

**आयकर अपीलीय अधिकरण "I" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "I" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.2232/Mum/2015

(निर्धारण वर्ष / Assessment Year : 2007-08)

Shri Arun Bahirwani (Prop. Satya Tex), Unit No. 605 Business Suites,Plot No. 83, S.V. Road, Santacruz (W), Mumbai - 400 054.	<b>बनाम/</b> v.	Asst. Commissioner of Income Tax - 15(2), Aayakar Bhawan, Mumbai - 400 020.
स्थायी लेखा सं./PAN : AGJPB7487M		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

Assessee by :	Shri Vipul Shah
Revenue by :	Shri Saurabhkumar Rai,DR

सुनवाई की तारीख /**Date of Hearing** : 04-01-2017

घोषणा की तारीख /**Date of Pronouncement** : 31-01-2017

**आदेश / ORDER**

**PER RAMIT KOCHAR, Accountant Member**

This appeal, filed by the assessee, being ITA No. 2232/Mum/2015, is directed against the appellate order dated 19-02-2015 passed by the learned Commissioner of Income Tax (Appeals)- 17, Mumbai (hereinafter called "the CIT(A)"), for the assessment year 2007-08, the appellate proceedings before the learned CIT(A) arising from the assessment order dated 22<sup>nd</sup> March, 2013 passed u/s 147 r.w.s. 143(3)(ii) of the Income-tax Act, 1961 (Hereinafter called "the Act").

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income Tax Appellate Tribunal, Mumbai (hereinafter called “the Tribunal”) read as under:-

“1. On the facts and circumstances of the case the Hon'ble CIT (A) erred in disallowing a sum of Rs. 38,87,031/- being the undervaluation of stock. The appellant prays that the above disallowance be deleted.

Ground No. 2 :

On the facts and circumstances of the case the Hon'ble CIT (A) erred in not 'quoting under which section of the Income Tax Act, 1961 said amount is disallowed.

Ground No. 3 :

Without Prejudice to above, on the facts and circumstances of the case the Hon'ble CIT (A) erred in disallowing Rs 38,87,031/ - and erred to understand the concept of AS 2, Valuation of Inventories under FIFO basis of Accounting.

Ground No. 4 :

On the facts and circumstances of the case the Hon'ble CIT (A) erred in initiating penalty proceedings u/ s 271(1)(c) of the Income Tax Act, 1961.”

3. The brief facts of the case are that the assessment u/s 143(3) of the Act was completed in the case of the assessee on 27<sup>th</sup> November, 2011 , which was reopened u/s 147 of the Act and notice u/s 148 of the Act was issued on 19<sup>th</sup> March, 2012 wherein the reasons for re-opening are recorded as under:-

“For the A.Y. 2007-08, assessee had filed its return of income declaring total income of Rs.13,07,685/- which was assessed u/s 143(3) at Rs. 14,09,174/. The assessee had credited Rs. 1,31,36,283/- as closing stock in P&L account and also disclosed in notes on accounts that the valuation of the closing stock was certified by the Proprietor. Also, tax auditor had mentioned that the method of valuation of closing stock was at cost and also furnished the quantity details in Annexure 'F' to form 3CD. The

assessee had offered the value of closing stock @ Rs. 119.69 per mt. However, it was noticed that the opening stock and purchases was made at the average rate of Rs. 160.44 and Rs. 149.78 per mt respectively. Thus, the assessee has understated the value of closing stock of Rs. 38,87,031/-. So valuation difference of closing stock is escaped assessment.”

Notice u/s 142(1) of the Act was issued to the assessee on 29.10.2012 along with questionnaire and in response, the assessee submitted as under:-

“The assessee has maintaining the stock on FIFO basis i.e. First in First Out Basis. As per FIFO basis of valuation of inventories, at the time of sale, the stock which was acquired first gets reduced from the existing stock. Accordingly, the stock acquired last will form part of closing stock.

We would like to inform you that the assessee had valued the closing stock at the rate of Rs 119.69/-. But according to the reasons for reopening the case , it should be valued at Rs. 154.5/-. We would like to inform that the assessee had purchased goods at an average rate of Rs. 177/- for the first 8 months of the financial year i.e. , from April to November. Then for the next three months i.e. , December to February the assessee had purchased goods at an average rate of Rs 113/-. Therefore to conclude the above, the assessee had initially purchased 3,14,241 mtrs of goods at average cost of Rs. 177/- and for the later quarter the assessee had purchased 2,33,882/-mtrs of cloth at the average cost of Rs 113/-. The closing stock as per books of accounts is 1,09,751 mtrs. We would like to submit that as per the FIFO method of stock accounting that the assessee has been following , majority of closing stock is out of stock purchased during the last 3-4 months, as explained above, was low as compared to the cost of the goods sold during the year. Hence, the valuation of the closing stock comes to Rs 119.69 which is the actual cost of the goods forming part of the closing stock as per the FIFO method of inventory accounting followed by the assessee. Thus, there is no undervaluation of stock.”

