Bombay High Court Dy. Commissioner Of Income Tax vs Samir Diamonds Export (P.) Ltd. on 30 October, 1998 Equivalent citations: 1999 71 ITD 75 Mum ORDER Per J. K. Verma (AM) As the name of the assessee suggests, the assessee is an exporter of diamonds. For this purpose, it imports rough diamonds and after shaping, cutting, polishing and sorting them, exports the cut and polished diamonds. It had filed a return of income at Rs. 3,48,163 after availing of the deductions under section 80HHC at Rs. 8,01,687. The assessing officer observed in his order that the assessee-company is a sister concern of Ws. Samir Diamonds and M/s. Samir Diamonds Mfg., which concerns as a group, comprise one of the biggest groups of exporters of cut and polished diamonds in India. He further noticed that the directors of the company are brothers and members of the Mebta family which controls the diamond trade not only in India but also in ANTWERP and New York, apart from DTC London and that large quantities of rough diamonds are purchased from the family's Belgian concerns and exports are made to family's New York concern. In order to verify the correctness of the returned income, the assessing officer issued notice under section 143(2) to the assessee and when he did not find the particulars given in the books of account to his satisfaction, he issued a questionnaire to the assessee, asking the assessee to furnish specific details regarding the colour, clarity, shape and number of pieces per carat in respect of lots of roughs issued for cutting and polishing and received back so that he could attempt some correlation between the lots of roughs imported and the lots of cut and polished diamonds exported. The assessee, however, declined to give these details stating that it did not maintain details of polished diamonds on the basis of weight, cut, clarity, shape and number of pieces. The assessing officer came to the conclusion that in the absence of such vital details being available from the books of account and the persistent refusal of the assessee to supply the required information, the book results could not be accepted. Thereafter, the assessing officer examined the total labour charges at Rs. 1,45,37,378 claimed to have been paid by the assessee to cut and polish 1, 10,666 carats of rough diamonds. He found that out of this amount Rs. 41.51 lacs were to the credit of its two sister concerns. He also noticed credits of about Rs. 12.90 lacs in the name of one Dinesh C. Shah and Rs. 1.73 lacs and Rs. 2.08 lacs credited in the names of two other parties who were doing the labour work for the assessee and other members of his group. He took into account the statement of Dinesh C. Shah recorded in the case of assessee's main concern M/s. Samir Diamonds where he had stated in response to a question to the effect that while issuing the rough lots to workers for cutting and polishing, they were not noted in the hangads. However, he recorded the expected yield on the packet according to the type of rough given for cutting and polishing and would compare the same when they were returned by the workers. But, when he was asked to show a few packets on which these details were noted, he stated that he destroyed such packets after the goods were received back. The assessing officer inferred that this indicated that assortment of roughs and of cut and polished diamonds was done and recorded, but those particulars were not furnished to the assessing officer. He also inferred that it was not possible to carry on the business of importing of roughs and cutting

and polishing the diamonds without keeping all these details. He also noticed that almost invariably uniform labour charges per carat were shown as paid to the labour parties which, according to him, was inconceivable. He noticed that the rates of diamonds exported by the assessee varied from US $ 41 per carat to US $ 850 per carat. For this purpose, he gave several examples in his order and after discussing in detail all these facts, he came to the conclusion that the book results could not be accepted and that on account of the defects enumerated by him he had to assess the income of the assessee according to the provisions of section 145 of the Income Tax Act. He, therefore, confronted the assessee with his findings and after considering various arguments advanced by the assessee to justify the reasonableness of the profits and the correctness of the accounts, the assessing officer observed that considering the results in the cases of assessee's group and assessee's own case for assessment year 1989~90the GP rate shown at 5.61% as against 15.50% and 9.68% in the cases of assessee's own sister concerns for the assessment year 1989-90 he would make flat addition (@ 5% on disclosed sales of Rs. 7,75,00,985. This resulted in an addition of Rs. 38,75,050 to the disclosed income of the assessee. 2. The assessee went in appeal. The Id. Commissioner (Appeals) took into account various explanations given by theassessee to the effect that the GP rate of this year was highest between 1980-81 to 1988-89. He also took into consideration assessee's explanation why GP rate for assessment year 1989-90 was higher than this year. He also considered the argument of the assessee to the effect that the GP rate should be compared with the GP rate of prior years and not with the subsequent years. After considering these arguments and the case law relied upon by the ld. counsel for the assessee, he deleted the entire addition of Rs. 38,75,050 against which the revenue has come in appeal before us. 2. The assessee went in appeal. The Id. Commissioner (Appeals) took into account various explanations given by theassessee to the effect that the GP rate of this year was highest between 1980-81 to 1988-89. He also took into consideration assessee's explanation why GP rate for assessment year 1989-90 was higher than this year. He also considered the argument of the assessee to the effect that the GP rate should be compared with the GP rate of prior years and not with the subsequent years. After considering these arguments and the case law relied upon by the ld. counsel for the assessee, he deleted the entire addition of Rs. 38,75,050 against which the revenue has come in appeal before us. 3. The ld. departmental Representative heavily relied on the order of the assessing officer. It was argued by the ld. departmental Representative that the assessee had started showing high profits in the assessment year 1989-90 onwards because of the availability of better deductions under section 80HHC. Moreover, the Id. Commissioner (Appeals) had based his decision merely on the arguments of the ld. counsel for the assessee showing comparison with earlier year's results without taking into account a good number of defects pointed out by the assessing officer in his order. He submitted that there was nothing to show that the assessments in the past had been made after making such enquiries and looking into such details as had been done by the assessing officer in this assessment year, he argued that book results being far from satisfactory, had rightly been rejected by the assessing officer and, therefore, the

