

(2005) 01 P&H CK 0080
In the Punjab And Haryana At Chandigarh
Case No : IT Ref. No. 182 of 1989

Commissioner of Income Tax

APPELLANT

Vs

Sant Ram Mangat Ram

RESPONDENT

Date of Decision : 03-01-2005

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 145

Citation : (2005) 195 CTR 345 : (2005) 275 ITR 312

Hon'ble Judges : Jasbir Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Rajesh Bindal, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—The Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short, "the Tribunal"), has referred the following questions of law for the opinion of this Court :

"(1) Whether, on the facts and circumstances of the case, the Tribunal was right in holding that ad hoc method of account is one of the recognised methods of valuing stocks under the principles of accountancy ?

(2) Whether, on the facts and circumstances of the case, the Tribunal was right in law in confirming the order of CIT(A) deleting the additions of Rs. 83,192 and Rs. 2,336 made by the IAC(I), Karnal, on account of undervaluation of closing stock of gold and silver, respectively ?"

2. The assessee is a registered partnership firm engaged in the business of manufacture and sale of gold ornaments. For the asst. yr. 1981-82, it filed return on 27th Aug., 1981 declaring an income of Rs. 30,280. The IAC (Inv.), Karnal, completed the assessment on 29th Jan., 1983. He made additions of Rs. 83,192 and Rs. 2,336 on account of alleged undervaluation of the closing stock of gold and silver, respectively. The appeal filed by the assessee against the order of assessment was allowed by the CIT(A) vide his order dt. 31st Jan., 1984. He

relied on the order passed by the Tribunal in ITA No. 556/Chd/1977-78--ITO v. Gopi Chand Kishori Lal and deleted the additions made by the IAC.

3. Feeling aggrieved by the appellate order, the Revenue filed an appeal before the Tribunal which was dismissed on 20th Dec., 1985. The relevant extract of the order passed by the Tribunal is reproduced below :

"5. After taking into consideration the rival submissions and going through the case law and the Tribunal's decision cited by the two parties before us, we are unable to interfere in the finding of the CIT(A). When it was put to the learned senior Departmental Representative as to what is the method on the basis of which the IAC(I) made the addition which he was supporting, he himself said that it was neither cost price of the stock nor the market price nor lower of the two but an average method. In order words, it was also ad hoc method, according to us, which was supported by the learned senior Departmental Representative. We are unable to appreciate his contention in this regard. His reliance on Investment Ltd. Vs. Commissioner of Income Tax, Calcutta, is misplaced and instead the said decision supports the contention of the assessee, which would be clear from the following finding:

"A taxpayer is free to employ, for the purpose of his trade, his own method of keeping accounts and for that purpose to value his stock-in-trade either at cost or at market price. A method of accounting adopted by the trader consistently and regularly cannot be discarded by the Departmental Authorities on the view that he should have adopted a different method of keeping account or of valuation. The method of accounting regularly employed may be discarded only if in the opinion of the taxing authorities, income of the trade cannot be properly, deduced therefrom. Valuation of the stock at cost is one of the recognised methods."

It was on the earlier part of this observation that the learned senior Departmental Representative submitted that there are only two methods, i.e., of cost price or market price but he ignored the second limb of the finding that whatsoever method is consistently adopted by the trader, it cannot be ignored. In the instant case, there is no dispute or controversy about the adoption of method of closing stock during the year under consideration, which is consistently employed from the earlier years. Then, even from the Calcutta High Court decision in British Paints India Ltd. Vs. Commissioner of Income Tax, , it supports the contention of the assessee. In the said case, it was observed by their Lordships that :

"..... The method or the process of valuing the unsold stocks and work-in-progress adopted by the assessee in the manner done in the year in question had been consistently and regularly followed by the assessee and accepted by the Revenue for a large number of years. There was the evidence on behalf of the assessee that the method followed was a regular method having regard to the nature and type of business carried on by the particular assessee.