The A.O. rejected the contentions of the assessee and observed that in the tax audit report the assessee had credited Rs. 1,31,36,283/- as closing stock in the P&L account which is undervalued by Rs. 38,87,031/- as in the opinion

of the A.O. the opening stock and purchases were made at the rate of Rs. 160.44 and Rs. 149.78 per meters respectively , as against which the assessee had offered closing stock at Rs. 119.69 per meter, vide assessment order dated 22-03-2013 passed by the AO u/s 143(3) r.w.s. 147 of the Act.

4. Aggrieved by the assessment order dated 22-03-2013 passed by the A.O. u/s 143(3) r.w.s. 147 of the Act, the assessee filed first appeal before the ld. CIT(A) who rejected the contentions of the assessee and dismissed the appeal. Before the ld. CIT(A) , the assessee contended that the assessee is trader in fabric and following the FIFO method of cost formulae for valuation of inventory but the A.O. did not accepted the submissions of the assessee and made an addition of Rs. 38,87,031/- being difference in the valuation of inventory. The assessee submitted following details to explain the method of accounting, mode of computation of stock quantity and its valuation thereof and submitted.:-

- “i. Quantitative details of opening stock with its value.
- ii. Details of purchase and sales made during the year giving the quantity and value.
- iii. Quantitative details of closing stock with its value.

It was explained that appellant is a Trader in Cloth/Fabric and had explained that it is trading only in Cloth/Fabric and not in any other item/product.”

It was submitted that the assessee has been consistently following FIFO method for the past many years which is accepted by the Revenue and this method of accounting is also allowed as per the AS-2 issued by the Institute of Chartered Accountants of India. The assessee having submitted the monthly summary of the fabric purchased and sold during the year and all other details in support of the claim of closing stock valuation which is

absolutely clear as the provisions of section 145A of the Act relating to method of stock valuation. The assessee submitted the entire summary and had also filed copy of purchase bills in support of the claim of closing stock valuation. The assessee also submitted that once FIFO method of valuation of inventory is applied , then inventory cannot be valued based on average cost method. The ld. CIT(A), however, considering the submissions of the assessee and the facts of the case, rejected the contentions of the assessee and observed that the stock is to be valued at cost or market price whichever is lower based on the arithmetic on the one hand and prudence on the other is also to be followed for computing income of the assessee. In support, the ld. CIT(A) relied upon the decision of Hon'ble Supreme Court in the case of Chainrup Sampatram v. CIT (1953) 24 ITR 481 (SC) and Investment Limited v. CIT (1970) 77 ITR 533 (SC). It was observed by learned CIT(A) that the assessee is contending that it is consistently following FIFO method for valuation of inventory while the auditors of the assessee had stated that it followed a cost method and hence the AO was left with no option but to take average rate for valuation of inventory which assessment order of the AO was confirmed by learned CIT(A), vide appellate orders dated 19-02-2015 passed by the learned CIT(A).

5. Aggrieved by the appellate order dated 19.02.2015 passed by the ld. CIT(A), the assessee is in appeal before the tribunal.

6. Before the tribunal , the ld. Counsel for the assessee submitted that the assessee is consistently following FIFO method of cost formulae for valuation of his stock/inventory. He submitted that complete details were submitted before the authorities below like summary of fabrics purchased and sold by giving quantitative rate and value, copy of purchase bills etc. The copy of tax audit report was also submitted before the authorities below. He submitted that in the case of relative of the assessee in ACIT v. Dinesh V. Bahirwani, the

Mumbai Bench of this tribunal in ITA No. 7479/Mum/2014 for assessment year 2010-11 vide orders dated 18-10-2016 had accepted the contentions of the assessee of following FIFO method for valuation of inventory, by holding as under:-

*“4.3. We have carefully gone through the facts of the case and well reasoned findings recorded by the Ld. CIT(A). It is noted that the assessee has been following FIFO method for valuation of its stocks in all earlier and subsequent years and no addition has ever been made. The assessment order was passed u/s 143(3) for A.Y. 2009-10 accepting FIFO method of stock valuation. It is further noted that assessee had submitted copies of bills and other evidences to justify valuation based upon FIFO method. Further, nothing wrong could be pointed out by the Ld. DR in the detailed and well reasoned findings of Ld. CIT(A). Further, it is noted by us that closing stock of the impugned year had become opening stock of the next year. Thus, viewed from this angle also, overall tax effect taking both the years into account will be tax-neutral. Under these circumstances, we do not find any necessity to make interference in the order of Ld. CIT(A), therefore, this ground is rejected.”*

Thus, the tribunal in the aforesaid order dated 18.10.2016 had , inter-alia, held that the closing stock of the impugned year had become opening stock of the next year and the tax effect is neutral. It is also held in that order that the tax-payer had been consistently following the said method of valuation of inventories which is accepted by Revenue. The ld. Counsel submitted that in the immediately succeeding year i.e. assessment year 2008-09, the A.O. had framed an assessment order dated 30-11-2010 u/s 143(3) of the Act in the case of the assessee itself whereby he accepted the method of valuation of stock followed by the assessee, said assessment order is placed in file.

