

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'B', BANGALORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

**ITA No.1242(B)/2014
(Assessment year : 2008-09)**

The Asst. Commissioner of Income-tax,
Circle-6(1)56th Floor, Rastrohana Bhavan,
Nrupathunga Road,
Bangalore-560 001

Appellant

Vs

Sri H. Prakashchand Kothari,
Prop: M/s Sumathi Jewellers,
No.1224, Near Bus Stand, Yelahanka,
Bangalore-560 064

PAN No.AANPH7031F

Respondent

**Revenue by : Dr. P.K.Srihari, Addl.CIT
Asasesee by : Smt Prathibha, R Advocate**

Date of hearing : 18-06-2015

Date of pronouncement : 29-06-2015

ORDER

PER SHRI VIJAY PAL RAO, JM:

This appeal by the revenue is directed against the order dated 24-06-2014 of CIT(A), arising from penalty order passed u/s 271(1)(c) of the IT Act, 1961 for the assessment year 2008-09.

2. The revenue has raised the following grounds;

“1.The order of the ld.CIT(A) is opposed to law and facts of the case.

2. On the facts and in the circumstances of the case the ld.CIT(A) erred in cancelling the penalty u/s 271(1)(c) of the Act without appreciating the fact that the assessee has not appealed against the quantum addition and considering the ratio laid down in the order of the Apex Court in the case of Mak Data Ltd Vs DCIT (2014) (1SC 674).

3. On the facts and in the circumstances of the case the ld.CIT(A) erred in holding that the AO had estimated the income even though the AO has highlighted the detailed working in the order and has established the case for levy of penalty u/s 271(1)(c).

4. For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT(A) in so far as it relates to the above grounds may be reversed and that of the AO may be restored”.

3. The assessee is a Proprietor of M/s Sumathi Jewellers. The AO while computing the assessment had made an addition on account of difference in closing stock valuation amounting to Rs.26,27,268/-. The assessee valued the closing stock, taking 80% of such stock as old stock reflecting in the opening stock and rest in the relevant year's purchase. Thus, the assessee is valuing the old stock at a lesser rate than the

current stock, which is at the prevailing market rate. The AO revalued the closing stock of the assessee and consequently, made an addition. Subsequently, he initiated penalty proceedings in respect of the addition made on account of difference in the value of stock and levied a penalty of Rs.8,93,015/- being 100% of the tax sought to be evaded vide order dated 29-04-2011. The assessee challenged the levy of penalty before the CIT(A) and contended that the assessee was consistently valuing the closing stock taking 80% of such stock as old stock, reflecting in the opening stock and balance being the purchase made in the year. It was further, contended that the assessee has furnished all the relevant details and the valuation of the assessee is fixed on the basis of the purity of Gold. Therefore, when this consistent accounting practice of the assessee was accepted by the AO in the earlier years, then merely not accepting the method of valuation by the AO for this assessment year and made an addition by re-valuing the closing stock of the assessee would not justify the levy of penalty. The CIT(A) has accepted the explanation of the assessee and found that there are inconsistency in the value of stock discrepancy adopted by the AO for the purpose of assessment order and penalty order which itself is inexplicable. Thus, the CIT(A) has deleted the penalty by accepting the explanation of the assessee as bonafide.

4. Before us, learned DR has strongly relied upon the penalty order of the AO and submitted that the AO found the discrepancy in the

valuation of the stock and accordingly, made the addition by taking the average purchase price of the stock which has been accepted by the assessee. Therefore, the assessee has furnished inaccurate particulars of income by undervaluing the closing stock warrants levy of penalty u/s 271(1)(c) of the Act.

5. On the other hand, learned AR of the assessee has reiterated the contention as raised before the authorities below and submitted that there is difference in the purity of the Gold in the old jewellery and in the new hall mark jewellery. Accordingly, the assessee consistently valuing the closing stock by adopting a different rate of valuation for the Gold jewellery than the new jewellery purchased during the year. This practice of the assessee has been accepted by the AO for the assessment year: 2007-08 passed u/s 143(3) of the Act. He further contended that even otherwise the old jewellery loses its value and worth due to the old design in comparison to the new design of jewellery. The new design and hall mark jewellery are the fast moving items, whereas the old jewellery becomes obsolete in a short period of time therefore, the valuation of the assessee of old jewellery at a lesser value is based on the consistent practice of the assessee and thus, the claim of the assessee is bonafide.

6. We have considered the rival submissions and perused the material on record. The AO made the addition by re-valuing the closing stock of the assessee with the uniform rate of value being average

purchase price, in comparison to the valuation of the assessee under which the assessee separately valued the old jewellery at lesser price than the prevailing market rate. The reason for giving a different valuation to the old jewellery was explained by the assessee that the old jewellery being a old design becomes obsolete in a short period of time, whereas the new jewellery having the new design is a fast moving stock and therefore, the assessee is valuing the old jewellery at a lesser rate. Further, assessee has been consistently valuing the old jewellery by adopting the same methodology. There is no dispute that for the assessment year 2007-08, the AO while passing the assessment order u/s 143(3) dated 30-04-2009 accepted the method of valuation of closing stock adopted by the assessee. Thus, it s clear that the purpose and object of valuing the old jewellery at a lesser rate by the assessee is to reflect the true and correct valuation of the closing stock of jewellery. Though, the assessee has accepted the addition made by the AO on account of re-valuation of the closing stock of jewellery. However, there was no discrepancy in the quantity of jewellery and the facts presented by the assessee therefore, merely because the AO did not accept the method of valuation and adopted his own rate of valuation resulted an addition to the total income of the assessee would not ipso facto, lead to the conclusion that the assessee has furnished inaccurate particulars of income or concealed the particulars of income. There is no allegation by the AO that the assessee has furnished inaccurate particulars of income, so far as the details of closing stock and

the rate adopted by the assessee are concerned. The AO has also not disputed the fact that the assessee has been consistently valuing the closing stock by taking 80% of such stock as old stock reflecting in the opening stock and balance being purchased during the year. Thus, we find that the explanation of the assessee is not an absolute, incorrect or false, but the same is having a bonafide basis of consistency in the practice of the assessee which was accepted in the earlier assessment years. Accordingly, we do not find any error or illegality in the order of the CIT(A) in deleting the penalty.

7. In the result, the appeal filed by the revenue is dismissed.

Pronounced in the open Court on the 29th June, 2015.

Sd/-

(JASON P BOAZ)
ACCOUNTANT MEMBER

D a t e d : 29-06-2015

Place: Bangalore

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Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-II Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

Sd/-

(VIJAY PAL RAO)
JUDICIAL MEMBER

By order

AR, ITAT, Bangalore