having any material on record. The assessee further stated that the assessee's case was covered search u/sec. 132 and no evidences were found with regard to suppression of income or any material to show that the assessee has 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.

5.1. With regard to admission given, Id.AR argued that there is no provision in the Act to complete the assessment on agreed basis. If a particular item or receipt or a transaction is taxable as per the provisions of the Act the same required to be taxed, whether the assessee agrees or 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. The AO has to collect legitimate taxes, and hence, argued that legal position is clear that even though the assessee has agreed, the AO is not permitted to tax the item which is not taxable and even if the assessee does not agree, the AO cannot be refrained from taxing the income which is taxable. The assessee has taken number of case laws to support his contention which is discussed in para 16 of the Id.CIT(A)'s order. 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)

6. 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 @ 2.15% instead of 6.26% 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.

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

8. During appeal hearing, Id.DR submitted that AO found the profit of the assessee was sharply declined for the A.Ys. 2016-17 & 2017-18. Against the net profit of 9.81% in the A.Y. 2012-13

the net profit was decreased to (-) 8.27% in the A.Y. 2016-17 and for the A.Y. 2017-18 it was further decreased to 18.34%. 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 net profit @ 2.15% and admitted net profit of Rs.2,15,27,737/- and additional income of Rs. 1,82,75,649/-for the A.Ys. 2016-17. 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 grievance to the assessee and to go back from the admission given hence argued that the addition made by the AO has to be sustained and requested to set aside the order of the Id.CIT(A) and allow the appeals of the Revenue.

9. 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 pressure and lack of understanding and the AO made the addition without 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.

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

11. For the A.Y. 2016-17, the assessee filed return of income disclosing loss of Rs. 8,06,87,262/-and subsequently revised the loss to Rs. 6,30,90,927/- duly decreasing the loss to the extent of Rs.1,75,96,335/- 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.9,43,92,456/-. Even in response to the notice issued u/sec. 153A the assessee filed return of income admitting the same loss for the A.Y. 2017-18. A search u/sec. 132 was conducted in the business premises and during the course of search, no evidence was found as seen from the assessment order with regard to understatement of income by the assessee. As seen from the assessment order, the assessee has incurred the loss of Rs.8,29,97,013/- for the

A.Y.2016-17 and Rs.15,62,25,156/- 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 profits declared by the assessee for the A.Y. 2011-12 to 2017-18 which is tabulated in assessment order at page No.2 which reads as under:-

| A.Y. | Gross turnover | Gross profit | GP to GT% | Net profit | NP to GT% | Stock trade in | ST to GT% |
|---------|----------------|---------------|-----------|---------------|-----------|----------------|-----------|
| 2011-12 | 115,45,18,322 | 25,53,678,190 | 22.12 | 10,42,22,628 | 9.04 | 51,88,57,998 | 44.94 |
| 2012-13 | 157,45,44,243 | 42,90,46,224 | 27.25 | 15,44,41,337 | 9.81 | 78,77,94,367 | 50.03 |
| 2013-14 | 132,91,44,299 | 40,32,81,324 | 30.34 | 13,16,74,716 | 9.91 | 86,89,80,246 | 65.38 |
| 2014-15 | 109,39,86,728 | 25,27,24,564 | 23.38 | 45,11,995 | 0.41 | 79,31,20,600 | 72.5 |
| 2015-16 | 121,96,76,057 | 21,89,56,440 | 17.95 | 2,61,64,539 | 2.15 | 75,62,01,248 | 62.00 |
| 2016-17 | 100,35,26,688 | 10,44,62,368 | 10.41 | -8,29,97,013 | -8.27 | 60,97,22,663 | 60.76 |
| 2017-18 | 885,19,30,587 | 67,21,985 | 0.79 | -15,62,25,156 | -18.34 | 46,13,44,674 | 50.63 |

12. The AO did not find any defect in the books of account, therefore the AO arrived at the average profit at 6.26% 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 6.26%. 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 did not furnish the details of closing and opening stocks and in the absence of such details the AO viewed that it is not possible to ascertain 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 declared by the assessee cannot be relied upon for the current year, therefore accepted the estimation of income at 2.15% as agreed by the assessee. Accordingly, completed the assessment estimating the income at 2.15% of the gross turnover and separately made the additions agreed during the course of search.

13. 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. 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 books of accounts, stock registers and the valuation was also done by the penal valuer with regard to stock available in the business premises. Thus, the basis for resorting to estimation of income of non-identification of the items that was sold is unacceptable. In the instant case, the assessee has explained the reasons and circumstances for

accepting the additional income in its affidavit before the Id.CIT(A) and the same was accepted by the Id.CIT(A). The assessee placed number of decisions where it is viewed by the Courts 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 to resort for estimation of income. The profit of earlier years cannot be sole indicator for estimation of income, since, there were many financial implications explained by the assessee in its explanation. 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 same is invalid and assessee is free to retract and the AO has to complete the assessment on the basis of evidence collected during the assessment proceedings. In the instant case, no defect was detected and all the purchases and sales were accounted and no expenditure was found to be booked outside the books of accounts. Thus, there is no case for estimation of income. The AO simply computed the average net profit of the earlier years and issued show cause notice for estimation of income, though the assessee had explained the reasons for declining the profit.

