

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'A' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Accountant Member and
Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. No. 1019/KOL/ 2014
Assessment Year: 2009-2010**

**Deputy Commissioner of Income Tax,.....Appellant
Circle-12, Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700 069**

-Vs.-

**M/s. Ganga Rasayanie Pvt. Limited,.....Respondent
50B, Harish Mukherjee Road,
Kolkata-700 025
[PAN: AAACG 2051 L]**

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**I.T.A. No. 933/KOL/ 2014
Assessment Year: 2009-2010**

**M/s. Ganga Rasayanie Pvt. Limited,.....Appellant
50B, Harish Mukherjee Road,
Kolkata-700 025
[PAN: AAACG 2051 L]**

-Vs.-

**Commissioner of Income Tax (Appeals)-XII,.....Respondent
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700 069**

Appearances by:

*Md. Ghayas Uddin, JCIT, Sr. D.R., for the Department
Shri Manoj Kataruka, A.R., for the assessee*

Date of concluding the hearing : May 01, 2017

Date of pronouncing the order : June 07, 2017

O R D E R

Per Shri P.M. Jagtap, A.M.:

These two appeals, one filed by the Revenue being ITA No. 1019/KOL/2014 and the other filed by the assessee being ITA No. 933/KOL/2014 are cross appeals, which

are directed against the order of the Id. Commissioner of Income Tax (Appeals)-12, Kolkata dated 12.02.2014.

2. The solitary common issue involved in these appeals relates to the addition of Rs.48,00,000/- made by the Assessing Officer on account of under-valuation of closing stock, which is sustained by the Id. CIT(Appeals) to the extent of Rs.13,72,363/- and the same is raised by both the sides by way of the following grounds:-

ITA No. 1019/KOL/2014 (Revenue's appeal)

"(1) On the facts and in the circumstances of the case and as per law Id. CIT(A) erred in restricting the valuation of closing stock to Rs.13,72,363/- instead of Rs.48,00,000/- calculated by the AO.

(2) On the facts and in the circumstances of the case and as per law Id. CIT(A) erred in not considering the calculation made by the AO for valuation of closing stock.

(3) On the facts and in the circumstances of the case and as per law Id. CIT(A) erred in allowing fresh evidence during the appeal proceedings in violation of Rule 46A".

ITA No. 933/KOL/2014 (assessee's appeal)

"(1) That the Id. CIT(A) was not justified in confirming the addition of Rs.13,72,363/- alleging to be difference in closing stock.

(2) That the addition has been made without appreciating the facts in their entirety and in their true perspective ignoring the evidences produced and, therefore, the same is wholly unwarranted, arbitrary and untenable both in law and on facts".

3. The assessee in the present case is a Company, which is engaged in the business of manufacturing and trading of chemical items. The return of income for the year under consideration was filed by it on 01.10.2010 declaring total income of Rs.2,09,57,326/-. During the course of assessment proceedings, the details of closing stock as on 31.03.2009 such as items, quantity, rate applied etc. were furnished by the assessee. On verification of the said details, it was noticed by the Assessing Officer that there was considerable difference in the rate applied by the assessee to arrive at the value of items of finished goods lying in the closing stock and the average sale price of the said items. The said difference as noticed by the Assessing Officer and pointed out in the tabular form was as under:-

Item	Quantity as on 31.03.2009	Rate/Kg. adopted for closing stock	Value shown as closing stock	Average sales price	Difference in value of closing stock
Mineral Oil Distillate (2633)	59832 Kg.	Rs.35/Kg.	2094120.00	@Rs.54/-Kg. 3230928.00	1136800.00
Mineral Oil Distillate (2629)	215371 Kg.	Rs.36.50/Kg.	7861041.50	@Rs.56/-Kg. 12060776.00	4199734.50
Garasole 110(17/99)	23029 Kg.	Rs.36/Kg.	829044.00	@Rs.40.50/-Kg. 932674.50	103630.50
Garasole 150(21/98)	50330 kg.	Rs.45/Kg.	2264850.00	@Rs.47.21/-Kg. 2376079.30	111229.30
Mineral Oil Distillate (2428)	8553 Kg.	Rs.35/Kg.	299355.00	@Rs.52/-Kg. 444756.00	145401.00

Less value of closing stock declared in the accounts as on 31.03.2009".

4. The assessee was called upon by the Assessing Officer to explain the above difference in the valuation of closing stock of finished goods amounting to Rs.56,96,795/-. In reply, the following explanation was offered by the assessee in writing:-

"Mineral Oil Distillate (GR 2428,2629 and 2633) are produced from Bonmax. Mineral Oil Distillate are specialized solvents and largely imported into India and used mainly by the Ink Industry.