7. The ld. D.R., on the other hand, submitted that the method of valuation of inventory followed by the assessee is FIFO method, hence, the authorities below had rightly brought to tax the differential amount to tax as the assessee

is required to follow cost or market price whichever is less method for valuation of inventory.

8. In the rejoinder, the ld. counsel for the assessee submitted that all details were submitted before the authorities below and it is wrong to say that quantitative details and other supporting details were not provided to the authorities below. He referred to the ld. CIT(A)'s order para No. 1.2.1 and 1.2.2 wherein it is mentioned that all details were submitted, and the learned counsel for the assessee submitted that in the subsequent year, the Revenue has accepted the same method of valuing inventories followed by the assessee. It was submitted that there is no evasion of tax as tax effect is revenue neutral as closing stock of the current year is opening stock of the immediately succeeding year. The Tribunal in ITA No. 7497/Mum/2014 for assessment year 2010-11 dated 18.10.2016 has deleted the addition made by the A.O. on account of difference in the valuation of the stock in the case of relative of the assessee viz. Dinesh V. Bahirwani(supra).

9. We have considered the rival contentions and also perused the material available on record including the afore-stated tribunal order. We have observed that the assessee is following FIFO method of accounting for the purpose of valuation of stock/inventory which is valued at cost, and the said method of accounting for valuation of inventory is consistently followed by the assessee and accepted by Revenue, which could not be controverted by authorities below as well by learned DR. This method for valuation of inventory is consistently followed by the assessee and regularly accepted by the Revenue and Revenue could not point out any deficiency in the method of accounting for valuation of inventory followed by the assessee and how the correct profit could not be computed by following the method adopted by the assessee in view of the mandate of provisions of Section 145/145A of the Act. We find that the assessee had submitted complete details showing summary

of fabric purchased and sold specifically showing the quantity, rate and value of the opening stock, purchases and closing stock before the authorities below and as such no defect has been pointed out by Revenue except that FIFO method of valuation of inventory is followed by the assessee on cost basis while the AO followed average method for valuation of inventory. The coordinate Bench of this Tribunal in the case of relative of the assessee in ACIT v. Dinesh V. Bahirwani, , in ITA No. 7497/Mum/2014 for assessment year 2010-11 vide orders dated 18-10-2016 had accepted the contentions of the said tax-payer by observing as under:-

*“4.3. We have carefully gone through the facts of the case and well reasoned findings recorded by the Ld. CIT(A). It is noted that the assessee has been following FIFO method for valuation of its stocks in all earlier and subsequent years and no addition has ever been made. The assessment order was passed u/s 143(3) for A.Y. 2009-10 accepting FIFO method of stock valuation. It is further noted that assessee had submitted copies of bills and other evidences to justify valuation based upon FIFO method. Further, nothing wrong could be pointed out by the Ld. DR in the detailed and well reasoned findings of Ld. CIT(A). Further, it is noted by us that closing stock of the impugned year had become opening stock of the next year. Thus, viewed from this angle also, overall tax effect taking both the years into account will be tax-neutral. Under these circumstances, we do not find any necessity to make interference in the order of Ld. CIT(A), therefore, this ground is rejected.”*

The Revenue has also accepted the method followed by the instant assessee consistently for past several years and also for succeeding year and per-se no such contrarian stand of the Revenue was brought on record except for the impugned assessment year by learned DR or authorities below to disprove this contention of the assessee, and also more-so the tax impact is revenue neutral as the closing stock/inventory of the relevant previous year is opening stock/inventory of the immediately succeeding financial year. The assessment order dated 30-11-2010 passed u/s 143(3) of the Act for

assessment year 2008-09 in the case of instant assessee wherein no addition has been made by Revenue on account of method of valuation of inventory is placed on record in file. Revenue has not been able to bring on record that how by following FIFO method of valuation of inventory based on cost, the profits of the assessee could not be computed correctly so as that it infringes on Section 145/145A of the Act. Under these circumstances, we do not find any merit in the contentions of the Revenue and accordingly the appeal filed by the assessee is allowed. We order accordingly.

10. In the result, appeal filed by the assessee in ITA No. 2232/Mum/2015 for assessment year 2007-08 is allowed.

Order pronounced in the open court on 31<sup>st</sup> January, 2017.

आदेश की घोषणा खुले न्यायालय में दिनांक: 31-01-2017 को की गई ।

Sd/-  
(SAKTIJIT DEY)  
JUDICIAL MEMBER

sd/-  
(RAMIT KOCHAR)  
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 31-01-2017

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व.नि.स/ R.K., Ex. Sr. PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "I" Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai