

**IN THE INCOME TAX APPELLATE TRIBUNAL
"G" Bench, Mumbai**

**Before Shri Saktijit Dey, Judicial Member
and Shri Rajesh Kumar, Accountant Member**

ITA No. 5431/Mum/2016
(Assessment Year: 2011-12)

M/s. Shirpur Gold Refinery Ltd.
135, Continental Bldg.
Dr. A.B. Road, Worli
Mumbai 400018

DCIT, Circle 9(3)
Room No. 146
Vs. Aayakar Bhavan, M.K. Road
Mumbai 400020

PAN – AAACA4896K

Appellant

Respondent

Appellant by: Shri B.S. Sharma & Shri Dalpat
Respondent by: Shri V. Vidhnyadhar

Date of Hearing: 10.04.2018
Date of Pronouncement: 26.04.2018

ORDER

Per Rajesh Kumar, AM

This appeal filed by the assessee is directed against the order of the CIT(A)-21, Mumbai dated 07.06.2016 for A.Y. 2011-12.

2. The assessee has raised the following grounds of appeal: -

- “1. The Hon'ble Commissioner of Income Tax Appeal 21, (Hereinafter referred to as the "The CIT(A)-21") erred in law, on facts and under the circumstances of the case, in confirming disallowance made by the Ld Assessing Officer 9(3) (the A.O.,) of Rs.53,43,830/- as bad debts or write offs under Section 36(1)(vii), Section 36(2)(i) and/or Section 37 of the Income Tax Act 1961 (Hereinafter referred to as "the Act").
2. The CIT(A)-21 erred in law, on facts and under the circumstances of the case in confirming addition by the Ld A.O., of Rs.54,11,304/- on the ground that the appellant erred in taking international rate in valuation of closing inventory, purchased from MMTC-the channelized agency, instead of prevailing domestic rate at the year end.
3. The appellate crave leave to add, alter, modify or submit, resubmit afresh any or all the grounds of appeal or any

supporting evidences or as may be required in connection with the grounds herein of appeal on or before hearing of the same.”

3. The brief facts of the case are that the assessee company, engaged in the business of manufacturing, refining and trading in gold and silver, filed its return of income for A.Y. 2011-12 on 05.09.2011 declaring total loss of ₹32,56,62,070/-. The case has been selected for scrutiny and notices under Sections 143(2) and 142(1) of the Income Tax Act, 1961 (hereinafter “the Act”) were issued. In response to the notices, the Authorised Representative of the assessee appeared from time to time and furnished details as called for. The assessment has been completed under Section 143(3) of the Act, on 26.03.2014 determining the total loss at ₹31,49,06,926, inter alia, making additions towards disallowance of bad debts claimed being sundry balances written off for ₹53,43,840/- and difference in value of closing stock at ₹54,11,304/-.

4. Aggrieved by the assessment order, assessee preferred appeal before the CIT(A). Before the CIT(A), the assessee submitted that it has written off sundry balances in the Balance Sheet in respect of both debits and credits which are irrecoverable for more than six years and the net result of written off of sundry balances has been considered as miscellaneous income. The assessee further submitted that it has written back the sundry balances appearing in the credit side of the Balance Sheet amounting to ₹1,18,94,846/- and sundry balances appearing in the debit side of the Balance Sheet at ₹53,43,830/- and the net result of ₹65,51,016/- was offered as other income. The AO, while accepting the sundry balances written off appearing in the credit side of the Balance Sheet disallowed the sundry balances appearing in the debit side of the Balance Sheet on the ground that the conditions prescribed under Section 36(1)(vii) r.w.s. 36(2) are not fulfilled. In so far as the difference in value of closing stock it was submitted that it has purchased gold by importing, out of which unsold portion of the goods has been valued by supplier’s methodology of billing by considering the international prevailing market rate of gold as on the date of valuation. However, the AO has adopted the

cost or market which rate, whichever is less, by taking the prevailing domestic market rate as on valuation date. Since the closing stock of gold consists of goods purchased from international market as well as goods purchased from domestic market, it has valued the closing stock at respective costs or market rate whichever is less, which is in accordance with Accounting Standard-2 issued for valuation of closing stock.