Under the circumstances, there could not be any disturbance by the Revenue. As a matter of fact, the issue is squarely covered in the earlier decision and as per the consistent view of this Bench that since it is a common dispute arising in the case of jewellers, we have dealt with the two cases cited by the learned senior Departmental Representative also which, according to us, support the contentions those of the assessee on the basis of consistent adoption of method of closing stock valuation."''

4. Shri Rajesh Bindal, learned counsel for the Revenue fairly admitted that the assessee had continuously followed the same method of valuation of the stock and that the Department had never questioned the same. He also conceded that in all the previous assessment years, the competent authority had made assessment by accepting the method adopted by the assessee for valuation of the stock and that the Revenue did not challenge the order passed by the Tribunal in the case of Gopi Chand Kishori Lal (*supra*). He, however, argued that the method adopted by the assessee for valuation of the stock is not one of the recognised methods and, therefore, notwithstanding the refrain of the Department to question the same in the past, the orders passed by the CIT(A) and the Tribunal should be set aside and the additions made by the IAC by taking average of the cost price of the stock and the market price should be restored. In support of his arguments, Shri Bindal relied on the judgments of the Supreme Court in *Sakthi Trading Co. Vs. Commissioner of Income Tax, Coimbatore*, and *Commissioner of Income Tax Vs. Indo Nippon Chemicals Co. Ltd.*, .

5. We have given serious thought to the arguments of Shri Bindal, but have not felt persuaded to agree with him. It is an admitted position that from the inception of its business, the assessee had continuously adopted the same method of valuation of the closing stock and no objection was raised by the Department in any of the previous years. Rather, the competent authority accepted the method adopted by the assessee and accordingly, made assessment. This being the position, we do not find any valid ground to accept the argument of Shri Bindal that the method adopted by the assessee for valuation of the stock was legally impermissible and on that account the additions made by the IAC should be restored. In *United Commercial Bank v. CIT* (1999) 240 ITR 355 , their Lordships of the Supreme Court held that the method which was consistently followed by the appellant-bank for valuing the stock-in-trade could not be rejected by the assessing authority in a particular year. The proposition of law laid down in that case reads as under:

"The principles applicable in valuation of stock are (1) that for valuing the closing stock, it is open to the assessee to value it at the cost or market value, whichever is lower; (2) In the balance sheet, if the securities and shares are valued at cost, from that no firm conclusion can be drawn. A taxpayer is free to employ for the purpose of his trade, his own method of keeping accounts, and for that purpose, to value stock-in-trade either at the cost or market price; (3) A method of accounting adopted by the taxpayer consistently and regularly cannot

be discarded by the Departmental authorities on the view that he should have adopted a different method of keeping accounts or of valuation; (4) The concept of real income is certainly applicable in judging whether there has been income or not, but, in every case, it must be applied with care and within recognised limits; (5) Whether the income has really accrued or arisen to the assessee must be judged in the light of the reality of the situation; (6) u/s 145 of the Act, in a case where accounts are correct and complete but the method employed is such that in the opinion of the ITO, the income cannot be properly deduced therefrom, the computation shall be made in such manner and on such basis as the ITO may determine."

6. In Commissioner of Income Tax Vs. Fazilka Co-operative Sugar Mills Ltd., a Division Bench of this Court considered the question similar to the one referred by the Tribunal in the present case. The facts of that case were that the assessee had filed return of income for the asst. yr. 1991-92, declaring a loss of Rs. 7,52,53,863. The AO completed the assessment and made an addition of Rs. 10,63,977 on account of revaluation of the closing stock. This addition was made on the hypothesis that the valuation of the closing stock had to be done on the basis of the average price for the month of March, 1991. The CIT(A) confirmed the order of the assessing authority, but the Tribunal declared that there was no justification to make addition on account of revaluation of closing stock. This Court dismissed the appeal filed by the Revenue and held that after having accepted the practice adopted by the assessee for valuation of closing stock, it was not open to the Department to question the same.

7. By applying the law laid down in the aforementioned cases to the facts of this case, we hold that the IAC committed a serious error by rejecting the method adopted by the assessee for valuation of its stock and making addition to its income.