additions should be restored and the order of the Id. Commissioner (Appeals) reversed. 3. The ld. departmental Representative heavily relied on the order of the assessing officer. It was argued by the ld. departmental Representative that the assessee had started showing high profits in the assessment year 1989-90 onwards because of the availability of better deductions under section 80HHC. Moreover, the Id. Commissioner (Appeals) had based his decision merely on the arguments of the ld. counsel for the assessee showing comparison with earlier year's results without taking into account a good number of defects pointed out by the assessing officer in his order. He submitted that there was nothing to show that the assessments in the past had been made after making such enquiries and looking into such details as had been done by the assessing officer in this assessment year, he argued that book results being far from satisfactory, had rightly been rejected by the assessing officer and, therefore, the additions should be restored and the order of the Id. Commissioner (Appeals) reversed. 4. The Id. counsel for the assessee, on the other hand, referred to para-5 of the order of the Commissioner (Appeals) and pointed out that since assessee's trading results were highest for this year as compared to the preceding years since 1980-81 to 1986-87 and subsequent year, i. e., assessment year 1988-89, the Id. Commissioner (Appeals) was justified in deleting. the additions. Even if the foreign exchange difference is excluded, the results for this year were the best as compared to trading results from assessment years 1980-81 to 1985-86. This would also justify the deletion of the additions by the Id. Commissioner (Appeals). He further pointed out that in view of the fact that there were thousands and thousands of small pieces of diamonds which he demonstrated before us, it was not possible to keep quantitative and qualitative details of the diamonds in the books of account office assessee. He reiterated the argument which was given before the assessing officer as well as before the Commissioner (Appeals) to the effect that it was not humanly possible to maintain the details as required by the assessing officer and hence, there is no justification in rejection of accounts by the assessing officer and applying the GP rate as done by him. He, therefore, prayed that the order of the Commissioner (Appeals) in this regard should be upheld. 4. The Id. counsel for the assessee, on the other hand, referred to para-5 of the order of the Commissioner (Appeals) and pointed out that since assessee's trading results were highest for this year as compared to the preceding years since 1980-81 to 1986-87 and subsequent year, i. e., assessment year 1988-89, the Id. Commissioner (Appeals) was justified in deleting. the additions. Even if the foreign exchange difference is excluded, the results for this year were the best as compared to trading results from assessment years 1980-81 to 1985-86. This would also justify the deletion of the additions by the Id. Commissioner (Appeals). He further pointed out that in view of the fact that there were thousands and thousands of small pieces of diamonds which he demonstrated before us, it was not possible to keep quantitative and qualitative details of the diamonds in the books of account office assessee. He reiterated the argument which was given before the assessing officer as well as before the Commissioner (Appeals) to the effect that it was not humanly possible to maintain the details as required by the assessing officer and

hence, there is no justification in rejection of accounts by the assessing officer and applying the GP rate as done by him. He, therefore, prayed that the order of the Commissioner (Appeals) in this regard should be upheld. 5. We have carefully considered the rival submissions and have scrutinised the orders of the assessing officer as well as the ld. Commissioner (Appeals) with great care. At the very out set we may mention that we have got an impression that whereas the assessing officer had taken great pains in framing this assessment order and had demonstrated a very good understanding and knowledge of the diamonds and diamond business, the Commissioner (Appeals) decided this appeal merely on the basis of the submissions made by or on behalf of the assessee without considering the facts discussed in the assessment order and taking care to check even superficially the veracity of the arguments and the facts as well as law submitted before him. Anybody who knows something about diamonds, knows at least that the prices of diamonds depend on four Cs. They are (i) carat (ii) cut (iii) colour and (iv) clarity. We may elaborate it taking each factor into account separately. Thus, if the price of 0.10 carat or 10 cents as it may be called in the diamond trade, is Rs. 5,000, the price of a diamond having all other similar qualities but weighing .20 carat or 20 cents. would not be Rs. 10,000 but may be Rs. 15,000 and the price of a diamond of one carat of the same quality, ie., similar cut, colour and clarity would not be Rs. 50,000 i e. 5000 X 10 but may be around Rs. 1 lac or more. 5. We have carefully considered the rival submissions and have scrutinised the orders of the assessing officer as well as the ld. Commissioner (Appeals) with great care. At the very out set we may mention that we have got an impression that whereas the assessing officer had taken great pains in framing this assessment order and had demonstrated a very good understanding and knowledge of the diamonds and diamond business, the Commissioner (Appeals) decided this appeal merely on the basis of the submissions made by or on behalf of the assessee without considering the facts discussed in the assessment order and taking care to check even superficially the veracity of the arguments and the facts as well as law submitted before him. Anybody who knows something about diamonds, knows at least that the prices of diamonds depend on four Cs. They are (i) carat (ii) cut (iii) colour and (iv) clarity. We may elaborate it taking each factor into account separately. Thus, if the price of 0.10 carat or 10 cents as it may be called in the diamond trade, is Rs. 5,000, the price of a diamond having all other similar qualities but weighing .20 carat or 20 cents. would not be Rs. 10,000 but may be Rs. 15,000 and the price of a diamond of one carat of the same quality, ie., similar cut, colour and clarity would not be Rs. 50,000 i e. 5000 X 10 but may be around Rs. 1 lac or more. Similarly, the price of a .05 carat or 5 cents may be around Rs. 400 instead of Rs. 2,500. The sum and substance of this is that as the size of the diamond increases, the increase in its price is far more than the proportion of increase in the weight of same quality of diamond. Same criteria would apply in the case of cut, i.e. if a diamond is weighing 10 cents but with inferior quality of cuts costs Rs. 2,000, a diamond of superior cut but of same weight, ie., carat, colour and clarity may cost Rs. 3,000. Similar considerations apply to the other factors, viz, colour and quality. The less colour a diamond has or in other words, the

more it is on whiter side, for the same caratage, cut clarity, the higher would be its price. The same can be stated about the clarity of diamonds. These facts were brought to the notice of the ld. counsel for the assessee by the Bench. In response, the ld. counsel had explained that the diamonds in which the assessee was dealing were of very small sizes, almost like granules, a packet of which he showed us. In these circumstances, the ld. counsel submitted, that these considerations of four Cs would not be applied to the diamonds in which the assessee deals, nor was it possible to keep account of each piece of the diamond in which the assessee deals and hence, they were sold in packets by weight. We do not find the explanation of ld. counsel for the assessee satisfactory at all because, it is obvious, that the assessee has not been dealing only in that particular quality of diamonds which assessee's counsel showed us. The Id. assessing officer, who had a reasonably good knowledge about these factors and who distinguished himself from his predecessors in this regard has brought out this point very elaborately and clearly on pp. 6 & 7 of his order and has given illustrations from the compilation filed before him by the assessee himself. The illustration given by the Id. assessing officer show that the assessee had been dealing in diamonds, prices of which ranged from US $ 41 per carat to US $ 850 per carat. We have noted that in his reply before the assessing officer dated 16-2-1990, assessee stated in para-2"Time and again it has been stressed by us that such records (ie., piecewise, qualitywise etc. Records of Stock) are not maintained by us... The standard unit of measurement is carats and it is this unit which forms the basis of all our records. No other unit is practicable or feasible."lt was further mentioned in the second part of the same paragraph "It is further submitted that in a year, we deal in millions and millions of pieces of diamonds. To keep piecewise records of the stock would therefore be a Herculean task and a meaningless one (emphasis supplied by us). The comparison between grains of rice and pieces of diamonds was drawn only to point out the futility and impossibility of maintaining such records. The 'Carais a very accurate unit of measurement and the weighing scales used by us are very modern electronic scales which are so very accurate that no mistakes are possible and the same have been universally employed throughout the world...". However, in the same paragraph it is written 'It is once again reiterated that the manner in which the books of account are maintained is our prerogative (emphasis supplied by us) and that the books maintained by us are in the same manner and format as were being done since the inception of the firm. The same having been found to be correct and complete in our earlier assessments, they cannot now be sought to be rejected." 6. This reply leads us to draw the following inferences It cannot be true that the assessee should not have been maintaining qualitywise record of the diamonds. If what it says were true, it could not have sold lots of diamonds at different prices as mentioned above which range from US $ 41 per carat to US $ 850 per carat. If this difference is converted into Indian rupees at the rates which might have been prevalent at that time, i.e., around Rs. 15 per dollar, the difference between the prices of one carat of diamonds at US $ 41 ie. about Rs. 615 per carat and US $ 850 ie., about Rs. 12,750 would be a difference which no businessman, howsoever large or big it may be, can afford to ignore. If we

