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

INCOME TAX APPEAL NO.5278 OF 2010

The Director of Income Tax
International Taxation ..Appellant.
Versus
M/s. Boston Scientific International B.V. ..Respondent.

Mr.Suresh Kumar for the Appellant.
Mr. F. V. Irani with Mr. Atul Jasani for the Respondent.

**CORAM : S.J.VAZIFDAR &
M.S. SANKLECHA, JJ.**

DATE : 01st August, 2012

JUDGMENT (Per M.S. SANKLECHA, J.):

This appeal by the revenue under Section 260A of the Income Tax Act ("the Act") challenges an order dated 5/4/2010 of the Income Tax Appellate Tribunal ("the Tribunal") passed in the Income Tax Appeal No.5451/Mum,/2007 relating to assessment year 2003-04. Being aggrieved, the revenue has raised the following questions of law for the consideration of this court.

a) Whether on the facts and circumstances of the case and in law the Tribunal was right in holding that even though the method of valuation of closing stock consistently followed by the assessee was to take cost or market price whichever was lower, the valuation done at cost only was correct and proper method of valuation without appreciating the ratio laid down by the Apex Court in the case of CIT Vs. British Paints India ltd. reported in 188 ITR 44 (S.C.)

b) Whether on the facts and circumstances of the case and in law, the ITAT was right in holding that when the entire income of the assessee was subjected to deduction of tax at source and no interest can be imposed u/s. 243B and 234C on the assessee?

<u>Re Question (b)</u> :

2) So far as Question (b) is concerned, the Advocates for the appellant and the respondent are in agreement that the question raised stands covered in favour of the respondent-assessee and against the appellant-revenue by the decision of this Court in the matter of **Director of Income Tax (International Taxation) Vs. NGC network Asia LLC (2009) 313 ITR 187.**

<u>Re Question (a)</u> :

3) The respondent is engaged in the business of trading and distribution of medical components and equipment such as stents and other products.

4) For the assessment year 2003-04, the respondent had valued its closing stock on the basis of costs as the same was lower than its net realizable value (market value). The respondent has

consistently arrived at the value of its closing stock by application of costs or market value whichever is lower. The respondent-assessee has been keeping a record of the stents in its possession. The individual cost of the stents depending upon its value ranges from approximately from Rs.342/- to Rs.16,766/- per unit for the respondent. During the course of the assessment proceedings for the assessment year 2003-04, the Assessing officer called upon the respondent-assessee to file quantitative details of the closing stock of stents and other products available with it on 31st March 2003 i.e. for the assessment year 2003-04. The respondent-assessee submitted a chart which indicated quantity of opening stock of stents, purchase made during the year, its value, sales made during the year and the closing stock. The respondent- assessee had also given valuation of the stents as available on 1/4/2002 i.e. opening stock. The quantity of closing stock was arrived at by adding the purchases to the opening stock and reducing the sales made during the course of the year. However, as the respondent had a record of the value (cost wise) of each stent in its possession the value of the closing stent was arrived at on cost basis as the same was lower than its market value. However, the above statement of closing stock supplied by the respondent-assessee was not accepted by the Assessing Officer, who by an assessment order dated 20/3/2006 worked out the closing stock on the basis of an average method i.e. by taking the aggregate value of stents purchased during the year ending 31/3/2003 and dividing it by the number of stents purchased to arrive at the average price/cost of each stent and then taking the average value so obtained for each stent and multiplying it with the quantity of stents in possession of the respondent –assesseee as on 31/3/2003. This method of arriving at the value of closing stock was justified by the Assessing Officer on the basis that the respondent–assessee was maintaining its inventories on the basis of “First in- First out” method and therefore the costs of the stents would be that of the recent purchases. Consequently, the value of the closing stock was enhanced by Rs.37.08 lacs resulting in addition of the above amount to the respondent's income.

5) The Commissioner of Income Tax (Appeals) by an order dated 22/5/2007 allowed the respondent's appeal. He held that the respondent was regularly following a recognized method of valuation of stock i.e. cost or market price whichever is lower and had not been following the method of valuation of stock on the basis of average cost of purchase of all stents. He also held that when the quality and price/cost of each stent varies significantly i.e. in the range of Rs.342/- to Rs.16,766/-, the application of average method to arrive at the value of closing stock would not give the correct value of the closing stock. Therefore the method adopted by respondent- assessee and its valuation of closing stock was upheld and the addition as done by the Assessing Officer was deleted.

6) On appeal, the Tribunal by its order dated 5/4/2010 dismissed the revenue's appeal .The Tribunal held that it is an admitted position that the respondent has been consistently following costs or market price whichever is lower method of valuing the closing stock. The Tribunal found that the respondent had the cost of stents of different qualities and had arrived at the value of the closing stock of stents by multiplying the quantity of each type of stent in its possession with the respective value of that quality of stent purchased

during the last quarter of the previous year ending 31.3.2003. Thereafter all the individual values were aggregated to obtain the value of the closing stock. The Tribunal also records the fact that the method adopted by the respondent to arrive at the closing stock of its stents for the period ending 31/3/2003 had not been controverted by the revenue before it.

