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ASSISTANT COMMISSIONER OF INCOME TAX vs. SUNDER JEWELLERS

IN THE ITAT CHANDIGARH BENCH 'B'

N.K. SAINI, VP & R. L. NEGI, JM.

ITA NO. 454/Chd/2019

Aug 12, 2021

(2021) 62 CCH 0422 ChdTrib

Legislation Referred to

Section 145(3), 145

Case pertains to

Asst. Year 2014-15

Decision in favour of:

Assessee

Assessment—Method of accounting— Assessee e-filed its return of income — Later on, case was selected for scrutiny under CASS — During course of survey discrepancy was found in valuation of stock and assessee surrendered an amount over and above normal income on account of undervaluation of stock — A.O. observed that even during course of survey proceedings partner of assessee firm had admitted that inventory of stock was not maintained properly and voluntarily surrendered amount which was basically difference in stock as recorded in books of account and value of stock determined by registered valuer of Department — A.O. further observed that in trading account furnished by assessee assessee had declared stock over and above stock which was appearing in books of accounts and made addition — CIT(A) deleted addition — Held, it is an admitted fact that during course of survey on 11/11/2013 at business premises of assessee no difference was found in quantity of stock found physically and as recorded in books of account — However difference was there in valuation made by registered valuer of department who applied market rate and worked out total stock of jewellery at Rs. 16,37,95,953/- whereas as per books of account of assessee on said date closing stock was at Rs. 12,97,32,305 — In present case, when Trading account was prepared as on 11/11-2013, assessee offered

difference in valuation amounting to Rs. 96,69,393 —A assessee while working out above difference applied average price which was followed consistently, whereas registered valuer of department applied market rate for valuation of closing stock — It is well settled that method of accounting adopted by assessee consistently and regularly cannot be discarded — Revenue department undisputedly accepted average cost price method for valuation of opening stock for year under consideration as well as valuation of closing stock in earlier years, therefore, valuation of closing stock as on 11/11/2013 found during course of survey, by applying market rate was not justified, as such CIT(A) rightly deleted impugned addition made by A.O —There is no valid ground to interfere with findings given by CIT(A — Revenue's appeal dismissed.

Held

It is an admitted fact that during the course of survey on 11/11/2013 at the business premises of the assessee no difference was found in the quantity of the stock found physically and as recorded in the books of account. However difference was there in the valuation made by the registered valuer of the department who applied the market rate and worked out the total stock of the jewellery at Rs. 16,37,95,953/- whereas as per books of the account of the assessee on the said date the closing stock was at Rs. 12,97,32,305/-. In the present case, when the Trading account was prepared as on 11/11-2013, the assessee offered the difference in valuation amounting to Rs. 96,69,393/-. The assessee while working out the above difference applied the average price which was followed consistently, whereas the registered valuer of the department applied the market rate for valuation of the closing stock. It is well settled that the method of accounting adopted by the assessee consistently and regularly cannot be discarded.

(para 8)

Revenue department undisputedly accepted the average cost price method for valuation of the opening stock for the year under consideration as well as the valuation of the closing stock in the earlier years, therefore, the valuation of the closing stock as on 11/11/2013 found during the course of survey, by applying the market rate was not justified, as such the CIT(A) rightly deleted the impugned addition made by the A.O. there is no valid ground to interfere with the findings given by the CIT(A). Revenue's appeal dismissed.

(para 8.2)

Conclusion

Method of accounting adopted by the assessee consistently and regularly cannot be discarded.

In favour of

Assessee

Cases Referred to

CIT vs. Sant Ram Mangat Ram(195CTR345)
United Commercial Bank v. CIT [1999] 240 ITR 355

Counsel appeared:

Tejmohan Singh, Advocate for the Assessee.: Ashok Khanna, Addl. CIT for the Revenue

N. K. SAINI, VP.

1. This is an appeal by the Department against the order dt. 30/01/2019 of Ld. CIT(A)-2, Chandigarh.
2. Following grounds have been raised in this appeal:

(i) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has not erred in law as well as facts in allowing the appeal of the assessee without appreciating the facts of the case ?

