

**IN THE INCOME TAX APPELLATE TRIBUNAL
“H” Bench, Mumbai**

**Before Shri Shamim Yahya, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA Nos.2858 to 2860/Mum/2018
(Assessment Years: 2012-13 to 2014-15)**

Ketan Sureshchandra Mehta
C-111, Karmakshetara,
SSS Nagar, Antop Hill,
Koliwada, Sion (East),
Mumbai – 400 037

JCIT 17(2)
Room No.123-A,
Vs. 1st Floor, Aaykar Bhavan,
Churchgate,
Mumbai – 400 020

PAN – ABDPM3885F

(Appellant)

(Respondent)

Appellant by: Shri Rajesh B. Gupte, A.R

Respondent by: Shri Manoj Kumar Singh, D.R

Date of Hearing: 01.05.2019

Date of Pronouncement: 08.05.2019

ORDER

PER RAVISH SOOD, JM

The present appeals filed by the assessee are directed against the respective orders passed by the CIT(A)-57, Mumbai for AY. 2012-13, A.Y. 2013-14 and A.Y. 2014-15, dated 01.02.2018, which in turn arises from the respective assessment orders passed under Sec.143(3) of the Income-tax Act, 1961 (for short I-T Act). As common issues are involved in the aforementioned appeals, therefore, the same are being taken up and disposed off together by way of a consolidated order. We shall first advert to the appeal of the assessee for A.Y. 2012-13. The assessee assailing the order of the CIT(A) has raised before us the following grounds of appeal :

- “1. On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) erred in confirming the addition of Rs.87,233/- under sec. 14A Rule 8D against exempt dividend income.
2. On the facts and circumstances of the case and in law, the Ld. CIT(Appeals) erred in not considering the fact that the entire investment was from own funds and not acquired from borrowed funds.
3. The appellant craves leave to add, amend, alter and/or modify any of the above mentioned hereinabove.”

2. Briefly stated, the assessee who is engaged in the business of trading in dyes, chemicals and general merchandise had filed his return of income for A.Y. 2012-13 on 24.09.2012, declaring total income of Rs.1,00,42,842/-. The case of the assessee was thereafter selected for scrutiny assessment under Sec. 143(2) of the I.T Act.

3. During the course of the assessment proceedings it was observed by the A.O that the assessee had valued its ‘Closing stock’ at Rs.2,87,04,589/- on 31.03.2012. On the basis of details gathered by the A.O, it was noticed by him that the assessee had not debited the proportionate amount of costs which were directly attributable to the imports/purchases of Rs.49,15,11,569/- made by him during the year under consideration. It was observed by the A.O that the expenditure of Rs.78,72,116/- viz. (i) interest expenditure: Rs.45,76,054/-; and (ii) transport expenses: Rs.32,96,062/- were directly attributable to the import/purchase of material of Rs. 49,15,11,569/-, part of which material was lying with him as on 31.03.2012 as ‘closing stock’. The A.O was of the view that the assessee could not furnish any documentary evidence which would substantiate that the interest bearing funds were not utilized for making the aforesaid import/purchase of Rs. 49,15,11,569/- during the year under consideration. Further, the A.O was of the view that in the absence of any documentary evidence to the contrary, it could safely be presumed that the assessee was following the method “First-in”, “First-out” (for short ‘FIFO’) for the purpose of valuation of its ‘closing stock’. As such, the A.O was of the view that the ‘direct expenditure’ of Rs.4,59,737/- was attributable to the ‘closing