accept what the assessee says it may mean that on one day assessee sells some diamonds at US $ 41 per carat and the some diamonds at US $ 50 per carat and the diamonds which the assessee itself has shown to have sold at the rate of US $ 850 or about Rs. 12,750 per carat could also have been sold at Rs. 600 per carat only, because the assessee does not maintain qualitywise, weightwise or numberwise details. As mentioned above, no prudent human being possessing ordinary common sense can believe that the explanation given by the assessee is true. Therefore, in our opinion, the Id. assessing officer was absolutely justified in coming to the conclusion that the assessee is not disclosing the truth before him and that the Id. Commissioner (Appeals), who was perhaps not aware of these niceties and factors applicable to the diamond business, was too credulous to accept assessee's version merely because assessee's accounts had been accepted in the past. The second inference to be drawn is that by trying to impress upon the assessing officer that the assessee was dealing in millions and millions of pieces of diamonds, it wanted to make him believe that dealing in diamonds and dealing in rice can be placed on same par. This is what can be gathered from the next sentence of the same paragraph from which we have already quoted. However, the assessee knows and it has, in fact, been accepted by the assessee before the GT(A) also that cut and polished diamonds are received from the labour parties and "they are assorted by the assessee in different lots, sizes, quality etc..". Surprisingly on page-4 of his order, the Id. Commissioner (Appeals) has written before this sentence that the manner in which the details of stock were called for by the assessing officer have never been maintained by them, nor it is maintained in the trade as such. As a practice only lotwise details of rough diamonds and details of polished diamonds are maintained and they are furnished to the assessing officer. The details supposed to be furnished by the assessee to the assessing officer are given in Schedule - 0' of assessee's accounts, a copy of which has been filed before us also. These details show opening stock of polished diamonds at 154 carats valued at Rs. 5,81,962. Product polished diamonds 29087 carats valued at Rs. 7,74,18,469, rough diamonds consumed 1,14,104 cts. valued at Rs. 5,86,51,949. Keeping in mind the factors mentioned earlier in this order and discussed in detail by the assessing officer in his order, nothing can be gathered about the correctness and completeness of assessee's accounts from these details. It is not known how much of the opening stock was of US $ 41 carat per' quality and how much was of US $ 850 per carat quality, what were the items of sale, what were the diamonds in the closing stock. In fact, the assessee wants that the assessing officer should accept that like rice if one k.g. rice costs Rs. 60, 5 kgs. of rice would cost Rs. 300 and that it was not possible to count the number of rice grains. In our view, this is an attempt by the assessee to hoodwink the assessing officer, in which he failed before the assessing officer, but in which attempt assessee appears to have succeeded before the Id. Commissioner (Appeals). The very fact that the assessee has been issuing rough diamonds and the expected yield was noted on the pockets and those details were verified by the assessee or its representative when cut and polished diamonds were received from labourers, shows that the business could not run its business without getting account of each and every piece of diamond, yet,

assessee or Shri Dinesh C. Shah stated that those packets had been destroyed. This would mean that the assessing officer was correct in coming to the conclusion that the accounts were not correct and complete because the corroborative and contemporaneous evidence has been admittedly destroyed by the assessee or by the persons dealing for and on behalf of the assessee. At no stage the assessee has raised an objection that the facts stated by Shri D.C. Shah should not be applied to assessee's case. We could have understood and appreciated if the assessee had given a break-up of lots of diamond packets to the assessing officer indicating that one particular lot of diamonds weighs 1 carat and on test cheek on the very accurate weighing scales and very modem electronic scales used by the assessee, one piece weighs one thousandth of a carat and hence, that particular lot would contain one thousand pieces of that particular quality of diamonds. Even, if at all, an attempt was made to actually count them the number might have been more or less by 5/10 pieces, which could have been ignored. Similarly, there may be another lot of diamonds weighing one carat where on test check one piece of diamond weighs 1/500 of a carat, that lot could have been indicated as a lot of diamonds weighing 1/500 carat each. The very fact that the assessee has admitted that after the cut and polished diamonds are received back from the labour parties they are sorted by the assessee in different lots, sizes, quality etc. (page-4 bottom of order of Commissioner (Appeals)'s order) would indicate that the assessee has been sorting them out on piece by piece basis but it has stated in its reply that it was not maintaining such details because it was a"Herculean task and meaningless one." At this point we may observe that what is meaningful for the 1TO to find out the correct profits of an assessee, may be meaningless for the assessee (and which we have mentioned cannot and is not meaningless in the case of this particular assessee), but it is for the assessing officer to determine whether the books of account are correct and complete according to his satisfaction or not. We may quote from section 145(2) of the Income Tax Act (as it stood at the relevant time) - "Where the assessing officer is not satisfied about the correctness or the completeness of the accounts of the assessee, or where no method of accounting has been regularly employed by the assessee, the assessing officer may make an assessment in the manner provided in section 144". Of course, the appellate authorities are entitled to judge as to whether the assessing officer was justified in coming to the conclusion that the books of account were not correct and complete, but it may not give a similar authority to an assessee to tell the assessing officer that what the assessing officer was asking was meaningless. As mentioned above, the way in which the assessee should have actually maintained the lots of its diamonds, as admitted before Commissioner (Appeals) mentioned earlier, would only confirm that the assessee had been, in fact, noting down and maintaining the details required by the assessing officer when it received back the cut and polished diamonds from the labour parties and when it was sorting them in different lots, sizes, quality etc. From this also, we infer that the assessee had withheld the complete and correct details regarding its accounts from the assessing officer and hence, so far as the assessing officer was concerned, the accounts which he was allowed to examine were not correct and complete and