(ii) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has not erred in accepting assessee's version that difference in stocks was attributable to rate difference whereas the assessee in his statement recorded during the course of survey on 11.11.2013 himself admitted that "inventory of stock is not maintained" as a result of which he offered a sum of Rs. 3.41 crores on account of difference in stock as additional income.

(iii) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has not erred in deleting the addition of Rs. 2,44,30,607/- made by the AO on account of difference in stocks (3,41,00,000 - revised return Rs. 96,69,393/-) when the assessee had admitted during survey to non-maintenance of proper stocks register/inventory/physical tally, which would have enabled the survey team to verify the correctness of whether the difference in stock was due to rate or quantity ?

(iv) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has not erred in deleting the addition of Rs. 2,44,30,607/- made by the AO on account of difference in stocks when the assessee himself admitted and offered Rs. 3,41,00,000/- during survey as his additional income and a statement made voluntarily can form the basis of assessment as held in 91 ITR 18 (SC) and other judicial precedents especially when the taxpayer has not discharged burden to prove it was wrong or given under coercion .

(v) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has not erred in deleting the addition of Rs. 2,44,30,607/- whereas the assessee himself admitted a sum of Rs. 3.41 crores on account of difference in stock as additional income in his statement and the assessee never claimed before the AO that the statement initially recorded was factually incorrect and had thus failed to discharge the burden of establishing that admission made during survey was wrong, through any "effective evidence" or that it was given through coercion.

(vi) It is prayed that the order of Ld. CIT(A) be set aside and that of the Assessing officer may be restored.

(vii) The appellant craves leave to add or amend any grounds of appeal before the appeal is heard or is disposed off.

From the aforesaid grounds it is gathered that only grievance of the Department relates to the deletion of addition of Rs. 2,44,30,607/- made by the A.O. on account of difference in stock.

3. Facts of the case in brief are that the assessee e-filed its return of income on 30/11/2014 declaring an income of Rs. 1,69,32,380/-. Later on, the case was selected for scrutiny under CASS. During the course of assessment proceedings the A.O. noticed that a survey under section 133A of the Income Tax Act, 1961 (hereinafter referred to as 'Act') was carried out on 11/11/2013 at the business premises of the assessee. During the course of survey discrepancy was found in the valuation of stock and the assessee surrendered an amount of Rs. 3,41,00,000/- over and above the normal income on account of undervaluation of stock. The A.O. asked the assessee to furnish the trading account before and after the survey. In response the assessee submitted as under:

Trading account upto 11.11.2013			
Particulars	Amount(Rs.)	Particulars	Amount(Rs.)
Opening Stock	109370975	Sales	142792433
Op. stock packing material	25000		
Purchases	139248537		
Labour charges	2390010	Closing stock packing material	25000
Cartage and freight	4235	Closing stock	129732305
Packing material	234909	Stock add- income tax survey	9669393.47
Gross profit	30945465.97		

Trading account for 12.11.2013 to 31.03.2014			
Particulars	Amount (Rs.)	Particulars	Amount (Rs.)

Opening stock	139401698.97	Sales	84611066
Op. stock	25000		
packing material			
Purchases	69711162		
Labour charges	896275	Closing stock packing material	25000
Cartage and	5468	Closing stock	138177497.38
freight			
Packing material	200755		
Gross profit	12573204.41		

3.1 The A.O. asked the assessee to submit its books of account including stock register and cash book, he also asked to show cause as to where the surrendered amount had been declared in the books / ITR and as to whether or not the tax on the said surrendered amount had been paid. In response the assessee submitted as under:

"Regarding effect of surrender amount during survey on the business premises of the assessee, it is submitted that a sum of Rs. 3410000/- was offered for taxation during survey proceedings u/s 133A. This surrender was based on valuation of stock arrived on by the registered valuer of the Income Tax Department, which was based on market price, as on 11.11.2013 i.e. the date of survey. It is further submitted that no difference in stock was found by the survey team of the Income Tax Department. However the income Tax Return for A. Y. 2014-15 i.e. F.Y.2013-14 has been filed by the assessee firm taking into consideration gross profit arrived at by adopting average rate of purchases & sales on day to day basis, which is recognized method of calculation of gross profit. There is no retraction from surrender during survey. As there is no accountancy methods of adopting method of valuation of stock on current price as such the recognized method of valuation of stock, of adopting average purchase and sale price on day to day bases has been adopted. Further as the assessee had no difference in stock and has adopted constantly being followed and recognized method of valuation of stock, your good self is requested to not to make any addition on this ground."

3.2 The Assessee also furnished stock register and the cash book. The A.O. observed that the stock register did not show as to how valuation of stock had been arrived at and that the valuation of

diamond, gold and jewellery depends on its purity and quality. He also observed that stock register did not contain quality-wise, item-wise, day-wise record of stock, therefore, it was not possible to verify the purchases and sales on a particular date and to evaluate the correctness of the value of the closing stock as shown by the assessee in its books of account. The A.O. observed that the defects were found in the cash book and several entries were seen in the credit side of the cash book which exceeded Rs. 20,000/- in a day.

3.3 The assessee submitted to the A.O. that the amounts shown on the credit side were basically sales, in support of that the assessee also furnished some bills. However the A.O. was not satisfied and rejected the books of account by invoking the provisions of Section 145(3) of the Act. The A.O. observed that during the course of survey proceedings on 11/11/2013 the valuation of stock was got done by registered valuer of the department and the stock was valued at Rs. 16,37,95,953/- whereas as per the books of the assessee on that date, the closing stock amounted to Rs. 12,97,32,305/-. He further observed that the partner of the assessee firm Shri Mahender Khurana was confronted and was asked to explain / reconcile the difference of 3,40,63,650/-, he stated in his statement recorded on 11/11 /2016 as under:

"....as the inventory of stock has not been maintained separately, I am offering a sum of Rs. 3,40,63,650/- the difference rounded off to Rs. 3,41,00,000/-(Rupees three crores and forty one lacs) which is the difference in stock of jewellery as additional income on a/c of stock difference for AY 2014-15 to buy peace of mind and avoid any further litigation and advance tax or other dues shall be paid accordingly."

3.4 The A.O. observed that even during the course of survey proceedings the partner of the assessee firm had admitted that the inventory of stock was not maintained properly and voluntarily surrendered the amount of Rs. 3,41,00,000/- which was basically the difference in the stock as recorded in the books of account and the value of stock determined by the registered valuer of the Department. The A.O. further observed that in the trading account furnished by the assessee as on 11/11/2013 the assessee had declared stock of Rs. 96,69,393.47 over and above the stock which was appearing in the books of accounts. He therefore made the addition of Rs. 2,44,30,607/-(Rs. 3,41,00,000/-(-) Rs. 96,69,393/-).

4. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and submitted as under:

"It is submitted that the assessee is following average cost rate method of accounting since inception which is an accepted norm and has been accepted by the department. During the course of survey, the departmental valuer applied the market price to arrive at the valuation and not the regularly applied method adopted by the assessee. The opening stock as taken by the valuation officer was calculated on the regularly applied method i.e average cost but while computing the stock as on 11.11.2013, market price was applied by the valuer. It is pertinent to mention here that the quantitative details of stock as found on the date of search are not in dispute. The same has been taken by the assessee to arrive at the stock valued on average cost method which is the regularly applied method. There was no difference in the quantity as appearing in the books and as per actual physical verification. No excess/short stock has been found during the course of survey. The stock found matched with that found recorded in the books of account. It is only a difference in method of valuation which has led to lesser valuation. It was found at the time of preparation of the final accounts by the qualified Chartered accountants that the working of the valuation of stock was on two different parameters which are against the accepted accounting standards issued by ICAI. The assessee was perplexed at the time of survey and was not aware of the intricacies of valuation which is the job of the professional accountants. It is pertinent to mention here that during the course of recording of the statement of the partner, he specifically stated that there was no difference in stock which was valued by the assessee at cost or market price whichever is less. As per the

detailed valuation, it would be seen that the value as per books based on average cost comes to Rs. 13,93,96,823.91 as against Rs. 16,37,96,524.95 It is therefore stated that when the quantitative details are not in dispute, the difference has to be worked out following identical scale. The fact also remains that that the method of accounting regularly followed by the assessee requires to be adopted for the purpose of valuation of stock. Reliance is placed on the decision of the jurisdictional ITAT rendered in the case of M/s Talwar sons Jewellers in ITA Nos. 1313 to 1317/ Chd/2012 wherein the departmental appeal was dismissed on identical grounds. The departmental valuer had adopted market rate for the purpose of valuation instead of the cost or market price which was regularly followed by the assessee. Rather the case of the instant assessee is on a stronger footing in as much as no excess stock was found during survey which could have attracted application of some other method of valuation. It is, therefore, stated that when the quantitative details are not in dispute, the difference has to be worked out following identical scale. The fact also remains that that the method of accounting regularly followed by the assessee requires to be adopted. Reliance is placed on the decision of the Hon'ble ITAT rendered in the case of Shri Kuldeep Chand Jain for the said proposition. This decision has been approved by the Hon'ble High Court vide its order dated 08.09.2015."

4.1 Apart from the aforesaid submission the assessee further submitted as under:

"On last hearing, it was submitted that the assessee has been following the same method of accounting for valuation of stock since inception. Copies of the audit report for AY 2011-12 and 2012-13 are annexed herewith to corroborate this contention. Attention is drawn to pages 286 and 302 of the paper book wherein it is specifically mentioned in the notes on account that closing stock is valued on average cost method."

Further as per AS1 of the accounting standards as issued by the ICAI, it is accepted as a fundamental accounting assumption that accounting policies are consistent from one period to another. The same finds place at Page 312 of the compilation annexed with this submission. Similarly, as per AS2 which deals with valuation of inventories, it is mentioned that inventories should be valued at lower of cost and net realizable value. This is what has been the method of valuation as finds mention in the audit report for all the years."

As such, it is prayed that the regularly followed method of accounting is to be adopted for valuation of stock. It may not be out of place to mention here that even in case the method adopted by the revenue is considered, the closing stock so adopted by the revenue shall become the opening stock for the subsequent year which would reduce the profits of the subsequent year. Thus, the entire exercise would be revenue neutral which is nothing but tinkering with the regularly accepted method of accounting."

4.2 The Ld. CIT(A) after considering the submissions of the assessee deleted the addition made by the A.O. by observing in para 7.3 of the impugned order as under:

7.3 I have considered the submissions of the appellant as well as the reasons leading to the impugned addition. It is seen that the assessing officer has made the addition only on the basis of the statement of the assessee recorded on the date of survey wherein he surrendered Rs. 3,41,00,000/- being the difference in stock of jewellery. She has failed to consider the reply filed by the assessee which is forming part of the assessment order wherein it is emphasized that the valuation done by the departmental valuer was at the market price. It is correct that the assessee has surrendered an amount of Rs. 3,41,00,000/- during the course of survey. It is also correct that while computing the value of jewellery found during the course of survey, the departmental valuer applied the market price to arrive at the valuation as has been demonstrated by the counsel of the assessee during the course of appellate proceedings and not the regularly applied method adopted by the assessee i.e. average cost method. Specific