The feedstock for Mineral Oil Distillates are normally not available easily in India. During February- March 2009, Indian Oil Corporation Ltd., Bongaigaon (earlier offered Bonmax to us and wanted us to develop this product). So we had lifted a substantial quantity to do certain experiments with an aim to produce various grades of Mineral Oil Distillates.

We had purchased 504780 kg of Bonmax at Rs 23/- kg and distilled the entire quantity. Unfortunately the finished product did not come out well and as per specification desired except for a very little quantity.

The quantity which could be produced as per specification were sold immediately while the off-grade stock were either blending with other products or sold over a very long period. It almost took 6 months to liquidate the stock.

GR 2629

The closing stock as on 31.03.09 of 215371 kg is off grade quality and hence valued at approx 36/kg.

Out of 215371 kg approx 32000 kg was blending with other products and 189340 kgs was sold between 01.04.09 to 31.12.09 at an average price of 41.95/kg.

GR2633

The closing stock as on 31.03.09 of 59832 kg is off grade quality and hence valued at approx 35/kg.

Out of 59832 Kg. approx 14865 kg was blending with other products and 33238 kg was sold between 01.04.09 to 31.12.09 at an average price of Rs.45.115/ kg. Some of the stock had to be reprocessed over the period to be sold. GR 2424. The closing stock as on 31.03.09 of 59832 kg is off grade quality and hence valued at approx 35/kg. Out of 59832 kg approx 14865 kg was blending with other products and 33238 kg was sold between 01.04.09 to 31.12.09 at an average price of Rs 45.115/ kg. Some of the stock had to be reprocessed over the period to be sold".

5. The above explanation offered by the assessee was not found acceptable by the Assessing Officer as the same was not backed with any supporting evidence to show that the finished goods lying in the closing stock were of down-graded quality having less value. He, however, agreed that in order to arrive at the cost of finished goods lying in the closing stock, gross profit was required to be deducted from the sale price of the finished goods. Accordingly, after reducing the gross profit at the rate of 12% as declared by the assessee as well as the expenses of carriage inward at 4%, the difference in the value of closing stock of finished goods was worked out by him at Rs.48,00,000/- and an addition to that extent was made by him to the total income of the assessee in the assessment completed under section 143(3) vide an order dated 30.12.2011.

6. Against the order passed by the Assessing Officer under section 143(3), an appeal was preferred by the assessee before the Id. CIT(Appeals) and after considering elaborate submissions made by the assessee as well as the detailed workings filed in support, the Id. CIT(Appeals) restricted the addition of Rs.48,00,000/- made by the Assessing Officer on account of under-valuation of closing stock of finished goods to Rs.13,72,363/- after recording his observations and findings as under:-

"I have carefully considered the submissions put forth on behalf of the appellant along with the supporting details/documents furnished, perused the facts of the case including the findings of the Assessing Officer and other materials brought on record.

It is noted that the AO has not accepted the explanation of the appellant that the stock of goods lying as on 31.03.2009 were off-grade quality as the appellant's claim was not substantiated with supporting documentary evidences. The AO further observed from the item wise selling rates furnished that though those products were sold during the year at much higher rates but the same item of goods have become downgraded or off-grade on the last date of the AY 2009-10 i.e. 31/03/09, which forced appellant to adopt less rate for the same items for the purpose of valuing the closing stock. Another observation of the AO is related to the method of accounting principle used to arrive at the GP. In the instant case, it was observed by the AO that the G.P ratio disclosed at 12.09%. Therefore, according to him, to arrive at the value of closing stock average rate of sale furnished should be deducted with the G.P ratio disclosed by the appellant. On calculation as appearing in the chart difference in the value of closing stock by considering the average rate of sale derived at Rs.56,96,795/- which includes element of gross profit therein. To calculate the actual cost price of goods sold, element of gross profit is to be deducted from the difference. Hence, considering the G.P ratio of 12% difference in value closing of the aforesaid items comes to Rs.50,13,179/- (Rs.56,96,795/- - Rs.6,83,615/-). However, considering the expenses of carriage inward say 4% which carries approximately Rs.2,00,000/-, the difference in the value of closing stock of the items worked out to Rs.48,00,000/- approx. Hence, the AO has not accepted the explanation of the assessee that the lower value of the said items was taken on the ground that the said items were of poor quality has no legs to stand since it is a general explanation with no supporting documents to substantiate the same. In this view of the matter and considering the facts, the AO has increased the value of closing stock as on 31/03/2009 by a sum of Rs.48,00,000/- and the same amount of Rs.48,00,000/- is added to the total income of the appellant company.