stock' of Rs.2,87,04,589/-. However, as the same was not taken into consideration by the assessee for the purpose of valuation of the closing stock, therefore, he called upon him to put forth an explanation as to why the expenditure to the said extent 'debited' in the profit and loss account may not be added to the value of his 'closing stock' for the year under consideration. In reply, it was submitted by the assessee that the 'closing stock' was valued by him as per the "Accounting Standard 2" (for short "AS 2"), as per which the inventory was to be valued at "cost or market value, whichever is less". It was submitted by the assessee that as he had consistently been following the said method for valuing his inventory, hence no adverse inferences on the said count were liable to be drawn in his hands. Apart there from, it was also the claim of the assessee that the valuation of the inventory was in accordance with the management decision/standard practice. However, the A.O after deliberating on the contentions advanced by the assessee was not persuaded to accept the same. In fact, the A.O held a conviction that the valuation of the closing stock, work-in-progress, finished products, raw materials and stores and packing material could not be based on the management decision/standard practise, as the same in itself was not backed by any credible evidence. It was observed by the A.O that as the valuation of the inventory was not in accordance with the Explanation to Sec.145A(a) of the I.T. Act, therefore, the claim of the assessee that he had consistently been valuing its inventory by following the aforesaid method did not merit acceptance. The A.O while concluding as hereinabove relied on the judgment of the Hon'ble Supreme Court in the case of CIT Vs. British Paints India Ltd. (1991) 188 ITR 44 (SC). On the basis of his aforesaid deliberations, the A.O was of the view that the method of accounting being followed by an assessee could be disturbed, if it is found that the income cannot be correctly determined on the basis of accounting policy adopted by the assessee. Apart there from, the A.O

held a conviction that the A.O was not bound to accept the system of accounting regularly employed by the assessee, specifically when the correctness of the same had not been questioned in the past. In fact, the A.O was of the view that as there was no estoppel in the income tax matters, therefore, the A.O was not bound by the method followed by the assessee in the earlier years. In the backdrop of his aforesaid deliberations, the A.O made an addition of Rs.4,59,737/-, being the expenditure directly attributable to the 'closing stock', and added back the same to the total income of the assessee.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). However, the CIT(A) observed that the assessee had not specifically assailed the aforesaid addition of Rs.4,59,737/-, as the corresponding relief had been granted by adding the said value to his 'opening stock' for the succeeding year i.e A.Y. 2013-14. On the basis of his aforesaid observations, the CIT(A) did not proceed with the issue under consideration.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Id. Authorized Representative (for short 'A.R') for the assessee, at the very outset submitted that he was not pressing the ground of appeal no. 1. In the backdrop of the said concession of the Id. A.R, the **Ground of appeal No. 1** is dismissed as not pressed. It was submitted by the Id. A.R that the assessee had consistently been valuing its inventory at 'cost or market value, whichever is less', which was in conformity with 'AS-2' issued by the Institute of Chartered Accountants of India. It was submitted by the A.R that the A.O had erred in proportionately allocating the 'transport expenses', other than the inward expenses, to the 'closing stock' for the year under consideration. In sum and substances, it was submitted by the Id. A.R that the A.O had failed to comprehend that the transport

expenses which were in the nature of 'direct expenses' could only be allocated to the value of the 'closing stock'. Apart there from, it was submitted by him that as no interest expenditure was incurred by the assessee insofar the import/purchases of Rs.49,15,11,569/- were concerned, therefore, it was incorrect on the part of the A.O to proportionately allocate the interest expenditure to the value of the 'closing stock' as on 31.03.2012. It was submitted by the ld. A.R that the matter may be restored to the file of the A.O with necessary directions to exclude the aforesaid expenses viz. (i) transport expenses; and (ii) interest expenses, to the extent the same were not in the nature of 'direct expenses' which could be attributed to the 'closing stock' for the year under consideration.

6. Per contra, the ld. Departmental Representative (for short 'D.R') though did not object to the aforesaid submissions of the assessee, however, it was submitted by him that in case the matter is to be restored to the file of the A.O, then a similar direction may also be given for making necessary modifications insofar the 'opening stock' for the year under consideration was concerned.

7. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. We find that as per Sec.145A(a) the valuation of purchase and sale of goods and inventory for the purposes of determining the income chargeable under the head "Profit and gains of business or profession" shall be viz. (i) in accordance with the method of accounting regularly employed by the assessee; and (ii) further adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods to the place of its location and condition as on the date of valuation. In the backdrop of the aforesaid settled position of law, we are of the considered view that