attention was drawn to page 125 of the Paper Book to evidence that the valuer had applied rate of Rs. 30,850/- per 10 gm for 24 carat gold as on 11.11.2013 i.e. the day of survey. On the other hand, the opening stock in the same calculation has been taken while preparing the trading account as reproduced in the assessment order as 10,93,70,975/- which has been calculated on the basis of average cost method. For this purpose attention was drawn to the Trading account placed at Page 17 of the paper book wherein Opening Stock has been taken at Rs. 10,93,70,975/-. Further reliance was placed on audit report placed in the paper book with specific thrust on page 15 specifying the method of valuation of closing stock as average cost method. I have perused the audit reports for the assessment years and it is seen that the method of valuation of stock has consistently been average cost method. Assessee has placed in the paper book at Pages 127-129 justification in respect of difference in stock valuation as per valuer's report and as per books as on the date of survey. This difference has arisen only because of the method of valuation as adopted by the appointed valuer of the department having applied the market rate while reaching at value of the stock. The assessing officer has nowhere rebutted this contention of the assessee. It is also seen that the assessee has not disputed the quantity of stock found at the time of survey for the purpose of valuation. There cannot be two methods adopted for purpose of valuation. The opening stock and closing stock have to be valued applying the same method. In the instant case, it is seen that the assessee has been following the same method throughout for the purpose of valuation of stock. Reliance had also been placed by the assessee's counsel on the decision of M/s Talwarsons Jewellers in ITA Nos. 1313 to 1317/Chd./2012 and Shri Kuldeep Chand Jain of the Hon'ble Jurisdictional High Court copies of which were placed at page nos.255-272 in the Paper Book. The P&H High Court in its decision in case of Sh. Kuldeep Chand Jain in ITA No. 165 of 2014(0& M) in case of Shri Kuldeep Chand Jain incorporated the finding of the ITAT, Chandigarh Bench in its decision in case of above said assessee for A.Y. 2007-08, wherein ITAT held as follows:

"We have heard the rival contentions and perused the record. The assessee is engaged in the business of sale and purchase of jewellery. The assessee, in order to value its closing stock is following LIFO method which is one of the prescribed method of accounting standards issued by ICAI for valuation of inventory. The said method of valuing the closing stock of gold ornaments has been consistently followed by the assessee from year to year. Similar methods was followed by the assessee in A.Y. 2007-08. The AO in assessment year 2007-08 has made an addition of Rs. 32,08,977/- on account of valuation of closing stock of gold ornaments. The Tribunal in ITA No. 1378/CHD/2010 relating to A.Y 2007-08 in DCIT vs. Sh. Kuldeep Chand Jain, HUF, vide order dated 24.04.2012, has held as under:

"We have carefully perused the rival submissions, facts of the case and relevant record. The brief facts of the case are that the appellant is a wholesale & retail sarafa merchant. The assessee filed return of income on 31.10.2007, declaring income of Rs.29,20,088/-. A survey u/s 133A of the Act was conducted, on the business premises of the assessee, on 13.10.2006, during which appellant surrendered an additional income of Rs.26 lacs (Rs.17 lacs on account of unexplained old gold and diamond jewellery and Rs. 9 lacs on account of excess cash found. The AO framed assessment u/s 143(3) at an income of Rs. 61,29,065/- after making disallowance of Rs.32,08,977/- on account of under valuation of closing stock. AO also rejected the books of account of the appellant and treated the surrendered amount of Rs.26 lacs as deemed income.