However, the appellant's contention is that the appellant has always been valuing its closing stock following Accounting Standard 2. The stock has been valued at Cost Price or Net realizable value, whichever is lower. It is submitted that GR 2428, GR 2629, GR 2633 have been manufactured by processing Bonmax (a aliphatic feed stock supplied by BRPL, Government of India Undertaking). The appellant had purchased Bonmax in bulk quantity on Trial Basis for producing special aliphatic fractions which are import substitute. The appellant furnished a statement detail showing the calculation of average cost of fractions produced from Bonmax (GR 2428,2629,2633) and the basis of valuation of closing stock of those grades of items and contented that the closing stock value has been fairly valued on cost price. It is also argued that the A/O has wrongly valued the closing stock based on average selling price which is not as per standard practice. The appellant further contradicted the

calculation of average selling price arrived by the A/O by relying on the Table of Statement furnished narrating the reasons of such a contention.

Vide submission dated 05-02-2014, the appellant further stated that earlier it was submitted that the average selling price (net of packing cost and freight and GP 12%) for GR 2428 was RsAO per Kg, GR 2629 was RsA1 per Kg, 2633 was RsA4 per Kg, Garosol 150 was RsA1 per Kg and Garosol 110 was Rs. 37 per Kg. which are based on the sales register maintained by the appellant, however it was not understood how the AO had derived at the average selling price for GR 2428 - RS.52 per kg, GR 2629 - RS.56 per Kg, GR 2633 - RS.54 per Kg, Garosol 150 - RsA7.21 per Kg and Garosol 110 – Rs40.50 per Kg. The AO has not relied on the generally accepted practice of valuation based on lower of cost price or market price whichever is lower; but instead relied on principle of deducting the GP from the average sale price. It is submitted that even if going with the principle followed by the AO, which is not the generally acceptable practice, there is huge difference in the valuation done by the AO and the valuation if done on the actual average selling rate. In support of this contention, the appellant furnished the under mentioned Table:

Item	Qty as on 31.3.2009	Rate adopted by AO	Valuation	Actual average selling price	Valuation	Difference
GR 2633	59832	54	3230928	44	2632608	598320
GR 2629	215371	56	12060776	41	8830211	3220565
GR 2428	8533	52	443716	40	341320	102396
Garosol 150	50330	47.21	2376079.3	41	2063530	312549.3
Garosol 110	23029	40.5	932674.5	37	852073	80601.5
19044174					14719742	4324431.8

It is further contended by drawing my attention to the contents of the above Table that even going by the AO's valuation principle, the addition should have been for only RS.13,72,363 (Rs.56,96,95 less Rs.43,24,431) and not Rs.56,96,795 as determined by the AO. However, the appellant reiterated that the valuation principle should be market price or cost price whichever is lower as per the generally acceptable accounting policy and practice. The appellant followed the same method of valuation of inventory on consistent basis for last several years. The AO has not relied upon on the generally accepted accounting practice of valuation based on lower of cost price or market price whichever is lower. However, as the above selling expenses were not considered by the AO, therefore, it is submitted that the basis of closing

stock valuation as derived by the Assessing Officer is wrong and incorrect. The AO has also wrongly alleged that during the subsequent year the appellant had sold goods at a higher rate. In this respect, the appellant stated that the average selling price of GR 2629 for the period of 1.4.09 to 31.12.09 was Rs.42 per kg minus G.P.12% = Rs.37/Kg. The appellant reiterated that the basis of computation made by the AO based on selling price is not as per accounting standards since the appellant has valued the goods on the principle of cost price or market price, whichever is lower and which is the generally acceptable practice.

After going through the facts of the case, I find force in the contention of the AO that in respect of some of the items there is considerable difference in the rate applied by the appellant to arrive at the value of closing stock with that of average sale price adopted for the statement of sales. Therefore, apparently the finding of the AO that by adopting lesser rate, the value of closing stock has been suppressed is found to be correct. Thus, the addition made by increasing the value of closing stock appears to be in right direction. However, after going through the submissions of the appellant and the supporting Statements/Tables furnished, I am inclined to agree with the contention of the appellant that the average selling price, on the basis of sale bills and Sales Register (net of packing cost and freight and GP 12%) for GR 2428 was Rs.40 per Kg, GR 2629 was Rs.41 per Kg, 2633 was Rs.44 per Kg, Garosol 150 was Rs.41 per Kg and Garosol 110 was Rs. 37 per Kg. which as against the average selling price for GR 2428 - Rs.52 per kg, GR 2629 - Rs.56 per Kg, GR 2633 - Rs.54 per Kg, Garosol 150 - Rs.47.21 per Kg and Garosol 110 - Rs.40.50 per Kg worked out by the AO. It is submitted that even going by the AO's valuation principle, the addition should have been for only Rs.13,72,363/- (Rs.56,96,95 less Rs.43,24,431) and not Rs.56,96,795 as determined by the AO. The finding of the AO that during the subsequent year the appellant had sold goods at a higher rate which was objected by the appellant, apparently found to be incorrect as evidenced from the supporting documents furnished by the appellant that the average selling price of GR 2629 for the period of 1.4.09 to 31.12.09 was Rs.42 per kg minus G.P.12% = Rs.37/Kg. However, I do not find any merit in the argument of the appellant that the basis of computation made by the AO based on selling price is not as per accounting standards since the appellant has valued the goods on the principle of cost price or market price; whichever is lower.