merely for the reason that the assessee as per the method of accounting that was regularly employed by him was not including the 'direct expenses' viz. (i) inward transport charges; and (ii) interest expenses, in the value of his inventory, the same cannot be held to be justified. We thus in terms of our aforesaid observations reject the contention of the assessee and uphold the view taken by the lower authorities that the valuation of the inventory of the assessee was to be worked out after allocating the 'direct expenses' relatable to the same. However, we are in agreement with the contention advanced by the Id. A.R that the expenses over and above the 'direct expenses' could not have been attributed and therein proportionally allocated to the value of the 'closing stock' for the year under consideration. At the same time, our aforesaid view would also be applicable insofar the 'opening stock' of the assessee for the year under consideration is concerned. We are of the considered view that the matter in all fairness requires to be restored to the file of the A.O, with a direction to verify the aforesaid claim of the assessee and therein restrict the allocation of the 'transport charges' and the 'interest expenditure' to the value of the 'closing stock', only to the extent the same is attributable as a 'direct expenditure' to the purchases of Rs. 49,15,11,569/- carried out by the assessee during the year. Apart there from, a similar exercise is also directed to be carried out insofar the 'opening stock' of the assessee for the year under consideration is concerned. Needless to say, the assessee shall during the course of the set aside proceeding furnish the requisite details with the A.O to facilitate giving effect to our aforesaid directions. The **Ground of appeal No. 2** is allowed for statistical purposes.

8. The appeal of the assessee is allowed for statistical purposes.

ITA No. 2859/Mum/2018
A.Y. 2013-14

9. We shall now advert to the appeal of the assessee for A.Y. 2013-14. Briefly stated, the assessee had filed his return of income for A.Y. 2013-14 on 27.09.2013, declaring total income of Rs.1,21,35,770/-. The return of income filed by the assessee was processed as such under Sec. 143(1) of the I-T Act. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2).

10. During the course of the assessment proceedings the A.O observed that the assessee had failed to allocate certain direct expenses ,viz. (i) interest expenditure; and (ii) transport expenses, while working out its 'closing stock' of Rs.3,20,13,613/-. On the basis of his aforesaid deliberations, the A.O attributed a proportionate amount of the aforesaid expenses to the value of the 'closing stock' and made an addition of Rs. 2,07,706/-. Aggrieved, the assessee unsuccessfully assailed the aforesaid addition before the CIT(A), who upheld the same.

11. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. We find that as the facts and the issue involved in the present appeal remains the same as were there before us in the appeal of the assessee for the immediately preceding year i.e A.Y. 2012-13 in ITA No. 2858/Mum/2018, therefore, our order therein passed shall apply *mutatis mutandis* for disposal of the present appeal for the year under consideration i.e A.Y. 2013-14 in ITA No.2859/Mum/2018.

12. The appeal of the assessee is allowed for statistical purpose in terms of our aforesaid observations.

ITA No. 2860/Mum/2018
A.Y. 2014-15

13. We shall now advert to the appeal of the assessee for A.Y. 2014-15. Briefly stated, the assessee had filed his return of income for A.Y. 2014-15 on 26.09.2014, declaring total income at Rs.2,23,61,680/-. The return of income filed by the assessee was processed as such under Sec. 143(1) of the I.T Act. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2).

14. During the course of the assessment proceedings the A.O observed that the assessee had failed to allocate certain direct expenses viz. (i) interest expenditure; and (ii) transport expenses while working out its 'closing stock' at Rs.2,28,970/-. On the basis of his aforesaid deliberations, the A.O attributed a proportionate amount of the aforesaid expenses to the value of the 'closing stock' and made an addition of Rs. 2,28,970/- in the hands of the assessee.

15. Aggrieved, the assessee unsuccessfully assailed the aforesaid addition in appeal before the CIT(A), who upheld the aforesaid addition.

16. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. We find that as the facts and the issue involved in the present appeal remains the same as were there before us in assessee's appeal for A.Y. 2012-13 in ITA No. 2858/Mum/2018, therefore, our order therein passed while disposing off the said appeal shall apply *mutatis mutandis* for disposal of the present appeal for A.Y. 2014-15 i.e ITA No. 2860/Mum/2018.

17. The appeal of the assessee is allowed for statistical purposes.

18. The appeals of the assessee for A.Y. 2012-13 i.e ITA No.2858/Mum/2018, A.Y 2013-14 i.e ITA No.2859/Mum/2018 and A.Y

2014-15 i.e ITA No. 2860/Mum/2018 are allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in the open court on 08.05.2019

Sd/-
(Shamim Yahya)
ACCOUNTANT MEMBER

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 08.05.2019
Ps. Rohit

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)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

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