

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
' B' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री इंटूरी रामा राव, लेखा सदस्य के समक्ष

[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. Nos.426 & 1801/Mds/2007

& C.O. No 104/Mds/2007

(in I.T.A. No. 1801/Mds/2007)

निर्धारण वर्ष /Assessment years :2003-04 & 2002-2003.

The Assistant Commissioner
of Income Tax,
Company Circle I,
Madurai.

Vs. M/s. Thiagarajar Mills Ltd,
Kappalur,
Madurai 625 008.

(अपीलार्थी/Appellant)

(Respondent/ Cross Objector)

आयकर अपील सं./I.T.A. No. 1160/Mds/2007

निर्धारण वर्ष /Assessment year : 2004-05.

M/s. Thiagarajar Mills Ltd,
Kappalur,
Madurai 625 008.

Vs. The Assistant Commissioner
of Income Tax,
Company Circle I,
Madurai.

(अपीलार्थी/Appellant)

**[PAN AACT 4304R]
(प्रत्यर्थी/Respondent)**

Department by
Assessee by

: Shri. A.Sundararajan, Addl. CIT.
: None

सुनवाई की तारीख/Date of Hearing

: 02-12-2019

घोषणा की तारीख /Date of Pronouncement

: 05-12-2019

आदेश / ORDER**PER INTURI RAMA RAO, ACCOUNTANT MEMBER**

These appeals and cross objection remanded back to this Tribunal by Hon'ble High Court of Madras vide Tax Case Appeal Nos.1125 to 1129 of 2009 dated 04.09.2019 with the following directions.

"6. Having considered the submissions made by the learned counsel for the Revenue, we do not find any substantial questions of law arising in respect of the method of valuation and therefore all the appeals may be remanded back to the Tribunal and the learned Tribunal may pass final orders about the valuation of closing stock in accordance with law after considering the decision of this Court cited supra while passing the fresh order. The learned Tribunal upon such remand shall pass a fresh order, within a period of six months from today. The Assessee shall appear before the Tribunal at the first instance without any further notice on 17.10.2019".

2. For the sake of convenience and clarity the facts relevant to the assessee appeal in ITA No.1160/Mds/2007 for assessment year 2004-05 are stated herein.

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

The appellant namely "M/s. Thiagarajar Mills Ltd". is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the manufacture of cotton yarn. The return of income for the AY 2004-05 was filed on 29.10.2004 disclosing total income of

Rs.10,78,73,768/-. Against the said return of income, the assessment was completed by the Assistant Commissioner of Income Tax, Company Circle-1, Madurai (hereinafter called "AO") vide order dated 29.12.2006 passed u/s. 143(3) of the Income Tax Act, 1961 (in short 'the Act') at total income of Rs. 15,01,47,156/-, after making several additions, which inter-alia includes addition on account of change in valuation of closing stock of ₹47,45,000/-, with which, we are concerned.

4. The factual matrix of the case is as under:-

It was stated that until assessment year 2003-2004, assessee valued the closing stock of yarn and cloth at market value. However, with effect from assessment year 2004-05, assessee had changed the method of valuation of closing stock at lower of cost of market value in accordance with Accounting Standard 2 issued by the Institute of Chartered Accountants of India. Accordingly, assessee had valued the closing stock of yarn and cloth at ₹191.14 lakhs as against market value of ₹238.59 lakhs. The difference was brought to tax by the Assessing Officer.

5. On appeal before the Id. CIT(A)-I, Madurai, who vide order impugned order dated 23.01.2007 in ITA No.240/06-07 at para 7.3 had deleted the addition by holding that change in the method of

valuation of stock is bonafide and no addition is required on account of change of method of accounting.

6. The Department had challenged the correctness of decision of the Id. CIT(A) before this Tribunal. This Tribunal vide order dated 03.04.2009 in ITA No.1160/Mds/2007 had remitted the issue back to the file of the Assessing Officer to value the opening stock by adopting the same method of valuation which was adopted for closing stock.

7. Challenging this decision of the Tribunal, the assessee carried the matter to the Hon'ble High Court. The Hon'ble High Court vide its judgment dated 04.09.2019 in Tax Case Appeal Nos.1125 to 1129 of 2009 had framed the following question of law.

'1. Whether the Appellate Tribunal was right in reversing the order of the first appellate authority and restoring that of the Assessing Officer for excluding receipts arising in the core business and not specified in Explanation (baa) to section 80 HHC?

2. Whether the Tribunal was right in directing the Assessing Officer to value the opening stock also on the basis as the closing stock in a case of change in valuation of closing stock which was accepted as bonafide and contrary to the decision of the jurisdictional High Court?'

The Hon'ble High Court had remanded the matter back to this Tribunal vide para 6 of its judgment. Thus, the matter arose again before us.

8. When the appeal was called up for hearing, none appeared on behalf of the assessee despite due service of notice as well as the direction of the Hon'ble High Court to appear before the Tribunal at the first instance on 17.10.2019 or any other subsequent hearing. The Hon'ble High Court had directed us to dispose of the matter within a period of six months. Hence, we have no other option but to proceed to dispose of the matter ex-parte.

9. On the other hand, the Id. Sr. Departmental Representative submitted that it is settled position of law that opening stock as well as closing stock should be valued adopting the same method of valuation following the decision of Hon'ble Jurisdictional High Court in the case of *M/s. Kadari Ambal Mills Ltd vs. JCIT and another in TCA No.430 of 2005, dated 20.06.2011.*

10. We heard the Id. Sr. Departmental Representative and perused the material on record. The only issue in the present appeal relates to valuation method of closing stock. Admittedly, the assessee has been following the method of market value for the purpose of valuing closing stock of yarn and cotton. From this assessment year onwards, assessee had changed the method of valuation of closing stock of yarn and cotton by adopting lower of cost or market price

pursuant to Accounting Standard No.2 issued by Institute of Chartered Accountants of India. However, the Assessing Officer had not accepted the change of method of valuation of closing stock and brought the difference on account of change of method of accounting of valuation in the closing stock to tax. On appeal before the Id. CIT(A), the Id. CIT(A) deleted the addition citing that this is a bona fide method of valuation and no addition should be made. The Department carried the matter before this Tribunal, this Tribunal had remanded back the matter to the file of the Assessing Officer to value the opening stock as well as the closing stock adopting the same method of valuation. This direction of the Tribunal is in accordance with the decision of Hon'ble Jurisdictional High Court in the case of *M/s. Kadari Ambal Mills Ltd (supra)* wherein it was stated as under.

"5. Heard the learned counsel. and perused the documents on record. During the relevant assessment year,. the assessee has changed the method of valuation of stock from market price to cost price. The assessee valued the closing stock on the basis of cost price but valued the opening stock on the basis of market price. For the earlier assessment years,. the assessee valued the closing stock of finished goods at market price. The Auditor of the assessee objected the same and also advised to value the closing stock at cost or market price, whichever is less. Therefore, the assessee has changed the method of accounting with regard to valuation of closing stock from market price to cost price. The Assessing Officer accepted the method of valuation of the closing stock at cost price without questioning the bonafide of the assessee. So,. there is no dispute that the Assessing Officer himself had accepted the valuation of the closing stock as on 31.03..1994 as declared by the appellant/assessee. In respect of the opening stock,. the assessee valued the opening stock as on

01.04.1993 at market price. Therefore, the Assessing Officer was of the view that valuation in respect of the opening stock and closing stock should be valued in the uniform method ie, cost price. The dispute is as to whether different methods could be adopted, one for the opening stock and another for closing stock. The said controversy is already settled by this Court in the case of CIT Vs. Carborandum Universal Limited reported in 149 ITR 759 (Mad) - In that judgment,. the issue was as to whether th closing stock is to be valued in the same method as what was applied to the opening stock. The High Court after considering the principles of valuation and also series of case laws held at page 765 as follows:

On a due consideration of the matter, we are inclined to agree with the view of the Tribunal. If the assessee is called upon to apply the new method of valuation to the opening stock of the accounting year as well, then, in consequence, the value of the closing stock of the year previous to the accounting year will also get altered and that will result in the modification of the assessment for the previous year. It is for this reason, the Tribunal has stated that though by adoption of the new nethoc1 of valuation for the closing stock alone the assessee may. appear to get some unintended benefit, in cause of time it will get adjusted and the Revenue will not be a loser.. Even apart from this reason, if the Revenue's contention that the new method should be adopted both to opening stock and closing stock even in the first year of the introduction of the new method is accepted, then it viii lead to the position that the assessee cannot at. all change the method or the assessee has to revalue the closing stock of the previous year which will be the opening stock of this year, and such a revaluation on the new basis as per the aseessee is not ordinarily possible.. That when a new method of valuation of stock is adopted in any particular year, the assessee can on that basis leave intact the valuation of the opening stock on the old method has been laid down in a series of cases."

6. The above judgment was also considered by the Bombay High Court in the case of Melmould Corporation Ye. Commissioner of Income Tax reported in (1993) 202 ITR 789.. In page 'Nos 792 to 794 it was held as follows:

We are not here concerned with whether this is the correct method or an acceptable method for determining cost price. At no stage of the proceedings was the question ever raised as to whether it was permissible for the assesses to revalue its stock by not including in the cost price overhead expenses.. The Tribunal has not dealt with this aspect, viz., the manner in which the closing stock has been valued in the present case. Therefore, the decision of the Supreme Court in the case of CIT Vs. British Paints India Ltd., (1991) 188 ITR 44, is not attracted to the question before us for consideration. The decision of the Tribunal is on the footing that since the closing stock was valued by adopting a certain method, the earns method should be adopting in valuing the opening stock. In other words, the change in the method of valuation, according to the Tribunal, should commence with valuing the opening stock of any previous year by the new method which is to be adopted for valuing the closing stock as well.. The assumption so made by the Tribunal appears to be contrary to the normally accepted accounting principles.. Mr.Bhujals has drawn our attention to a booklet called "Valuation of Stock and work-in-progress- Normally accepted Accounting Principles" brought out by Indian Merchants' Chamber Economic Research and Training foundation and written by Shri G.P.Kapadia. At page 4 of this booklet there is a discussion about change from one valid basis to another valid basis.. It states :

" 2. Where a change from one valid basis to another valid basic is accepted, certain consequences normally follow.. The opening stock of the base year of change is valued on the same basis as the closing stock. Whether the change is to a higher level or to a lower level,, the Revenue normally does not seek to revise the valuation of earlier years. It neither seeks to raise additional assessments, nor does it admit relief under the 'error or mistake" provisions.

3. It is not possible to define with precision what amounts to a change of basic.. It is a convenience, both to the tax payer and to the Revenue, not to regard every change in the method of valuation as a change of basis. In particular, the Revenue encourages the view that change which involves no more than a greater degree of accuracy, or a refinement, should not be treated as a change of basis,

whether the change results in a higher or a lower valuation. In such cases the new valuation is applied at the end of the year without amendment of the opening valuation..” (underlining ours)..

The same principle has been adopted by the Karnataka High Court in CLT Vs. Corporation Bank Ltd., (198) 174 ITR 616. It has said (headnote):

“The two principles applicable with regard to the valuation of stock are that the assessee is entitled to value the closing stock either at cost price or market value whichever is lower,. and that the closing stock must be the value of the opening stock in the succeeding year.. It is,. thus, clear that irrespective of the basis adopted for valuation in the earlier years, the assessee has the option to change the method of valuation of the closing stock at cost or market price, whichever is lower, provided the change is bone fide and followed regularly thereafter.”

Thus, the value of the closing stock of the preceding year must be the value of the opening stock of the next year. The change, therefore, has to be effected by adopting the new method for valuing the closing stock which will, in its turn, become the value of the opening stock of the next year. if, instead, a procedure is adopted for changing the value of the opening stock, it will lead to a chain reaction of changes in the sense that the closing value of the stock of the year preceding will also have to change and correspondingly the value of the opening stock of that year and so on. This was pointed out by the Madras High Court in the case of CIT Vs. Carboradum Universal Ltd.,. (1984) 149 ITR Th9. In the case before the Madras High Court. also the valuation of opening stock had been done by the company on the basis of total cost i..e. cost including overheads while it changed its method of valuation for the closing stock to ‘direct cost’,. i.e.,. cost without overheads. This change in method was made bone fide and the assessee said that it would be adopting this method consistently in the future just as in the present Case. The court in that case held

The change was a bone fide one and was a arrangement which was to be followed year after year, the change would have to be accepted

notwithstanding the fact that during the assessment year in question, which was the first year when the change of method was brought about, a prejudice or detriment might be caused to the revenue because the opening stock was valued at. total Cost. while closing stock was valued at direct cost..”

It said (Head note):

If the assessee is called upon to apply the new method of valuation to the opening stock of the accounting year as well, the value of the closing stock of the year previous to the accounting year will also have to get altered which will result in a modification of the assessment of that previous year.”

7. Following the judgment of this Court cited supra and also agreeing with the judgment of the Bombay High Court, we are of the view that the Tribunal is wrong in holding that there must be uniformity in the method of valuation of opening stock as well as the closing stock. In the instant Case, the Assessing Officer has accepted the valuation of the closing stock as on 31.03.1994 at cost price and also bone fide of the assessee is not in dispute. Further, the assessee has followed the new method consistently. Therefore, the order of the Tribunal is wrong in rejecting the contention of the assessee. Hence, we set aside the order of the Tribunal and restore the order of the Commissioner of Income (Appeals).. In the circumstances, we answer the above questions of law in favour of the assessee and as against the Revenue. The Ta case (Appeals) stands allowed. No costs.”

In view of the above legal position and facts, the earlier order of the Tribunal stands reversed and we restore the order of Id. CIT(A). In the circumstances, the appeal filed by the assessee stands allowed.

11. The issues in other grounds of appeal does not survive because the question of law framed by the Hon'ble High Court stands

dismissed by Hon'ble High Court. In the result, the appeals filed by the Revenue stand dismissed and cross objection filed by the assessee becomes infructuous.

12. To summarize the results, the appeals of the Revenue in I.T.A. Nos.426 & 1801/Mds/2007 for Assessment years 2003-04 & 2002-2003 are dismissed, the appeal of the assessee in No.1160/Mds/2007, for assessment year 2004-05 is allowed, whereas the Cross Objection No. 104/Mds/2007 filed by the assessee is dismissed.

Order pronounced on 5th day of December 2019, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(इंटूरी रामा राव)

(INTURI RAMA RAO)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated:5th December, 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 |