7) Mr.Suresh Kumar, Counsel for the revenue submits that merely because a particular method of valuing closing stock has been employed in the past and the correctness of which was not questioned at that time, would not debar the revenue from contesting the method of valuation of closing stock for the current assessment year. On merits, he commended us to accept the reasoning of the Assessing officer to arrive at the closing stock of the stents on the basis of the over all average price of stents purchased during the previous year ending 31/3/2003. This is particularly so as the respondent assessee followed the method of first in first out of keeping inventory. Consequently, the purchases made during the year would be in stock available at the end of the year and not earlier stock. Therefore, purchase price of the closing stock in the peculiar facts of the respondent-assessee's case has to be done on the average basis as done by the revenue.

8) As against the above, Mr. Irani, learned counsel appearing for the respondent assessee submits that the question posed in the present appeal is one of fact viz. the correct valuation of the closing stock. According to him as the Commissioner of Income Tax (Appeals) as well as the Tribunal have upheld the valuation of the closing stock

declared by the respondent-assessee, their concurrent findings ought not to be interfered with in this appeal. Mr. Irani further submits that the cost or market value method of valuation of the closing stock has been consistently followed by them and accepted by the department. There is no reason to change the method. He lastly submits that the costs of each stent varies depending upon its quality in the range of Rs.342/- to 16,776/-. The method of averaging the costs adopted by the revenue would lead to distortion of respondent-assessee's profits. It was his submission that the valuation of the closing stock arrived at by the respondent-assessee is accurate as the same was arrived at by multiplying the quantities of each type of stent with the respective costs of such stents purchased during the last quarter of March 2003. This method did not involve any estimation as against the averaging method adopted by the revenue which was entirely on estimation. In the circumstances, according to him, no substantial question of law arises in this case for the determination by the court.

9) We have considered the submissions. The entire object of valuation of closing stock is the correct determination of the profit and loss resulting from a business activity carried on during the course of the year. The Act itself does not provide for any particular method of computing closing stock though the principles of accounting do require that valuation of the closing stock and the opening stock should be taken into account at cost or market price whichever is lower. In the present case there is no dispute between the revenue and the respondent that the valuation of the stock has to be done on the basis of the costs or market value whichever is lower. They are also agreed that in the present case the costs of the closing stock is lower than the

market value of the closing stock as on 31/3/2003 i.e. relevant previous year to assessment year 2003-04. However, the difference between the appellant-revenue and the respondent-assessee is that the appellant-revenue seeks to arrive at value of the closing stock by adopting an average method by valuation while the respondent assessee seeks to arrive at the valuation of closing stock on the basis of quality of the stent and its costs as available on actual basis. The method of valuation of closing stock in the present case done by the revenue of first determining average costs of each stent and then multiplying the average costs to each stent to the total number of stent in possession of the respondent at the end of the year. However, the above method does not lead towards proper disclosure of the value of the closing stock. This is for the reason that there are various types of stents and each of them has a different price. The respondent assessee has identified the purchase price of each such type of stent as was available with them for the quarter ending March, 2003. Consequently, the cost/price of each such stent as purchased during the course of the assessment year is available and the same is multiplied with the number of stents of a particular quality and thereafter the value of each type of stent are aggregated to arrive at closing stock of the stent as on 31/3/2000. Therefore even this method of computing the value of the closing stock as adopted by the respondent does take into account the fact that the inventories are maintained by them on First in first out basis.

10) There can be no dispute with the submission of the revenue that there is no bar in the revenue contesting the correctness of the method adopted to arrive at the valuation of the closing stock on

the ground that the same has been accepted in the earlier years. This has been so held by the Apex Court in the matter of CIT Vs. British Paints India Ltd. reported in 188 ITR 44. However the challenge to the method of valuation adopted for the current year has to be on the basis that the method adopted by the assessee does not correctly reflect the valuation of the closing stock. In the present case, we find that the respondent has adopted the method of valuing stock which gives the value of the closing stock depending upon the quality of the stents which are in its possession. The method adopted by the revenue of seeking to multiply the number of stent with the average costs by stents in the possession of the respondent would lead not only to estimated cost of closing stock but also distort the profit and/or loss obtained. This is so as the method employed by the revenue completely ignores the valuation of the individual stent. Therefore, on merits, we find no fault with the method adopted by the respondent-assessee of valuing closing stock which has been upheld by the Commissioner of Income Tax (Appeals) and the Tribunal. Besides the valuation of the closing stock is a question of fact in the present case it cannot be even suggested that the orders of the Commissioner of Income Tax (Appeals) and the Tribunal are arbitrary and perverse. In view of the above the question (a) as framed does not give rise to any substantial question of law and is therefore, dismissed.

11) The appeal is dismissed. No order as to costs.

(M.S. SANKLECHA, J.) **(S. J. VAZIFDAR, J.)**