hence, he was justified in invoking the provisions of section 145(2) of the Income Tax Act. 7. The fifth inference which we draw is that since the assessee had succeeded in the past in making the assessing or the appellate authorities to believe that the qualitative, quantitative details and the books of account in the diamond business where correct and complete if the total weights of rough diamonds purchased and cut and polished diamonds sold and remaining in closing stock was given, it could declare any income that it likes and no assessing officer can find or has authority to question or examine its accounts. It is on account of this conviction that the assessee wrote to the assessing officer that 1t is once again reiterated that the manner in which the books of accounts are maintained is our prerogative and that the books maintained by us are in the same manner and format as were being done since the inception of the firm. The same having been found to be correct and complete in our earlier assessments, they cannot now be sought to be rejected. Obviously, it was a wrong impression of the assessee that if books of account have been accepted once, they can never be questioned or examined by the assessing officer. 7. The fifth inference which we draw is that since the assessee had succeeded in the past in making the assessing or the appellate authorities to believe that the qualitative, quantitative details and the books of account in the diamond business where correct and complete if the total weights of rough diamonds purchased and cut and polished diamonds sold and remaining in closing stock was given, it could declare any income that it likes and no assessing officer can find or has authority to question or examine its accounts. It is on account of this conviction that the assessee wrote to the assessing officer that 1t is once again reiterated that the manner in which the books of accounts are maintained is our prerogative and that the books maintained by us are in the same manner and format as were being done since the inception of the firm. The same having been found to be correct and complete in our earlier assessments, they cannot now be sought to be rejected. Obviously, it was a wrong impression of the assessee that if books of account have been accepted once, they can never be questioned or examined by the assessing officer. This is because, for income-tax purposes, every year is an independent year and an assessee who might be keeping correct and complete accounts in one year may fail to keep correct and complete accounts deliberately or inadvertently in a subsequent year and it is the privilege and prerogative of the assessing officer to examine each year as to whether the books of account of that year are correct and complete. We hold that even if in the past, from year to year the department has taken the view that the books of account maintained in a particular manner are to be treated as correct and complete, a succeeding assessing officer can point out that looking to the facts of that case and investigation done by him, they cannot be treated as correct and complete. That is what the assessing officer who framed the assessment for this year has done. No assessee can claim that since his books of account were fount to be correct and complete in a preceding year, it is a conclusive proof of the fact that the books of account for subsequent Year or years are also complete and that no assessing officer can either question the assessee on this issue or even after questioning take the view that the books of account for that subsequent year are not correct

and complete. Even if the assessee thought that what it was writing pertained to the system of accounting and not the correctness or completeness of the books of account, and which perhaps the Id. Commissioner (Appeals) accepted while he passed the appellate order on 7-12-1990, the law in this regard has undergone a sea change after the pronouncement of the judgment of the Mon'ble Supreme Court in the case of CIT v. British Paints India Ltd. (1991) 188 ITR 44/54 Taxman 499 (SC). We may mention that with that order the Hon'ble Supreme Court reversed tbe judgment of the Hon'ble Calcutta High Court and which view was holding ground when the Id. Commissioner (Appeals) passed his order. But now as per the decision of the Hon'ble Supreme Court in the case of British Paints India Ltd. (supra) where the accounts are prepared without disclosing the real cost of the stock-in-trade (which as discussed is the situation in the case before us) albeit on sound expert advise in the interest of efficient administration of business, it is the duty of the assessing officer to determine the taxable income by making such computation as he thinks fit. Therefore, the claim of the assessee that it is assessee's prerogative to maintain the books of account in the manner that it likes and that the assessing officer cannot reject them 'because they had been accepted in the past, can no longer be accepted 'and has to be rejected. 8. Now, we may deal with the question as to whether the assessing officer was justified in rejecting assessee's books of account. We find that the ld. C1T(A) has written in para-8 of his order that there should be good and sufficient reasons for rejecting the books of account. There can be no dispute about this proposition. However, thereafter he mentions that the details which are required by the assessing officer, and which are not maintained by the assessee and not maintained in the trade in which the assessee is engaged, cannot be a basis for rejecting the books. Thereafter, he has further observed that no specific defects have been pointed out by the assessing officer in the books of account and that they had been, by and large, accepted in earlier years. We find that these observations of the Id. Commissioner (Appeals) are not factually and legally correct. As we have discussed earlier in this order, particularly with reference to the decision of the Hon'ble Supreme Court in the case of British Paints India Ltd (supra), firstly the assessing officer's duty is to ascertain the correct profits from the books of account maintained by the assessee and if the books of account are not correct and complete, the fact that all other assessees in that trade are maintaining similar accounts, cannot be a basis for superseding the decision of the assessing officer whereby he had rejected assessee's books of account. Secondly, neither before the assessing officer, nor before the Id. Commissioner (Appeals), nor before us, any evidence has been adduced to corroborate the claim of the assessee that the details required by the assessing officer are not maintained in the trade in which the assessee is engaged. At best, it can be said to be a self-serving assertion made by the assessee and accepted by the Id. Commissioner (Appeals) without any evidence or materiai in support of this assertion. Ithas, therefore, to be ignored. 8. Now, we may deal with the question as to whether the assessing officer was justified in rejecting assessee's books of account. We find that the ld. C1T(A) has written in para-8 of his order that there should be good and sufficient reasons for rejecting the books of

