

**आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई**  
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH : CHENNAI

श्री इंटूरी रामा राव, लेखा सदस्य एवं  
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष

[BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER]

आयकर अपील सं./I.T.A. No.1030/CHNY/2018.

निर्धारण वर्ष /Assessment year : 2011-2012.

The Deputy Commissioner of Income Tax,  
Corporate Circle 4(2)  
Chennai 600 034. **Vs.** M/s. Khazanchi Jewellers Pvt Ltd  
No.52, NSC Bose Road,  
Sowcarpet,  
Chennai 600 079.

**(अपीलार्थी/Appellant)**

**[PAN AABCK 4583E]**  
**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by : Sheri. R. Clement Ramesh Kumar,  
IRS, Addl. CIT.  
प्रत्यर्थी की ओर से /Respondent by : Shri. D. Anand, Advocate

सुनवाई की तारीख/Date of Hearing : 16-07-2019  
घोषणा की तारीख /Date of Pronouncement : 21-08-2019

**आदेश / ORDER**

**PER INTURI RAMA RAO, ACCOUNTANT MEMBER**

This is an appeal filed by the Revenue directed against the order of the Commissioner of Income Tax (Appeals)-8, Chennai ('CIT(A)' for short) dated 05.01.2018 for the Assessment Year (AY) 2011-2012.

2. The Revenue raised the following grounds of appeal:

*'1. The order of the CIT(A) is contrary to law and facts of the case.*

*2.The Id.CIT(A) erred in deleting the addition towards concealed Gross Profit in Gold and Silver of Rs 7,20,59,374/-.*

*2.1 The Id.CIT(A) erred in holding that the presumption of the AC that realizing the value of gold jewellery at gross weight of the jewellery as against the net weight of the gold component in the said jewellery and the presumption with respect to the purity of gold jewellery that equates all jewellery at the same purity have robbed the legitimacy for reworking the Gross profit of the assessee on any revised method of valuation*

*2.2 The Id. CIT(A) ought to have appreciated that Weighted average method is only an improvement over the historical cost method and it does not interfere with or alter the presumption with respect to the content of gold or its purity. Hence the observation of the CIT is completely erroneous and untenable.*

*2.3 The Id. CIT(A) failed to note that in sales tax assessment the focus is essentially on the gross sales returned. Determination of profit is not a primary aspect in sales tax assessment, whereas, profit determination is the core aspect in income tax assessment. In view of this fundamental difference, the acceptance of sales tax returns by itself is not conclusive evidence, which can only be a subordinate or secondary evidence.*

*2.4 The Id. CIT(A) erred in holding that the presumptions made by the AO for rejecting the books of accounts are not strong in merits.*

*2.5The Id.CIT(A) failed to note that omission to furnish details of materials sold in the sales bills is a serious failure, as without the quantities, the sales value can neither be established nor corroborated. Such invoices are not dependable pieces of evidence, as they are incomplete and misleading. Therefore the AO had no option but to reject the books as unreliable, since the quantities underlying the sales value are not verifiable.*

*2.6The Id.CIT(A) erred in holding that suppression of gross profit to the extent of Rs 7.20 crores against the turnover of about Rs 31 crores is highly unlikely and not supported by evidence.*

*2.7 The order of the Id CIT(A) has been vitiated by the erroneous belief that 7.2cr variation in GP is attributed on a turnover of 31CR, whereas the actual turnover is 353.23 Cr. The order of the Ld CIT(A)*

*has lost its orientation and is prejudiced by a mistaken notion about the value of GP in relation to the turnover. The order of the Ld CIT(A) as such is erroneous and is inherently biased due to the mistaken notion on the assessee's turnover and GP.*

*2.8 The Id.CIT(A) erred in holding that the department cannot make unsubstantiated additions when the Act provides sufficient procedures and tools to unearth evidences and bring concealed incomes for taxation.*

*2.9 The Id. CIT(A) failed to note that valuation of stock is an integral part of the assessment. Anomalies in valuation have to be explained, and there is no need to for the AD to produce clinching evidence against the assessee to complete an assessment in every case, where closing stock valuation is suspect or questionable.*

*2.10 The Id.CIT(A) erred in holding that the books and book results have been accepted for all the other years as they are returned and that this arbitrary reworking of gross profit for one year without any basis grossly over-estimating the profit figures cannot be sustained.*

*2.11 Having regard to the decision of the Hon'ble Supreme Court in the case of M/s British Paints India Ltd (1991)(54 Taxman 499 (SC) wherein it is held that "each year being a self-contained unit, and the taxes of a particular year being payable with reference to the income of that year, the method adopted by the assessee had been found to be such that income not properly be deduced therefrom it is not only the right but the duty of the AD to act in exercise of his statutory power. It is incorrect to say that the officer is bound to accept the system of accounting regularly employed by the assessee, the correctness of which had not been questioned in the past. There is no estoppels in these matters and the officer is not bound by the method followed in the earlier years," the Id.CIT(A) ought t 0 have upheld the action of the AO.*

*3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored".*

**3.** The brief facts of the case are as under:

The Respondent-assessee namely M/s. Khazanchi Jewellers Pvt Ltd is a company incorporated under the provisions of the Companies

Act, 1956. It is engaged in the business of manufacturing & trading in gold and silver jewellery. The return of income for the AY 2011-12 was filed disclosing total income of ₹56,25,840/-. Against the said return of income, the assessment was completed on 28.03.2014 u/s.143(3) of the Income Tax Act, 1961 (in short "the Act") at total income of ₹15,05,49,619/-. After receipt of the assessment order, the assessee preferred an petition before the Id. Principal Commissioner of Income Tax (in short "the Id. PCIT") under the provisions of Section 264 of the Act praying that the Assessing Officer was not justified in estimating the book profits without rejecting the books of accounts and making double addition on account of suppression on valuation of closing stock and suppression of gross profits. The Id. PCIT after considering the submissions of the assessee had set aside the assessment order vide order dated 25.03.2015 to the file of the Assessing Officer with direction to redo the assessment after giving proper opportunity of being heard to the assessee. Pursuant to the order of the Id. PCIT, the Assessing Officer passed the assessment order vide order dated 30.03.2016 passed u/s.143(3) r.w.s. 264 of the Act at total income of ₹7,76,85,214/-.

**4.** While doing so, the Assessing Officer made addition on gross profit of ₹7,20,59,374/- by alleging that Respondent -assessee had resorted to suppression of the value of the closing stock. The

Assessing Officer had come to the conclusion that Respondent-assessee had resorted to suppression of the valuation of the closing stock by observing that assessee had not bifurcated the weight of the stones and enamel which are embedded in the gold jewellery and therefore held that no rebate is required to be given in the weight of stones and enamel embedded in the gold jewellery. Similarly, the Assessing Officer also rejected the plea for reduction of valuation of gold jewellery in accordance with purity of the gold by observing that assessee has been selling the entire ornaments of gold at the prevailing rate of gold. After making the above observations, the Assessing Officer had proceeded with the estimation of gross profits by holding that value of closing stock was suppressed by the assessee taking note of the fact that value of closing stock of the gold ornaments is only ₹1,150/- per gram which does not give true picture of the profit earned by the assessee. Therefore, the Assessing Officer had proceeded to estimate the closing stock by adopting average weighted method as against the LIFO method adopted by the Respondent-assessee. Accordingly made an addition of ₹7,20,59,374/- by alleging suppression of value of closing stock.

**5.** Being aggrieved, an appeal was preferred before Id. CIT(A), who vide impugned order allowed the appeal of the assessee by holding that the additions are made by the Assessing Officer on

assumptions and presumptions and without rejecting the books of accounts maintained by the assessee, the Assessing Officer cannot resort to estimation of gross profit and allowed the appeal of the assessee.

**6.** Being aggrieved by the order of the CIT(A), the Revenue is in appeal before us in the present appeal. The Id. Sr. Departmental Representative contended that valuation of the closing stock is an integral part of the assessment, each year is a self contained unit and the taxes of the particular year being payable with reference to the income of that year and the method of accounting adopted by the assessee is that such income cannot be preferably deduced from the books of accounts maintained and therefore the Assessing Officer is justified in rejecting the books of accounts and it is further submitted that in the assessment of income in cases of jewelers, can be done by adopting weighted average method which reflects true profits of the business of jewellery and placed heavy reliance on the assessment order.

**7.** On the other hand, the Id. Counsel Shri. D. Anand, submitted that it is not for the Assessing Officer to direct the assessee to adopt particular method of accounting. In the absences of any finding as to defects in the books of accounts by the Assessing Officer

resorting to estimation of gross profits cannot be made. In this regard he placed reliance on the decision of Delhi Bench of the Tribunal in the case of *Mehta Constructing Co. vs. ITO, New Delhi* in ITA No.3167/Del/2010, dated 16.10.2015 for the assessment year 2007-2008.

**8.** We heard the rival submissions and perused the material on record. The issue in the present appeal revolves around addition on account of alleged suppression of value of closing stock. On perusal of the assessment order, it is clear that Assessing Officer arrived at the estimated value of the closing stock on the ground that value of closing stock shown by the assessee is at ₹1,150/- per gram which is very low. The assessment order also shows that assessee had filed detailed explanation as to how he arrived at the value of closing stock at ₹1,150/- per gram as set out by the Assessing Officer vide page 11 & 12 of the assessment order. The Assessing Officer simply rejected the explanation by holding that weighted average cost method is the best method available reflecting true profits in the business of jewellery. Accordingly, he computed the valuation of the closing stock by adopting weighted average cost method on the quantity of closing stock of 120046.646 grams in the process of which the Assessing Officer estimated closing stock at the end of every calendar month and thereby estimated the gross profit and finally arrived the difference of

higher gross profit of ₹5,71,91,937/- in respect of gold ornaments and silver ornaments of ₹1,48,67,437/-. Thus the Assessing Officer made an addition of ₹7,20,59,374/-. It is clear from the working of the Assessing Officer that he had accepted the value of purchases and sales, quantity of purchases and sales. What the Assessing Officer did is he only enhanced the value of the closing stock which resulted in higher gross profit, resultant the difference in value was brought to tax. It is salutary principles of law that stock should be valued at the cost or resaleable value, whichever is lower, the Department is bound by the choice of method regularly employed unless by that method the true profit or gain cannot be arrived at. The choice of method of accounting lies with the assessee but assessee is bound to show that he follows this method of accounting regularly. Reliance in this regard can be placed on the decisions of Hon'ble Supreme Court in the cases of *CIT vs. British Paints India Ltd*, 188 ITR 44 and *United Commercial Bank vs. CIT*, 240 ITR 355. It is equally settled principle of law that assessee's method of accounting cannot be rejected as improper merely because it gave him benefit in certain years or because according to the Assessing Officer another method is preferable. Reliance can be placed on the decision of Hon'ble Andhra Pradesh High Court in the case of *CIT vs. Margadarsi Chit Funds (P) Ltd*, 155 ITR 442 and the decision of Hon'ble Supreme Court in the

case of *United Commercial Bank (supra)*, the courts had also laid down that lower rate of gross rate cannot be a reason to reject method of accounting adopted by the assessee. Reliance can be placed on the decision of Hon'ble Bombay High Court in the case of *R.B. Bansilal Abirchand Spg. Wvg Mills vs. CIT, (1970) 75 ITR 260* and the decision of Hon'ble Gauhati High Court in the case of *Aluminium Industries (P) Ltd vs. CIT, (1995) 80 Taxman 184*.

**9.** Applying the legal principles to the facts of the present case, the Assessing Officer had not pointed out any defects in the method of accounting followed by the assessee nor disputed the quantity of purchases and sales. The Assessing Officer only estimated the gross profit by adopting weighted average cost method of the stock only because the profits shown or the value of the closing stock is less. As a part of exercise to arrive at the value of the closing stock, assessee can adopt any of the following method. (i) LIFO (ii) FIFO and (iii) Weighted average cost method. It is normal practice in the business of trading in jewellery to follow LIFO method wherein last bought items were sold first, which results in the value of goods lying closing the stock was shown much less than the prevailing market value. This would enable the assessee to keep accumulating the old jewellery and enable the assessee not to pay tax on appreciated value of the gold , which is permissible under law. Having regard to the

ratio decision laid down by Hon'ble Supreme Court in the case of United Commercial Bank (supra), the Assessing Officer is bound to accept this method of accounting preferred by the assessee and he cannot impose another method on the assessee, in the absence of any defects in the method of accounting followed by the assessee. Therefore the addition made by the Assessing Officer cannot be sustained in the eyes of law, viewed from any angle. Thus, we do not find any reason to interfere with the order of the Id. CIT(A).

**10.** In the result, the appeal of the Revenue stands dismissed.

Order pronounced on 21st day of August, 2019, at Chennai.

**Sd/-**

(धुव्वुरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

**Sd/-**

(इंटूरी रामा राव)

(INTURI RAMA RAO)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 21<sup>st</sup> August, 2019.

**KV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant   | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT           | 6. गार्ड फाईल/GF        |