5. The CIT(A), after considering the submissions of the assessee, upheld the additions made by the AO towards disallowance of sundry balances written off by holding that the assessee failed to furnish necessary evidences to prove that the sundry balances written off are really bad debts and which are coming within the parameters of provisions of Section 36(2) of the Act. The assessee even failed to file basic details in respect of the transactions to prove that such debts are arisen out of sales made in the earlier period and such sales has been subjected to tax, which is the precondition for allowing bad debts claimed under Section 36(1) of the Act. In so far as valuation of closing stock is concerned the CIT(A) observed that the AO has considered the value of closing stock on the basis of cost or market rate whichever is less method by considering the cost of imports as per the books of account of the assessee whereas the assessee had determined the cost as on valuation date by adopting the methodology of billing by the supplies by taking GJEPC rate on which the applicable taxes and other cess have been added to arrive at the cost to compare the market rate which is not in accordance with the prescribed method for valuation of closing stock as per the Accounting Standard. The CIT(A) further observed that the cost per kg. of gold as per assessee's books of account works out to ₹2,08,385/- and the market value in the Indian local market is ₹21,18,000/- per kg. The assessee has adopted the cost per kg. at ₹20,81,859/- in respect of closing stock of gold imported through MMTC even though the cost works out to ₹21,08,385/-. Therefore the AO was right in rejecting the valuation of closing stock by the assessee and adopting cost or market rate as per the Indian market whichever is

less to determine the value of closing stock. The relevant portion of the CIT(A)'s order is extracted as under: -

*“5.3 I have considered the submissions carefully. It is seen that cost of purchases as per books is Rs.21,08,385/- per kg (43,01,10,649 / 204 kg). As per the valuation adopted by the appellant, the market value is Rs,20,81,859/- per kg. It has adopted the lower of the two value and the value of the inventory of 204 kg at Rs.20,81,859/- per kg. Gold being a commodity for which market value is readily ascertainable, I find that the AO was correct in considering the market value to be the local rate for gold prevailing on 31.03.2011. A contrary valuation based on hypothetical landed cost of imported gold cannot be considered to be acceptable when there is local market rates available at which such gold can be sold or purchased. It is further seen that the AO has noted that the cost of purchases has been computed at Rs.21,08,385/- per kg and the market value in the Indian local market is Rs.21,18,000/- per kg. The AO has also noted that the local purchase of gold by the appellant has been valued at the cost price or the local market value whichever is lower. He has therefore considered the valuation of 204 kg of gold stock imported through MMTC Ltd. on the basis of cost of purchase which is Rs.21,08,385/- per kg being lower than the market value of Rs.21,18,000/- in the local market. He has rightly rejected the market value computed by the appellant for the gold imported through MMTC Ltd of Rs.20,81,859/- per kg. In these facts, there is no basis for interference in the assessment order and **ground of appeal No.2 is dismissed.**”*

6. The first issue came up for consideration in assessee's appeal is disallowance of sundry balances written off and claimed as bad debts under Section 36(1)(vii) of the Act. The AO disallowed bad debt claim on the ground that the assessee failed to prove bad debt written off in the books of account are arisen out of sales made in the earlier years and same has been offered for taxation. According to the AO, the assessee has written off certain balances appearing in the Balance Sheet under the head 'Loans and Advances' without any evidence to prove that such advances are arisen in the normal course of business. It is the contention of the assessee that it has written off sundry balances appearing in the Balance Sheet under the head 'Loans and Advances' irrecoverable in cash or kind which are outstanding for more than six years and the chances of recovery of such advances is remote. The assessee further contended that it has written of sundry balances in its books of account as irrecoverable.

Therefore the AO was incorrect in disallowing bad debts claimed when he has accepted the sundry balances written off appearing in credit side of the Balance Sheet.

7. We have heard both the parties and perused the material available on record. It is an undisputed fact that the assessee has written off sundry balances appearing in debit as well as credit side of the Balance Sheet under various heads which are outstanding for more than six years. The AO has accepted the sundry balances appearing in the credit side of the Balance Sheet under the head 'Income from other Sources' as miscellaneous income. The AO has disputed the sundry balances appearing in the debit side of the Balance Sheet on the ground that the said write off is not in accordance with the provisions of Section 36(1)(vii) r.w.s. 36(2), as the assessee has failed to prove that such debits are arisen out of the sales made in the earlier year.