In the course of assessment proceedings, the assessee informed the AO, that LIFO method of accounting was followed in valuation of closing stock. The contention of the assessee was not found acceptable by the AO. The AO, referred to A.S.-2, that specifies of only three methods of determining the cost of inventories i.e. specific identification method, FIFO and Weighted average cost method. The AO made an addition of Rs.32,08,977/- following the weighted average cost method of the closing stock. The Id. CIT(A), on appreciation of the case laws and

submissions filed before her, gave her findings in para 5.2 of the appellate order, which are reproduced here under

"5.2 I have carefully considered the submission filed by the appellant, it was informed that the AO has accepted the calculation error in the closing stock valuation and has rectified the same by passing order u/s 154 dated 30.06.2010 vide which the difference in stock stand reduced from Rs.32,08,977/- to seen that during the A.Y. 2003-04,2005-06 and 2006-07 assessment for which was completed u/s 143(3), the method of Valuation of closing stock has been accepted by the AO including by the AO who has passed the assessment order for the year under appeal. Therefore, the AO cannot reject the method of valuation of closing stock which is consistently followed by the appellant and has also been accepted by the AO in the past. I agree with the appellant that rule of consistency has to be followed and observed. Further, it is seen that the Hon'ble Punjab & Haryana High Court in appellant's own case CIT vs. Sant Ram Mangat Ram(195CTR345) observed as under :-

"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 Inspecting Assistant Commissioner 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. 'There is merit in the appellant's submissions that the principle of judicial discipline requires that the order of the Higher Appellate Authority should be followed unreservedly by the subordinate authorities. Therefore, in view of the above stated facts - assessee having consistently employed the same method of valuation of closing stock and AO having not questioned the same and in fact having accepted it in the previous assessment years, it is held that the method of valuation of closing stock could not be rejected. Therefore, the addition made by the AO which by her order of rectification u/s 154 stands reduced to Rs. 19,45,073/- on account of difference in valuation of closing stock is deleted. This ground of appeal is allowed.'" 6. A bare perusal of the findings of CIT(A) reveals that on the basis of the doctrine of consistency in relation to method of valuation of inventory as also the decision of the jurisdictional High Court in assessee's own case, she recorded findings in favour of the assessee. Having regard to the fact-situation of the case, decision of the Hon'ble jurisdictional High Court, relied upon by the Id. CIT(A), and the relevance of consistency principle in the matter, we do not find any infirmity, in the findings of the CIT(A), and hence, the same are upheld. Thus, the ground of appeal of the revenue is dismissed."

There is merit in the appellant's submissions that the principle of judicial discipline requires that the order of Higher Appellate Authority should be followed unreservedly by the subordinate authorities. Therefore, in view of the above stated facts, assessee having consistently employed the same method of valuation of closing stock and AO having not questioned the same and in fact having accepted it in previous years, it is held that the method of valuation of closing stock could not be rejected. Therefore, the addition made by the AO which by her order of rectification u/s 154 stands reduced to Rs. 19,45,073/- on account of difference in valuation of closing stock is deleted. This ground of appeal is allowed.

The relevant extract of the judgement of ITAT, Chandigarh in case of Talwarsons Jewellers in ITA No. 1313 to 1317/CHD/2012, in which the decision of CIT(A) was confirmed the ITAT, is reproduced below:

"52 We have heard the rival submissions carefully. The CIT(A) has decided the issue vide para 5.1 which is as under However the issue is the manner of valuation of the excess stock, as the quantitative details of the gold and diamond jewellery are not in dispute. It is the case of the AO that the excess stock determined was based of trading a/c drawn up on basis of details furnished by the assessee and that the closing stock inventoried by the departmental valuer was in the presence of the assessee who had no objection to the appointment of the government approved Valuer for valuation purpose. On the other hand, the assessee has contended that he had only accepted the appointment of the government approved Valuer. It transpires that the trading result of gold was based on the GP rate of last financial year at 19.46%, wherein the stock had been valued at cost price as per method of accounting regularly followed while the Valuer valued the excess stock at market price. The method of valuation of the closing stock followed was stated to be cost or market whichever is lower. So it was submitted that the excess be firstly determined to which the value adopted by the Valuer could be applied. I find that the assessment order is silent on the method of the valuation of the stock. The alternate plea of the assessee is that at the year end, the excess stock value will get set off in any case. Be that as it may, I am inclined to accept the arguments of the assessee, that as the value of the stock for the purpose of trading account has been worked out by taking the inventory at cost value, not the market value, so for making a comparison the value should be arrived at by the same method. In other words, the book value of the stock is valued at cost whereas the physical stock is valued at market value. No doubt the details for drawing up the trading account as on the date of search was provided by the assessee and the GP rate is also not in dispute. It is therefore only fair that when the quantitative details are not in dispute, the difference should be necessarily worked out following identical scale. The fact also remains that the method of accounting regularly followed by the assessee requires to be adopted. In this case, there is no rejection of the books of accounts, nor any adverse findings on the system of accounting followed by the assessee. ' Coming to the issue of difference in the stock of gold, the excess stock of gold @ Rs.1380 per gm for 22 ct as well as gold bullion melted as taken by the Valuer, works out to 9952.20 gms (9897 gms of 18 ct and 55.20 gms of 22 ct) which is the accepted difference in weight as per Valuation and as per books. Aside, the 18 ct gold where in no difference was found (in fact the books showed 2.904 gm more) was valued by the valuer @ Rs. 1200 per gm. On therefore applying the rate as done by the valuer, the value comes to Rs. 13,58,37,331/-. I find that the value of the gold as per the books of account has been worked out at Rs. 10,10,49,782/- The ensuing difference, thus, comes to Rs. 3,47,87,549/-. However, on applying the cost price to the excess gold stock, the value comes to Rs. 1,37,51,760/-. Thus the difference which had been added by the Ld AO of Rs. 2,08,35,789/- is therefore found to be arising due to difference on account of valuation only as assessee has valued his stock at cost while the valuer has valued at the market rate at the time of search. This excess stock value thereof, of Rs. 1,37,51,760/- is found to be corresponding to amount surrendered by the assessee on account of excess stock of gold. As regards the surrender on account of excess diamond of Rs. 4,37,56,1591- ,the same is not in dispute. Consequently the assessee deserves to succeed in this ground of appeal."

We find that the Id. CIT(A) has correctly adjudicated the issue. If the physical quantity of the stock which were found during search is compared with the stock recorded then the assessee has already valued the excess stock on the value which was applied by the valuer.

The ratio of the decisions in above said cases are clearly applicable to the facts of the appeal at hand. Following the said judgements of jurisdictional High Court 8 B ITAT, it is held that since the surrender made was not on the basis of any excess stock, but on the basis of adoption of market rate instead of average cost method regularly employed by the assessee, it is held that there were no grounds/finding rejecting the contention of the assessee to this effect and accordingly, the addition made by AO is deleted. Grounds of appeal no.2, 3 & 4 are allowed.

5. Now the department is in appeal.

6. The Ld. DR strongly supported the assessment order passed by the A.O. and reiterated the observations made therein. It was further submitted that during the course of survey held on 11/11/2013 it was noticed that there was difference in the closing stock physically found vis a vis recorded in the books of accounts and the assessee was asked to explain /reconcile the difference of Rs. 3,40,63,650/-, the partner of the assessee firm, offered the difference in stock jewellery rounded off to Rs. 3.41 Crores as additional income. However while furnishing the trading account as on 11/11/2013, the assessee declared only Rs. 96,69,393/- over and above stock which was appearing in the books of account on the date of survey, therefore the balance amount of Rs. 2,44,30,607/- was rightly added by the A.O. in the income of the assessee and the Ld. CIT(A) was not justified in deleting the said addition, particularly when the rejection of books by the A.O. were upheld by the Ld. CIT(A).