account. There can be no dispute about this proposition. However, thereafter he mentions that the details which are required by the assessing officer, and which are not maintained by the assessee and not maintained in the trade in which the assessee is engaged, cannot be a basis for rejecting the books. Thereafter, he has further observed that no specific defects have been pointed out by the assessing officer in the books of account and that they had been, by and large, accepted in earlier years. We find that these observations of the Id. Commissioner (Appeals) are not factually and legally correct. As we have discussed earlier in this order, particularly with reference to the decision of the Hon'ble Supreme Court in the case of British Paints India Ltd (supra), firstly the assessing officer's duty is to ascertain the correct profits from the books of account maintained by the assessee and if the books of account are not correct and complete, the fact that all other assessees in that trade are maintaining similar accounts, cannot be a basis for superseding the decision of the assessing officer whereby he had rejected assessee's books of account. Secondly, neither before the assessing officer, nor before the Id. Commissioner (Appeals), nor before us, any evidence has been adduced to corroborate the claim of the assessee that the details required by the assessing officer are not maintained in the trade in which the assessee is engaged. At best, it can be said to be a self-serving assertion made by the assessee and accepted by the Id. Commissioner (Appeals) without any evidence or materiai in support of this assertion. Ithas, therefore, to be ignored. 9. Now, coming to the observations of the Id. Commissioner (Appeals) to the effect that no specific defects had been pointed out by the assessing officer in the books of account, we feel that the Id. Commissioner (Appeals) went more by the arguments advanced on behalf of the assessee with which we shall deal later also, rather than going through the detailed order of the assessing officer. The assessing officer has discussed the nature of the trade, the basis of valuation of diamonds and the procedure of giving the rough diamonds for cutting and polishing and receiving them back from the labour parties. Correctness of those facts and observations has not been denied by the assessee. Thereafter, in para-8 of his order, he has mentioned that rough diamonds are assorted before giving for cutting and polishing and they are segregated qualitywise so that the owner can have all possible means to ensure that it gets back the same pieces cut and polished. This fact was corroborated by Shri Dinesh C. Shah and has not been objected to on behalf of the assessee. Further, the claim that the papers on which these details are noted were destroyed as stated by Shri Dinesh C. Shah has also not been denied on behalf of the assessee. This itself is sufficient to show, as we have mentioned earlier, that when the primary and original documents which should have corroborated the entries in the books of account have been destroyed, the entries made in the books of account cannot be verified and consequently the assessing officer is entitled to hold that the books of account are not correct and complete when, admittedly, the primary documents necessary for completion of accounts stand destroyed and are not produced before the assessing officer. 9. Now, coming to the observations of the Id. Commissioner (Appeals) to the effect that no specific defects had been pointed out by the assessing officer in the books of account, we feel that the Id.

Commissioner (Appeals) went more by the arguments advanced on behalf of the assessee with which we shall deal later also, rather than going through the detailed order of the assessing officer. The assessing officer has discussed the nature of the trade, the basis of valuation of diamonds and the procedure of giving the rough diamonds for cutting and polishing and receiving them back from the labour parties. Correctness of those facts and observations has not been denied by the assessee. Thereafter, in para-8 of his order, he has mentioned that rough diamonds are assorted before giving for cutting and polishing and they are segregated qualitywise so that the owner can have all possible means to ensure that it gets back the same pieces cut and polished. This fact was corroborated by Shri Dinesh C. Shah and has not been objected to on behalf of the assessee. Further, the claim that the papers on which these details are noted were destroyed as stated by Shri Dinesh C. Shah has also not been denied on behalf of the assessee. This itself is sufficient to show, as we have mentioned earlier, that when the primary and original documents which should have corroborated the entries in the books of account have been destroyed, the entries made in the books of account cannot be verified and consequently the assessing officer is entitled to hold that the books of account are not correct and complete when, admittedly, the primary documents necessary for completion of accounts stand destroyed and are not produced before the assessing officer. 10. Another defect pointed out by the assessing officer in his order is that even assessee's own export bills record the number of pieces per carat, from just four pieces per carat to as many as 200 pieces per carat and, yet, it was claimed before the assessing officer that no piecewise details were maintained by the assessee. He has also pointed out that in view of these defects, it was clear that labour charges were also not proved and were inflated and non-genuine. He had also pointed out on the basis of statement of Shri Dinesh C. Shah that the labour charges were determined" on the basis of rough diamonds per carat and number of pieces per carat" but no such details are stated to have been maintained by the assessee on the plea that it is a Herculean task. For this reason also, the books of account cannot be said to be correct and complete. The assessing officer also pointed out the fact that the assessee had shown almost a uniform yield between 25% to 26% of polished diamonds from the rough diamonds. In the absence of details maintained by the assessee for such a costly commodity as diamonds, it cannot be said that the yield in respect of each rough stone has been correctly recorded in the books of account. Even otherwise, as pointed out by the assessing officer in his order, when the diamonds obtained by the assessee after cutting and polishing, range from 4 pieces per carat to 200 pieces per carat, no prudent human being having ordinary commonsense would believe that the yield of cut and polished diamonds would be uniform at 2596 to 26% only. Thus, on the basis of preponderance of probability also we hold that the inference of the assessing officer to the effect that the correct record of assessee's business had either not been maintained, or even if maintained, was refused to be produced before the assessing officer. Therefore, so far as the assessing officer is concerned, the books of account produced before him were not correct and complete. Another defect which he pointed out is that there

is no record to correlate as to whether the same quality of diamonds has been received after cutting and polishing of which the rough was given. As already discussed, the price of diamonds may vary substantially on the basis of its colour and clarity, cut and carat. Hence, no assessee dealing in diamonds can leave it to the sweet will of the labour party to take rough of higher quality and higher weight from the assessee and give back the cut and polished diamonds of inferior quality and lesser weight per piece. We have also discussed earlier that the assessee itself had conceded that when the rough diamonds were given for cutting and polishing the expected yield was noted on the packets and when the cut and polished diamonds were received back from the labour parties, they were assorted into different lots, sizes and qualitywise and they were thereafter offered for sale to customers. Further, there is no such record to show if any special instructions were given to the agent to have particular roughs to be cut in a particular manner. No such details had been produced on the ground that they could not be maintained. Even if it is true, while it may be ignored in the business of rice, referred to by the assessee, or other food grains or other commodities involving bulk dealings, it can in no circumstances be ignored in the business of diamonds where each and every piece, whether smallest or bigger one, carries substantial monetary value and no diamond dealer can sweep away the diamonds without counting each piece as might be done by the traders in rice business. Therefore, non-maintenance of these details or non-production of these details in diamond business, justifies the assessing officer to come to the conclusion that the books of account maintained by the assessee were not correct and complete. Taking all these factors into account, we hold that the observation of the Id. Commissioner (Appeals) in his order to the effect that no specific defects had been pointed out by the assessing officer is not factually correct and that the assessing officer after having pointed out various defects regarding incorrectness and incompleteness of the accounts of the assessee was justified in invoking the provisions of section 145(2) of the Income Tax Act.
10. Another defect pointed out by the assessing officer in his order is that even assessee's own export bills record the number of pieces per carat, from just four pieces per carat to as many as 200 pieces per carat and, yet, it was claimed before the assessing officer that no piecewise details were maintained by the assessee. He has also pointed out that in view of these defects, it was clear that labour charges were also not proved and were inflated and non-genuine. He had also pointed out on the basis of statement of Shri Dinesh C. Shah that the labour charges were determined" on the basis of rough diamonds per carat and number of pieces per carat" but no such details are stated to have been maintained by the assessee on the plea that it is a Herculean task. For this reason also, the books of account cannot be said to be correct and complete. The assessing officer also pointed out the fact that the assessee had shown almost a uniform yield between 25% to 26% of polished diamonds from the rough diamonds. In the absence of details maintained by the assessee for such a costly commodity as diamonds, it cannot be said that the yield in respect of each rough stone has been correctly recorded in the books of account. Even otherwise, as pointed out by the assessing officer in his order, when the diamonds obtained

