IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.681 OF 2016
WITH
INCOME TAX APPEAL NO.1048 OF 2016

Pr.Commissioner of Income Tax-27 … Appellant

V/s.

M/s Gem Corporation … Respondent

Mr.Ashok Kotangle with Ms.Padma Divakar for the Appellant.
Mr.Ashish Gabhale for the Respondent.

CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : DECEMBER 04, 2018.

P.C.:-

1. Since issues are similar, we may record the facts from Tax Appeal No.681 of 2016.

2. The Revenue has challenged the judgment of Income Tax Appellate Tribunal ("the Tribunal" for short) dated 13th March, 2015. Following questions are presented for our consideration:

"(i) Whether on the facts and circumstances of the

> case and in Law, the Hon'ble ITAT was justified in accepting assessee's Books of Accounts only on the basis of acceptance of sales by Commercial Tax Authorities even when substantial amount of sales were made in the name of non-existing parties at lower rates just to reduce profit?
> (ii) Whether on the facts and circumstances of the case and in Law, the Hon'ble ITAT was correct in shifting the burden, to prove the sales at low rates to the AO, which is primarily of the assessee and allowed relief to the assessee even when assessee did not discharge its onus of proving the unverifiable sales at low rates?"

3. We have perused the documents on record with the assistance of learned counsel appearing for the parties. The issues concern the decision of the Assessing Officer to reject the assessee's book results and to make additions on the grounds that the assessee had made sales at low rates and in some cases sales were to non-existing parties.

4. The Tribunal in the impugned judgment examined relevant material on record and came to the conclusion that the Assessing Officer was not justified in rejecting the book results. The Tribunal also gave detailed reasons why the action of the Assessing Officer in comparing gross profit of other entities

engaged in the same business was not justified or correct. We also notice that the CIT appeals had also given substantial relief to the assessee.

5. Perusal of the order on record would show that the entire issue is fact-based. No perversity is pointed out in the conclusion of the Tribunal. No question of law arises. The tax appeals are dismissed.

(M.S.SANKLECHA,J.) **(AKIL KURESHI,J.)**

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