8. There is another reason for our disinclination to accept the argument of Shri Bindal. Admittedly, the Revenue had neither questioned the method adopted by the assessee for valuation of its stock in the previous assessment years nor challenged the order passed by the Tribunal in ITA No. 556/Chd/1977-78--ITO v. Gopi Chand Kishori Lal (supra). In that case, the Tribunal referred to the assessment made in the assessee's case and observed as under :

"A close study of the above figures would show that the assessee has never valued the closing stock at the market rate and it was valued slightly above the cost price which was in conformity with the assessee's explanation that the old ornaments purchased contained some impurities, and, therefore, ad hoc valuation necessarily had to be adopted. Besides, we fail to understand the agitation of the Revenue because the assessee did not stand to gain anything by any manipulation and there is no charge that the assessee was understating its sales for any year. The AAC has mentioned that even in the case of Sant Ram Mangat Ram, referred to by the ITO, the average cost price worked out to Rs. 24 per gm. the average sale price was Rs. 36 per gm. and the closing stock

valuation was @ Rs. 26.8 per gm. which clearly indicated that the pattern of closing stock valuation by the assessee was in conformity with the other jewellers and particularly the case on which reliance was sought to be placed. It is really surprising that though the ITO adopted the market sale price towards the close of the year in the case of Sant Ram Mangat Ram to enhance the closing stock valuation of the assessee's stocks, closing stock valuation in that case was given a clean go-bye and which was the same as in the case of the assessee.

After closely perusing the facts of the case and hearing the parties, in our opinion, the ITO clearly misdirected himself in adopting the value of the closing stock in the assessee's case at market rate and the assessee's method of valuation was in conformity with the earlier years pattern of closing stocks as also in conformity with the other jewellers. Therefore, the AAC's approach in the case has been correct that there was no undervaluation of stock at all. On such view of the matter, we dismiss the Revenue's appeal. While deciding this appeal, we have closely perused the orders of the ITO and the AAC and the evidence placed before us in the form of copies of trading accounts and other evidence filed, before the ITO and the AAG as also the ITO's notice u/s 143(3) and the assessee's reply thereto."

9. In our opinion, by having accepted the method continuously adopted by the assessee for valuation of its stock and accordingly making assessment in the previous assessment years and by not challenging the order passed in the case of Gopi Chand Kishori Lal (supra), the Department will be deemed to have forfeited its right to challenge the order passed by the Tribunal in the present case and we do not find any justification to permit the Revenue to question the method adopted by the assessee for valuation of its stock in relation to the asst. yr. 1981-82.

This view of ours is supported by the decisions of the Supreme Court in Union of India and Ors. v. Kaumudini Narayan Dalai and Anr. (2001) 10 SCC 231, Commissioner of Central Excise Vs. Titawi Sugar Complex, and Collector of Central Excise, Pune Vs. Tata Engineering and Locomotives Co. Ltd., , wherein it has been consistently held that after having refrained from challenging the adverse decision of the Tribunal/High Court, the Revenue is not entitled to challenge the same when followed in the case of other assessee.

10. The judgments of the Supreme Court in Sakthi Trading Co. (supra) and Indo Nippon Chemicals Co. Ltd. 's case (supra) are clearly distinguishable. In the first case, the Supreme Court considered the question whether the method adopted by the assessee for valuing its stock can be rejected only on account of the dissolution of the firm due to the death of one of its partners notwithstanding the fact that there was no interruption in its business and answered the same in negative. In the second case, the Supreme Court held that the AO was not entitled to adopt different methods for valuing the stock of raw material and unconsumed raw material. In neither of the two cases, the Court was called upon to consider the question whether after having accepted the method of valuation

of stock consistently adopted by the assessee for years together, the Revenue could reject the same for a particular assessment year. Therefore, the Revenue cannot derive any help from these judgments.

11. For the reasons mentioned above, the questions referred by the Tribunal are answered in favour of the assessee and against the Revenue.