by the assessee after cutting and polishing, range from 4 pieces per carat to 200 pieces per carat, no prudent human being having ordinary commonsense would believe that the yield of cut and polished diamonds would be uniform at 2596 to 26% only. Thus, on the basis of preponderance of probability also we hold that the inference of the assessing officer to the effect that the correct record of assessee's business had either not been maintained, or even if maintained, was refused to be produced before the assessing officer. Therefore, so far as the assessing officer is concerned, the books of account produced before him were not correct and complete. Another defect which he pointed out is that there is no record to correlate as to whether the same quality of diamonds has been received after cutting and polishing of which the rough was given. As already discussed, the price of diamonds may vary substantially on the basis of its colour and clarity, cut and carat. Hence, no assessee dealing in diamonds can leave it to the sweet will of the labour party to take rough of higher quality and higher weight from the assessee and give back the cut and polished diamonds of inferior quality and lesser weight per piece. We have also discussed earlier that the assessee itself had conceded that when the rough diamonds were given for cutting and polishing the expected yield was noted on the packets and when the cut and polished diamonds were received back from the labour parties, they were assorted into different lots, sizes and qualitywise and they were thereafter offered for sale to customers. Further, there is no such record to show if any special instructions were given to the agent to have particular roughs to be cut in a particular manner. No such details had been produced on the ground that they could not be maintained. Even if it is true, while it may be ignored in the business of rice, referred to by the assessee, or other food grains or other commodities involving bulk dealings, it can in no circumstances be ignored in the business of diamonds where each and every piece, whether smallest or bigger one, carries substantial monetary value and no diamond dealer can sweep away the diamonds without counting each piece as might be done by the traders in rice business. Therefore, non-maintenance of these details or non-production of these details in diamond business, justifies the assessing officer to come to the conclusion that the books of account maintained by the assessee were not correct and complete. Taking all these factors into account, we hold that the observation of the Id. Commissioner (Appeals) in his order to the effect that no specific defects had been pointed out by the assessing officer is not factually correct and that the assessing officer after having pointed out various defects regarding incorrectness and incompleteness of the accounts of the assessee was justified in invoking the provisions of section 145(2) of the Income Tax Act.

11. We may also deal with the various cases cited before the Id. Commissioner (Appeals), the ratio of which appears to have been accepted by the Id. Commissioner (Appeals) merely on the submissions of the Id. counsel for the assessee without applying his mind to the facts and circumstances of those cases and the ratio decindi of those cases. We may mention that the Id. Commissioner (Appeals) has given a list of the various cases cited before him, some of the citations being wrongly mentioned and thereafter he has summarily mentioned the ratio of those cases as might have been argued before him, to the effect

that those cases laid down that the books of account cannot be rejected only if there are certain omissions, irregularities and defects in the accounts. Further that the nature of business and the practice followed in the trade have also to be kept in view and that non-maintenance of accounts in a particular manner cannot be the basis for rejection of accounts. In our view, this is too sweeping an observation made by the Id. Commissioner (Appeals), which cannot be said to be warranted from the cases mentioned by him in his order. Thus, the first case cited is S. Yeeriah Reddiar 38 ITR 52, the correct citation is S. Veeriah Reddiar v. CIT (1960) 38 ITR 152 (Ker.) and not page 52 as mentioned in the order of the Commissioner (Appeals). The ratio of decision of this case was that merely because the profits disclosed were low and there was no stock register, rejection of accounts was not justified. However, in para-9 of page 171 of that report, the Hon'ble Court had observed that the 1TO, Appellate Assistant Commissioner, or the Tribunal had nowhere in their orders stated that the assessee's method of accounting was such that its income, profits and gains could not be properly deduced therefrom. Further, in that case the only reason given by the assessing officer for rejecting the assessee's method of accounting was low profits and absence of regular stock register under provisions of section 13 of Income Tax Act, 1922. In the instant case before us, it is the books of account that had been rejected, for which the assessing officer has given detailed reasons as mentioned by us earlier in this order. Another case referred to is M. Durai Raj v. CIT (1972) 83 ITR 484 (Ker). The facts of this case are similar to the case of S. Veeriah Reddiar (Supra). The next case mentioned is the case of R.B. Jessaram Fateh Chand (Sugar Dept.) v. CIT (1970) 75 ITR 33. This case has been decided by the Hon'ble Bombay High Court. In this case merely because addresses of purchases were not mentioned in the cash memo copies, the book results had been rejected. it won't apply to the facts of assessee's case. Another case is of R.R Bansilal Abirchand Spg. & Wvg. Mills 75 ITR 26. We may state that this citation is also not correct. The correct citation is R.B. BansilalAbirchandSpg. & Wvg. Mills v. CIT (1970) 75 ITR 260 (Bom.) and not page-26 as mentioned in the order of the Commissioner (Appeals). Here also the decision was given in assessee's favour with the specific observation that the Income Tax Officer's powers under proviso to section 13 of Income Tax Act, 1922, arise only after a finding is recorded as to the unacceptability of the method and an irregularity of the accounts kept and that in the absence of such a finding recorded by the authorities, the book results could not be Ignored. As we have mentioned above, this also does not apply to assessee's case where the findings of the assessing officer are specific in this regard which have been upheld by us. The next case mentioned is the case of International Forest Co. Its correct citation is International Forest Co. v. CIT (1975) 101 ITR 721 (J & K). In that case also the trading results were rejected merely because the profits were low. This does not apply to assessee's case. Another case cited is that of Jhandun-zal Tarachand Rice Mills (1969) 72 ITR 122 (Punj.). Its correct citation is Jhandu Mal Tara Chand Rice Mills v. CIT (1969) 73 ITR 192 (Punj. & Har.) and not 72 ITR 122 as mentioned in the order of the Commissioner (Appeals). In this case the book results were rejected because the assessee was