7. In his rival submissions the Ld. Counsel for the Assessee reiterated the submissions made before the Ld. CIT(A) and further submitted that there was no difference in the stock found during the course of survey and as recorded in the books of accounts, the only difference was in the method of valuation of stock adopted by the valuer of the department and followed by the assessee. It was contended that the assessee was following the average cost price method for valuation of the closing stock, consistently from year to year which had been accepted by the department. However, the valuer of the department applied the market rate while valuing the stock found during the course of survey and worked out the difference in valuation at Rs. 3,41,00,000/- but the actual difference in valuation was Rs. 96,69,393/-, which was offered by the assessee for taxation, therefore the balance addition amounting to Rs. 2,44,30,607/- was rightly deleted by the Ld. CIT(A). It was also submitted that the Ld. CIT(A) while deleting the arbitrary addition made by the A.O. followed the decision of the ITAT Chandigarh Bench in the case of M/s Talwarsons Jewellers Vs. ACIT in ITA Nos. 1313 to 131 7/Chd/2012 & ITA No. 81/Chd/2013 for the A.Y. 2004-05 to 2006-07 and 2009-10 to 2010-11 vide order dt. 30/09/2013 and the judgment of the Hon'ble Jurisdictional High Court in the case of CIT, Panchkula Vs. Shri Kuldeep Chand Jain (HUF) in ITA No. 165 of 2014 order dt. 08/09/2015, therefore the impugned addition was rightly deleted by the Ld. CIT(A).

8. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case it is an admitted fact that during the course of survey on 11/11/2013 at the business premises of the assessee no difference was found in the quantity of the stock found physically and as recorded in the books of account. However difference was there in the valuation made by the registered valuer of the department who applied the market rate and worked out the total stock of the jewellery at Rs. 16,37,95,953/- whereas as per books of the account of the assessee on the said date the closing stock was at Rs. 12,97,32,305/-. In the present case, when the Trading account was prepared as on 11/11-2013, the assessee offered the difference in valuation amounting to Rs. 96,69,393/-. The assessee while working out the above difference applied the average price which was followed consistently, whereas the registered valuer of the department applied the market rate for valuation of the closing stock. It is well settled that the method of accounting adopted by the assessee consistently and regularly cannot be discarded.

8.1 On a similar issue their Lordship of the Jurisdictional High Court in the case of CIT, Panchkula Vs. Shri Kuldeep Chand Jain (HUF) (supra)observed in para 7 to 9 as under:

7. Apex Court in United Commercial Bank's case (supra) dealing with a case of valuation of stock held that a method of accounting adopted by the tax-payer consistently and regularly cannot be discarded by the revenue on the view that different method of keeping accounts or of valuation ought to have been adopted by the assessee. The broad principles of valuation of stock had been summarized by the Supreme Court as under:-

"(1) that for valuing the closing stock, it is open to the assessee to value it at the cost of market

value, whichever is lower;

(2) *In the balance-sheet, if the securities and shares are valued at cost but 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 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 their recognized 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) *Under section 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 Income-tax Officer, the income cannot be properly deduced therefrom, the computation shall be made in such manner and on such basis as the Income-tax Officer may determine."*

8. Following the aforesaid pronouncement, a Division Bench of this Court in Sant Ram Mangat Ram's case (supra) had held as follows:

"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 Inspecting Assistant Commissioner should be restored."

9. *Undisputedly, in the earlier years, the revenue had accepted the LIFO method for valuation of closing stock of the assessee. Learned counsel for the revenue could not demonstrate that the approach of the Tribunal was erroneous or perverse in any manner warranting interference by this Court."*

8.2 In the instant case also the Revenue department undisputedly accepted the average cost price method for valuation of the opening stock for the year under consideration as well as the valuation of the closing stock in the earlier years, therefore, the valuation of the closing stock as on 11/11/2013 found during the course of survey, by applying the market rate was not justified, as such the Ld. CIT(A) rightly deleted the impugned addition made by the A.O. We do not see any valid ground to interfere with the findings given by the Ld. CIT(A). Accordingly we do not see any merit in this appeal of the Department.

9. In the result appeal of the Department is dismissed.

(Order pronounced in the open Court on 12/08/2021)

Customized Notes

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