In the light of the above discussion and finding and perusing the entire facts of the case, the addition made by the on account of value of closing stock is restricted to Rs.13,72,363/- as against Rs.48,00,000/- made by the AO. Thus, this ground of appeal is partly allowed”.

Aggrieved by the order of the Id. CIT(Appeals), the Revenue and assessee both are in appeals before the Tribunal.

7. We have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that the difference in the valuation of closing

stock of finished goods as pointed out by the Assessing Officer during the course of assessment proceedings was explained by the assessee by submitting that the relevant finished goods lying in the closing stock were of inferior or off-grade quality. Since the said explanation offered by the assessee was not supported by any documentary evidence, the Assessing Officer rejected the same. During the course of appellate proceedings, an altogether different stand, however, was taken by the assessee by submitting that the stock of finished goods was valued at cost or net realisable value by following the Accounting Standard 2. The working of cost of some of the items of finished goods was also furnished by the assessee before the Id. CIT(Appeals) to show that the value adopted by it for some of the finished goods lying in the closing stock was at actual cost. It was further submitted on behalf of the assessee before the Id. CIT(Appeals) that the average selling price adopted by the Assessing Officer for working out the difference in the value of closing stock of finished goods was not correct. The working in this regard was also furnished by the assessee to show the average selling price of the corresponding items of finished goods lying in the opening stock on the basis of sales made in the month of March. In the working so furnished, the gross profit @ 12% was reduced by the assessee from the average selling price worked out by it to show that the net realisable value so determined was correctly taken for the purpose of valuation of closing stock of finished goods. As rightly contended by the Id. D.R., all these workings prepared and furnished by the assessee for the first time before the Id. CIT(Appeals) in support of an altogether new stand taken to explain the difference in the valuation of closing stock of finished goods was not forwarded by him to the Assessing Officer for giving an opportunity to verify the same, as required by Rule 46A of the Income Tax Rules, 1962 and there is thus a clear violation of the said Rule by the Id. CIT(Appeals) while giving relief to the assessee on this issue. When this position was confronted to the Id. counsel for the assessee and he was asked to offer his explanation in the matter, he has submitted that the relevant stock records are maintained by the assessee and it is possible to ascertain the exact cost of the relevant finished goods lying in the closing stock. The Id. representatives of both the sides have also agreed that if the actual cost of the relevant finished goods lying in the opening stock can be ascertained from the relevant stock records, the same has to be adopted for the purpose of valuation of closing stock unless the assessee is in a position to show that in case of certain items

of finished goods lying in the closing stock, the net realisation value is lower than the cost so ascertained. Keeping in view this submission made by both the sides, we set aside the impugned order of the Id. CIT(Appeals) on this issue and restore the matter to the file of the Assessing Officer for deciding the same afresh after verifying the actual cost of the relevant items of finished goods lying in the closing stock from the relevant stock record maintained by the assessee. Needless to observe that the Assessing Officer shall afford proper and sufficient opportunity of being heard to the assessee.

8. In the result, the appeal of the Revenue and that of the assessee both are treated as allowed for statistical purposes.

Order pronounced in the open Court on June 07, 2017.

Sd/-
(S.S. Viswanethra Ravi)
Judicial Member

Sd/-
(P.M. Jagtap)
Accountant Member

Kolkata, the 7th day of June, 2017

- Copies to :
- (1) **Deputy Commissioner of Income Tax,
Circle-12, Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700 069**
 - (2) **Commissioner of Income Tax (Appeals)-XII,
Aayakar Bhawan,
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 - (3) **M/s. Ganga Rasanyan Pvt. Limited,
50B, Harish Mukherjee Road,
Kolkata-700 025**
 - (4) **Commissioner of Income Tax (Appeals)- , Kolkata;**
 - (5) **Commissioner of Income Tax ,Kolkata**
 - (6) **The Departmental Representative**
 - (7) **Guard File**

By order

*Senior Private Secretary,
Head of Office/DDO
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*