Without rejecting explanation offered by the assessee and without having cogent evidence/material for estimation of income is impermissible. In his explanation, the assessee stated that there is huge competition from the corporate players and the assessee was forced to close the branches at Bangalore and Visakhapatnam. The assessee further stated that to attract the customers they are forced to reduce the margins and from the F.Y. 2012-13 the turnover was drastically 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 was one of the reasons stated to be for reduction of turnover and the profit. 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 Investigation Wing, the AO ought to have verified the above facts 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. 121.96 crores to Rs. 100.35 crores for the A.Y.2016-17 which was further reduced to Rs. 85.19 crores for the A.Y. 2017-18 and the gross profit also reduced to Rs. 10.44 crores to 67.21 lakhs. Thus assessee's sales has been decreased which resulted in huge losses since the fixed cost cannot be reduced. Further on going through the paper book page No.112 to 114 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 @6.26% and the case was posted for hearing on 27.11.2018 at 11.45 AM. Similarly one more notice u/s 142(1) was placed in paper book page No.115 to 116 calling for various details vide notice dated 19.11.2018 posting the case for hearing on 27.11.2018 at 3.15 P.M. Thus, it is observed that the AO even without verifying the details prejudiced to estimate the income @6.26% 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 all the enquiries and 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 @6.26%. There was no indication of agreement for estimation of income vide letter dated 15.12.2018. It is also seen that the assessee has furnished the affidavit on 24.12.2018 before the AO, though there was no hearing. The above material placed in the paper book clearly indicate that there was undue pressure on the assessee as stated by him in the affidavit filed before the Id.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 observation of the Id.CIT(A) with regard to admission given by the assessee in page No.25 which reads as under:-

"17.8) On examination of the notice U/s 142(1), the Assessing Officer has not pointed out the defects in the Books of accounts and simply questioned about the reason for loss incurred, and also asked as to why the net profit should not be adopted @ 6.26% when compared with the previous assessment 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 admission specifically when there are defaults on the part of the assessee. In the present situation, the AO has not brought any default of the appellant 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. In my opinion, on examination of the Assessment

order and the notices issued in the course of Assessment proceedings, the Assessing Officer has not found fault in the Books of account. Hence without defects in the Books of accounts mere admission will not have the evidentiary value.

17.9) During the course of Assessment proceedings, books of accounts were examined in depth. The Stock records were seized/ impounded are with the department. The Assessing Officer's 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 AO 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.

17.10) The Assessing Officer has not drawn any conclusion in the Assessment order whether any material was seized which shows that the appellant company has siphoned the profit out of the company books. The appellant contention is on the date of search itself i.e.20.09.2016, that as per the Books of accounts there is a loss and the investigation department has taken note of it. Then 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, I am of the opinion that the admission given by the appellant in the form of letter and affidavit is with misapprehension of law and facts.

17.11)In the case of CIT Vs. Smt. Malti Mishra (2014) 221 Taxman 25,the Hon'ble Allahabad High Court held that the legal position has been clarified as under:-

Para 12 of the order:-

In the instant case there is no concealment on the part of the assessee regarding the transactions. All the transactions were duly disclosed. If the income as per law is exempted, then the offer of the assessee is meaningless as the law will prevail and will supersede the "offer" made by the assessee. In the instant case, surrender was to buy the peace as the assessee is not an expert in income tax matter. The department cannot take the advantage of the ignorance of the assessee as per the CBDT circular No.14(XL-35)/1955 dated

01/04/1995 mentioned in PAREKH Brothers Vs. CIT 15 Taxman 539 (Ker.). In the instant case, the statement was recorded of the broker, who had confirmed the sale and purchase. No concealment was made by the assessee even then she has made an offer to treat the said income as income from "other sources". The only reason for making the addition is that it was not entered in the register of the company, for which, the assessee is not responsible specially when she has discharged the burden of proof by disclosing all the transactions in the return, as per the ratio laid down by the Punjab & Haryana High Court in the case of CIT Vs. Smt.Sudarshan Gupta [IT Appeal No. 487 of 2007, dated 20-5-20087. Hence, we are of the view that the surrender letter will have to be ignored. Thus, we find no reason to interfere with the impugned order passed by the Tribunal. The same is hereby sustained along with reasons mentioned therein.

On consideration, I find that the ratio laid down in the above case, is applicable to the present case of the appellant company. In the case of appellant company, all the transactions were disclosed in the return of income and also in the Books of accounts. AO has not pointed out any concealment of transactions or concealment of income. As per the Books of accounts the appellant company has incurred the loss which is being accepted by the AO because AO has not pointed out any defects. In the absence of such facts the surrender letter or the affidavit will have to be ignored as the letter and affidavit were given with misapprehension of law and facts."

14. 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 page No.45 which reads as under:-

"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. 2,15,27,737/- by estimating the net profit @ 2.15% on the gross of Rs.100,35,28,688/- could have gained some strength. Further, it is a 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 @ 2.15% on the gross turnover of Rs. 100,35,28,688/- 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 of the appellant for the AYs 2011-12 to 2015-16 ($9.04 + 9.81 + 9.91 + 0.41 + 2.15 = 31.32/5 = 6.26\%$) and arrived at the average net profit 6.26% which was proposed to apply to the appellant's case, was also not adopted but a profit ratio of 2.15% 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."

15. 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. RushabhVatika* (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 also 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 made without having any material is bad in law, thus, we uphold the order of the Id. CIT(A) and dismiss the appeal of the Revenue.

16. 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.

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

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

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

sd/-
(V. DURGA RAO)
Judicial Member

Dated: 23rd December, 2020.

vr/-

Copy to:

1. *The Assessee - M/s. Deccan Jewellers Pvt. Ltd., D.No. 27-16-65, Besant Road, Governorpet, Vijayawada.*
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

Sr. Private Secretary,
ITAT, Visakhapatnam.