8. Having heard both sides we do not find any merit in the finding of the AO for the reason that, when the AO has accepted credit side of the Balance Sheet, there is no reason for the AO to reject the sundry balances written off appearing in the debit side of the Balance Sheet only on the ground that the assessee has failed to file necessary evidence to prove that such debts are arisen out of the sales made in the previous financial year. We further observe that when the assessee has written off debit as well as credit balances, the net result of which may be debit or credit, it has to be treated either as income or expenses. We further observe that the assessee has filed certain evidences to prove that such advances are outstanding for more than six years and are arisen out of normal course of business like advances for expenses and other advances which are irrecoverable. Therefore, in our opinion the AO was incorrect in disallowing sundry balances written off and claimed as bad debt under Section 36(1)(vii) of the Act. Hence we direct the AO to delete the additions made towards sundry balances written off.

9. The next issue came up for our consideration is the additions towards difference in valuation of closing stock. The AO made addition of ₹54,11,304/- towards value of closing stock on the ground that the assessee has not followed prescribed method of valuation of closing stock as per the Accounting Standard, which is evident from the fact that the assessee has followed two different market rates for closing stock of gold procured from two sources. According to the AO, assessee has adopted a separate market rate for imported gold and separate market rate for gold purchased in domestic market. The AO has adopted cost or market rate, whichever is less, on the basis of the prevailing market rate in domestic market as on valuation date and adopted the cost or market rate, whichever is less, to determine the value of closing stock for both imported as well as domestic gold. It is the contention of the assessee that it has followed cost or market price whichever is less method for valuing closing stock. However, its closing stock consists of imported as well as locally procured gold for which it has followed different market rates prevailing on the valuation date. Therefore, its valuation of closing stock is in accordance with the Accounting Standard issued for valuation of closing stock.

10. Having heard both the sides and considering the material on record we find that the assessee has adopted cost or market rate whichever is less method for valuing closing stock. Further, for valuation of imported gold it has considered the prevailing market rate available in the international market as on valuation date and then adopted that cost to determine the value of closing stock. For valuing the closing stock in respect of goods procured in domestic market it has followed cost or market rate in domestic market as on valuation date. There is no dispute in the method followed by the assessee for valuation of closing stock. The dispute is with regard to the prevailing market rate adopted by the assessee. Assessee has adopted two market rates for domestic as well as imported goods. The AO has considered the prevailing market rate in Indian market as on valuation date and then adopted cost to determine the cost or market rate whichever

is less for valuing the closing stock. We find that there is no error in the method followed by the AO to determine the cost or market price. For valuation of closing stock the assessee has to follow cost or market rate whichever is less and such market rate has to be determined on the basis of the prevailing market rate in Indian market as on the valuation date. If the assessee has considered the prevailing rate in Indian market to arrive at cost or market rate whichever is less, then there is no reason for the AO to deviate from the said method. But, the fact remains that as per the finding of the AO the assessee has determined a different market rate by adopting GJEPC rate to arrive at market rate which in our opinion is not in accordance with the prescribed method for valuation of closing stock. Therefore we set aside the issue to the file of the AO and direct him to determine the value of closing stock by adopting the cost or market rate whichever is less method as prescribed under Accounting Standard-2 for valuation of closing stock. If the AO finds the rate adopted by the assessee is in accordance with AS-2, then the AO is directed to delete the addition made towards difference in valuation of closing stock. If the assessee has adopted prevailing market rate in the international market as on the valuation date for valuing the closing stock and compare with that cost, then the AO is directed to ascertain the cost as per the books of account of the assessee then compare and the prevailing market rate in Indian market as on date of valuation to arrive at the cost or market rate whichever is less. Accordingly the ground raised by the assessee is allowed for statistical purposes.

11. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 26th April, 2018.

Sd/-
(Saktijit Dey)
Judicial Member

Sd/-
(Rajesh Kumar)
Accountant Member

Mumbai, Dated: 26th April, 2018

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -21, Mumbai*
4. *The Pr. CIT - 13, Mumbai*
5. *The DR, "G" Bench, ITAT, Mumbai*

By Order

//True Copy//

*Assistant Registrar
ITAT, Mumbai Benches, Mumbai*

n.p.