in business of husking rice from paddy and the yield was lower when compared with some other dealer and no day do day driage register was maintained. As we have already seen it is not a case of rejection of accounts for alleged low yield of cut and polished diamonds from rough diamonds. Moreover, as we have already mentioned the quantitative details in diamond business cannot be compared or equated with husking of rice. Hence, the ratio of this judgment would also not apply to the facts and circumstances of assessee's case. Finally, the case of ShriRam Arorav. CIT (1971) 180 ITR 78 (All.) has been mentioned. In this case the assessee had not maintained purchase vouchers for agriculture produce purchased from agriculturists and it was held that this could not by itself be a ground for rejecting assessee's books of account. It is clear that the facts and ratio laid down in the cases cited before the Id. Commissioner (Appeals) cannot lead to the inferences drawn by the Id. Commissioner (Appeals) from them and hence in our opinion, his conclusion to the effect that on the basis of this case law the assessing officer was not justified in rejecting the assessee's books of account, is not legally and factually correct. We may also mention that most of the cases cited before the Id. Commissioner (Appeals) were in respect of provisions of section 13 of the Income Tax Act, 1922, which were different from the provisions of section 145 of the Income Tax Act, 196 1. Section 145 consists of sub-section (1), proviso to sub-section (1) and subsection (2), whereas section 13 of the Income Tax Act, 1922, contained only a proviso to that section and can be said to be at least slightly different from the section 145 of Income Tax Act, 1961 in its details and its applicability. So far as section 145 is concerned, we may quote from the decision of the Hon'ble Supreme Court in the case of British Paints India Ltd. (supra) at page-56 as under: 11. We may also deal with the various cases cited before the Id. Commissioner (Appeals), the ratio of which appears to have been accepted by the Id. Commissioner (Appeals) merely on the submissions of the Id. counsel for the assessee without applying his mind to the facts and circumstances of those cases and the ratio decindi of those cases. We may mention that the Id. Commissioner (Appeals) has given a list of the various cases cited before him, some of the citations being wrongly mentioned and thereafter he has summarily mentioned the ratio of those cases as might have been argued before him, to the effect that those cases laid down that the books of account cannot be rejected only if there are certain omissions, irregularities and defects in the accounts. Further that the nature of business and the practice followed in the trade have also to be kept in view and that non-maintenance of accounts in a particular manner cannot be the basis for rejection of accounts. In our view, this is too sweeping an observation made by the Id. Commissioner (Appeals), which cannot be said to be warranted from the cases mentioned by him in his order. Thus, the first case cited is S. Yeeriah Reddiar 38 ITR 52, the correct citation is S. Veeriah Reddiar v. CIT (1960) 38 ITR 152 (Ker.) and not page 52 as mentioned in the order of the Commissioner (Appeals). The ratio of decision of this case was that merely because the profits disclosed were low and there was no stock register, rejection of accounts was not justified. However, in para-9 of page 171 of that report, the Hon'ble Court had observed that the 1TO, Appellate Assistant Commissioner, or the Tribunal

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his conclusion to the effect that on the basis of this case law the assessing officer was not justified in rejecting the assessee's books of account, is not legally and factually correct. We may also mention that most of the cases cited before the Id. Commissioner (Appeals) were in respect of provisions of section 13 of the Income Tax Act, 1922, which were different from the provisions of section 145 of the Income Tax Act, 196 1. Section 145 consists of sub-section (1), proviso to sub-section (1) and subsection (2), whereas section 13 of the Income Tax Act, 1922, contained only a proviso to that section and can be said to be at least slightly different from the section 145 of Income Tax Act, 1961 in its details and its applicability. So far as section 145 is concerned, we may quote from the decision of the Hon'ble Supreme Court in the case of British Paints India Ltd. (supra) at page-56 as under: "Section 145 of the Income Tax Act, 1961, confers sufficient powers upon the officer - nay it imposes a duty upon him to make such computation in such manner as he determines for deducing the correct profits and gains. This means that where accounts are prepared without disclosing the real cost of the stock-in-trade, albeit on sound expert advice in the interest of efficient administration of the company, it is the duty of the Income Tax Officer to determine the taxable income by making such computation as he thinks fit." Further, it has also been held in this decision after referring to several other Supreme Court decisions that what is to be determined by the officer in exercise of his power is a question of fact, i.e. whether or not income chargeable under the Act can properly be deduced from the books of account and he must decide the question with reference to the relevant material and in accordance with the correct principles. This leads us to the conclusion that the case law cited before the Id. C1T(A) and applied by him was not applicable to the facts and circumstances (if assessee'scase. We, therefore,hold thattheld. Commissioner (Appeals) was not justified in coming to the conclusion that the rejection of books of account by the assessing officer in this case was not legally justified. 12. Now, remains the final question of making the addition of 5% flat rate to the disclosed sales of Rs. 7,75,00,985. We have closely examined the observations of the Id. GT(A) in this regard also. It appears to us that the assessee had made a mountain out of more hill of a typing mistake in the order of the assessing officer. It is true that in para-4 of his order the assessing officer has written that during the relevant year of account the assessee had shown "a GP of only.99%." In fact, the correct figure should be 5.9996. However, it was represented before the Id. Commissioner (Appeals) that the assessing officer had drawn his inferences on the basis that the GP rate was only.9996 when, according to the statement of the assessee before the Id. C1T(A), it was only the net profit rate. We have noticed that this statement is not correct because on sales of Rs. 7,75,00,985 assessee's profit before taxation for this year is Rs. 11, 16,423 which gives a net profit rate of 1.43396 and.9996 against a net profit rate of 4.466% in the preceding year on sales of about Rs. 6.42 crores. On the other hand, this year assessee's gross profit, by deducting the direct expenses at Rs. 7,31,89,735 from the total sales at Rs. 7,78,60,621 including the foreign exchange difference benefits works out to Rs. 46,70,886 which is 5.99% and not.9996. This clearly shows that it was only a typing mistake in the assess-

ment order. As against this one mistake of typing, the assessee had furnished altogether wrong facts and figures before the Commissioner (Appeals) on which he relied in his order. Thus, on page-3 of his order, he has given the GP rate including exchange difference, and in another column, excluding exchange difference, for the assessment years 1980-81 to 1989-90. We do not have the details regarding the trading accounts for those assessment years except the trading results for the assessment year under consideration, i.e. assessment year 1987-88 and the preceding assessment year 1986-87 which are given on the same copy of accounts. According to this table in the order of the Commissioner (Appeals) the GP rate for assessment year 1986-87, including exchange difference was 9% and excluding exchange difference it was 5.73%. Further the GP rate for assessment year 1987-88 is 6.50% and 6.0596 respectively. 12. Now, remains the final question of making the addition of 5% flat rate to the disclosed sales of Rs. 7,75,00,985. We have closely examined the observations of the Id. GT(A) in this regard also. It appears to us that the assessee had made a mountain out of more hill of a typing mistake in the order of the assessing officer. It is true that in para-4 of his order the assessing officer has written that during the relevant year of account the assessee had shown "a GP of only.99%." In fact, the correct figure should be 5.9996. However, it was represented before the Id. Commissioner (Appeals) that the assessing officer had drawn his inferences on the basis that the GP rate was only.9996 when, according to the statement of the assessee before the Id. C1T(A), it was only the net profit rate. We have noticed that this statement is not correct because on sales of Rs. 7,75,00,985 assessee's profit before taxation for this year is Rs. 11, 16,423 which gives a net profit rate of 1.43396 and.9996 against a net profit rate of 4.466% in the preceding year on sales of about Rs. 6.42 crores. On the other hand, this year assessee's gross profit, by deducting the direct expenses at Rs. 7,31,89,735 from the total sales at Rs. 7,78,60,621 including the foreign exchange difference benefits works out to Rs. 46,70,886 which is 5.99% and not.9996. This clearly shows that it was only a typing mistake in the assessment order. As against this one mistake of typing, the assessee had furnished altogether wrong facts and figures before the Commissioner (Appeals) on which he relied in his order. Thus, on page-3 of his order, he has given the GP rate including exchange difference, and in another column, excluding exchange difference, for the assessment years 1980-81 to 1989-90. We do not have the details regarding the trading accounts for those assessment years except the trading results for the assessment year under consideration, i.e. assessment year 1987-88 and the preceding assessment year 1986-87 which are given on the same copy of accounts. According to this table in the order of the Commissioner (Appeals) the GP rate for assessment year 1986-87, including exchange difference was 9% and excluding exchange difference it was 5.73%. Further the GP rate for assessment year 1987-88 is 6.50% and 6.0596 respectively. But these figures are arithmetically wrong. We may give the figures as given in the copies of account filed before us. Assessment Year Assessment Year Sales Sales Sales (A/c Yr. 1984-85) (A/c Yr. 1984-85) (A/c Yr. 1984-85) Including foreign exchange difference Including foreign exchange difference Including foreign exchange difference Excluding

foreign exchange difference Excluding foreign exchange difference Excluding foreign exchange difference 1986-87 1986-87 Rs. 6,64,15,384 Rs. 6,64,15,384 Rs. 6,42,68,219 Rs. 6,42,68,219 Less : Less : Direct expenses Direct expenses Rs. 5,86,44,172 Rs. 5,86,44,172 Rs. 5,86,44,172 Rs. 5,86,44,172 Gross Profit Gross Profit Rs. 77,71,212 Rs. 56,24,047 Rs. 56,24,047 Percentage of Gross Profit Percentage of Gross Profit 11.70% 11.70% 8.7% 8.7% (A/c. Yr. 1985-86) (A/c. Yr. 1985-86) 1987-88 (year under consideration) 1987-88 (year under consideration) Rs. 7,78,60,621 Rs. 7,78,60,621 Rs. 7,75,00,985 Rs. 7,75,00,985 Less : Less : Direct expenses Direct expenses 7,31,89,735 7,31,89,735 Rs. 7,31,89,735 Rs. 7,31,89,735 Gross Profit Gross Profit Rs. 46,70,886 Rs. 46,70,886 Rs. 43,11,250 Rs. 43,11,250 Percentage of Gross Profit Percentage of Gross Profit 5.99% 5.99% 5.5% 5.5% These figures would prove that the GP rates for the assessment year 1986-87 including exchange difference was 11.7% and excluding foreign exchange difference it was 8.7%. For the assessment year 1987-88 i.e, assessment year under consideration the GP rate including exchange difference is 5.99% and excluding foreign exchange difference is 5.5%. Against these correct figures, the figures given before the ld. Commissioner (Appeals) and mentioned by him in his order were as under: Asstt. Yr. Asstt. Yr. Asstt. Yr. Percentage including foreign exchange difference Percentage including foreign exchange difference Percentage including foreign exchange difference Percentage exclusing foreign exchange difference Percentage exclusing foreign exchange difference Percentage exclusing foreign exchange difference 1986-87 1986-87 9% 9% 5.73% 5.73% 1987-88 1987-88 6.50% 6.50% 6.05% 6.05% After furnishing these wrong figures, assessee argued before the ld. Commissioner (Appeals) that its GP rate including foreign exchange difference in this assessment year if compared was highest with the GP rates for assessment years 1980-81 to 1988-89. We have already mentioned that we do not have assessee's figures of sales and direct expenses in the preceding years. But this at least proves that in this year there is a steep fall in assessee's GP and net profit rates. In view of having found out that assessee is capable of furnishing inaccurate particulars and advancing wrong arguments before the first appellate authority who very innocently and in good faith accepted it, we are unable to follow suit. From the facts and figures mentioned above, it is clear that whereas assessee gave an explanation before the assessing officer as well as the Commissioner (Appeals) for the gross profits rates going substantially high in the assessment year 1989-90 and argued that only past year's result and not subsequent year's results should be considered, furnished no explanation before the assessing officer or the Commissioner (Appeals) for a sharp decline in the GP rate from 11.70% in the immediately preceding assessment year 1986-87 to only 5.99% in the assessment year 1987-88 which is under consideration before us. We may accept assessee's argument that it may not be necessary to compare this year's results with the trading results of the assessment year 1989-90 and hence, we ignore that. However. in view of assessee's when argument that past year's result should be considered for comparison and in the absence of any justification having been given for this sharp decline in the trading results, we are of the opinion, that the assessing officer was more than reasonable in making an addition at the flat rate of

596 on the sales of Rs. 7,75,00,985. It is obvious that these additions raised the GP rate to only 10.99% which is still lower than the GP rate of 11.70% in the immediately preceding year. Since we have already held that the assessing officer has rightly pointed out that the books of account of the assessee were not correct and complete and since he has specifically invoked his powers under section 145(2 ) according to the provisions of law, he was justified in making an estimated addition by applying a flat rate of profit at 5% on the disclosed sales which resulted in an addition of Rs. 38,75,050. We, therefore, reverse the order of the Id. Commissioner (Appeals) in this regard and restore the addition of Rs. 38,75,050 which has been made by the assessing officer.