

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA No.924/M/2019
Assessment Year: 2015-16**

M/s. Shyam Jewellers, Shop No.3, Gurunanak Shopping Centre, Shankar Lane, Kandivali (W), Mumbai – 400 067 PAN: AAKFS 8991C	Vs.	ACIT 33(3), Room No.608, 6 th Floor, C-12, Pratyaksha Kar Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Nishit Gandhi, A.R.
Revenue by : Shri T.S. Khalsa, D.R.

Date of Hearing : 01.12.2020
Date of Pronouncement : 08.01.2020

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 12.10.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2015-16.

2. The only issue raised by the assessee is against the confirmation of addition of Rs.29,68,151/- by Ld. CIT(A) as made by the AO by changing the method of valuation of stocks followed by the assessee consistently.

3. The facts in brief are that the AO during the assessment proceedings noticed that assessee has under valued the closing stocks and accordingly called upon the assessee's counsel to explain the method followed by the assessee for valuing stocks. The Ld. A.R. stated that assessee is following method of valuation on the basis of market value or at cost whichever is lower and also produced a chart of market rates of 24 carat gold and 22 caret of gold. The AO observed that assessee has not applied the correct rate to value the closing stocks. According to the AO, the rate applied to the opening stocks is market rate + 12.22% which is added towards labour and suppliers margin. However, in the closing stocks, the AO noted that assessee has applied only 7% towards labour and suppliers margin. The necessary details reproduced below:

	Quantity (gms)	Amount	Market Rate	Rate applied by assessee	Rate Difference	% tage of rate difference
OP Stock	21466.983	64659546.12	2684	3012.01	328.01	12.22
CI Stock	22765.154	60899488.00	2500	2675.11	175.11	7.00

4. The AO rejected the contentions of the assessee qua applying the 7% on the market rate in order to value the closing stocks by holding that when 12.22% is applied on the market rate to value the opening stock why the same should not be applied on the closing stock. According to the assessee the labour charges and supplier's margin is not standard therefore it varies from case to case. The AO did not agree to the accept the submissions of the assessee and finally made an addition of

Rs.29,68,151/- by framing assessment dated 25.10.2017 under section 143(3) of the Act by applying 12.22% on the market rate to value the closing stocks.

5. The Ld. CIT(A) also dismissed the appeal of the assessee by holding and observing as under:

"4.2 I have carefully gone through the assessment order and submissions of the assessee. Assessee argued that it is following FIFO method in accounting of stock and books of accounts are audited and no discrepancy was ever pointed out by the Auditor. The method of valuation was consistently followed and there was no deviation in the method of valuation for the year from the earlier years. The cost of items comprised the labour charges and profit margin of the seller. Assessee further submitted that the AO observed that value of opening stock is higher than that of closing stock because of gold rate at the beginning of the year was higher (2685) and the rate of 22ct gold as on 31.03.2015 was 2500 because of changing market rates. Similarly, the labour/ making charges and profit margins of sellers differ from item to item and trader to trader. The AO did not question the 22ct gold rate taken by the assessee for valuation of opening stock and closing stock at 2685 and 2500 respectively. AO found fault with the marking up made by the assessee over the rates of 22ct gold. In his analysis in para 3.1, the AO gave a table to show that the component of labour and profit margin of seller was 12.22% in opening stock and only 7% in c/s, which is part of the account books prepared by the assessee. This lower marking up of closing stock as correctly observed by the AO, resulted in under valuation of closing stock resulting in under-statement of income for the year. It is not the argument of the assessee that the labour charges have drastically come down as on 31.03.2015 compared to 01.04.2014. It is also not the argument of the assessee that the assessee changed the suppliers of gold ornaments at the end of the year compared to beginning of the year. It is also not an argument that the suppliers have drastically cut down their profit margins for any reason. Therefore, on the ornament gold (22ct) rate which is between (2500 - 2700) the fall in labour and profit margin by 5.22% points i.e. 12.22%. to 7% is abnormal. As there is no fall in labour charges or the profit margins of suppliers at the end of the year, the valuation of closing stock by marking up by only 7% has resulted in substantial under-valuation of closing stock resulting in showing lesser profit/more loss for the year. Therefore, the addition made on account of under-valuation of closing stock of Rs.29,68,151 is upheld. Ground nos.1 to 5 is dismissed."

6. After hearing both the parties and perusing the material on record, we notice that in this case the AO has made an addition of Rs.29,68,151/- by increasing the rate applied by the assessee to value the closing stock. The assessee applied market value +

7% whereas the AO applied market value + 12.22% on the plea that assessee has applied 12.22% to value the opening stock. The Ld. CIT(A) also dismissed the appeal of the assessee by holding that the assessee has under valued the stocks to the extent of 5.22% and thus dismissed the appeal of the assessee. The Ld. A.R. vehemently submitted before us that the labour charges and margin of the suppliers is never constant and keeps on changing. The Ld. A.R. submitted before us that assessee has been following a consistent method of valuing his stocks at market value or cost whichever is lower and can not be changed the tax authorities at their whims and fancies. We have examined the facts on records and find merit in the contentions of the Ld. A.R. that the method of valuing closing stock can not be changed when the same is followed consistently by the assessee. The rate to be applied to the closing stocks depends on cost to the assessee. The AO has not given any reasoning as to why the rate applied by the assessee is wrong and has simply on the basis of rate which was applied to closing stocks came to the conclusion that closing stocks are undervalued. The case of the assessee is supported by the decision of the Hon'ble Supreme Court in the case of CIT vs. Realest Builders and Services Ltd. 307 ITR 202 SC. The AO has not disputed the consistency of method followed by the assessee. Besides we find that the exercise of changing the method of valuation and making addition by applying a different rate to the closing stock is a tax neutral addition as the closing stock of the current year will automatically become to the opening stock of the next year. We do not find any force in the arguments of the Ld. D.R. that the

income of each year has to be assessed separately and undervaluation of stock has direct bearing on the profitability of the assessee to be assessed in that particular year. Since the whole exercise of the AO is taxed neutral and therefore we are not in a position to sustain the order of Ld. CIT(A) on this issue. The Ld. CIT(A)'s order is set aside and the AO is directed to delete the addition.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 08.01.2020.

Sd/-
(Ram Lal Negi)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 08.01.2020.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.