

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H" MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No. 4945/MUM/2019
Assessment Year: 2016-17**

Mrs. Khurshed H. Attari,
Flat No. 6, East and West Court,
103, Shahid Bhagat Singh Road,
Mumbai-400 001.

PAN No. AAAPA 9806 C

Appellant

ITO Ward-17(2)(1),
Vs. Kautilya Bhavan, G. Block, BKC,
Bandra (E),
Mumbai-400051.

Respondent

Assessee by : Mr. Deepak Tralshawala, Advocate
Revenue by : Mr. Gurbinder Singh, DR

Date of Hearing : 11/08/2021
Date of pronouncement : 08/11/2021

ORDER

PER S. RIFAUR RAHMAN, A.M.

The present appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-28, Mumbai [in short 'CIT(A)'] for the assessment year 2016-17 dated 27.05.2019 and arises out of assessment completed u/s 143(3) of the Income Tax Act, 1961 (in short the Act).

2. Brief facts of the case are, the assessee filed its return of income on 12.10.2016 for assessment year 2016-17 declaring current year's loss of ₹3,65,761/-. The case was selected for limited scrutiny under CASS and statutory notices u/s 143(2) and 142(1) were issued and served on the assessee. In response, the assessee filed the written submissions and placed on record.

The assessee is an individual engaged in the share trading business and during assessment proceedings, the Assessing Officer observed that the assessee has declared loss from business and interest income for which he has filed the relevant information. On verification of the records, the AO observed from the tax audit report that profit of the assessee was decreased by ₹66,03,013/- due to change in stock valuation. In the tax audit report, the auditor commented on the method adopted for valuation of stock as stock has been valued at lower of cost or market value. The AO observed that the assessee is into business of share trading and valued stock in hand at lower of cost or market value and as a result of which profit of the assessee was reduced by ₹66,03,013/-. In order to verify the same, the assessee was asked to submit the relevant information on valuation of shares. In response, the assessee filed written submission wherein it was submitted that change of method of valuation as on 31.03.2016 based on the introduction of income computation and disclosure standard by Central Government vide notification No. 32/2015 on 31.03.2015. The Assessing Officer observed that he does not find any merit in the submission of the assessee considering the fact that the notification is effective from 2017-18 and not for the year under consideration. By merely changing the method of valuation, the assessee has reduced the profit to the extent as mentioned above which was not the loss actually suffered by the assessee. According to the Assessing Officer, the reduction in profit is only the arbitrary loss because of change in valuation as per the aforesaid notification which is not applicable for the year under consideration. Accordingly, he made the addition to the extent of reduction in valuation of stock.

3. Aggrieved, the assessee preferred an appeal before Ld. CIT(A)-28, Mumbai. Before the Ld. CIT(A), the assessee filed a detailed submission justifying the reasons for adopting the changes in valuation of stock.

4. After considering the detailed submission of the assessee, the Ld. CIT(A) dismissed the appeal of the assessee with the following observation:

“5.5 Considering the rival stands, I find that the fact cannot be ignored that the IDS was postponed to A.Y.2017-18 by virtue of the notification from the Central Government on 29th September, 2016. Further, I find and observe that it may be so that the Audit Report, incorporating the change in the valuation of stock in adherence to IDS, was signed on 26th September, 2016, yet the question remains as to why did the appellant not take the due cognizance of the factum of the postponement of the ICDS to the Assessment Year 2017-18? It cannot be ignored that the IDS had no applicability to the 'A.Y.2016-17, which is the pertinent year under consideration. The appellant could have very well revised the Audit Report/return of income by maintaining the status-quo relating to the valuation of stock and thus, confirming to the postponement of the ICDS. It is also pertinent to note that whenever any Accounting Standard is stipulated to be introduced from a certain Assessment Year, then in such a case to operationalize the same for an earlier year is contrary to the law.”

5. Aggrieved with the above order the assessee is in appeal before us raising following grounds of appeal:

“On the facts and circumstances of the case and in law, the Ld. CIT(A)-28, Mumbai erred in retaining the addition of ₹66,03,013/- made by the AO by rejecting the method of valuation of stock adopted by the appellant on the ground that though the valuation method was in adherence to ICDS (Income Computation and Disclosure Statement), the ICDS were postponed to the following year.”

6. Before us, the Ld. AR brought to our notice that the assessee is in business of share trading and during this assessment year the assessee changed the method of valuation of closing stock. Based on the notification of ICDS No. 32/2015 and adopted the market value which is less than the actual cost of the shares. He brought to our notice notification of ICDS which is effective from assessment year 2016-17. As he brought to our notice, the above notification was postponed and applicable w.e.f. assessment year 2017-18. He brought to our notice page 23 and 24 of the Paper Book to highlight the implications of the adoption of recommended valuation of closing stock in ICDS. He also brought to our notice Circular No. 10 of 2017 which is placed at page 28 of the Paper Book and also he brought to our notice question 19 in page 31 of the Paper Book from the above notification No. 32/2015.

The Ld. AR further submitted that the Assessing Officer treated the valuation of closing stock by the assessee as an arbitrary loss and the Ld. CIT(A) accepted the observation of the Assessing Officer and rejected the submission of the assessee. With the observation that the audit report was signed on 29.09.2016 and still the question remains as to why did the assessee not take a due cognizance of the postponement of the ICDS to the assessment year 2017-18 and Ld. CIT(A) observed that it cannot be ignored that the ICDS had no applicability to the assessment year 2016-17, which is the pertinent year under consideration. He brought to our notice that the Ld. CIT(A) advised the assessee that she could have very well revised the audit report/return of income by maintaining status quo relating to valuation of stock and thus confirming to the postponement of the ICDS. He strongly objected to the finding given by the Ld. CIT(A) and he relied on the decision of ITAT Chennai Bench in the case of Handy

Waterbase India (P.) Ltd. v. DCIT (ITA No. 672 & 1228/Chny/2018 & 422/Chny/2020 for assessment years 2009-10 to 2011-12) dated 21.04.2021 and he brought to our notice the observation of the Bench as below :

“Therefore, the statute has provided deduction to all units established as 100 per cent EOU as per EXIM policy under s. 10B – Thus, there is a promise from the Government of India for 100 per cent tax rebate to units established in MEPZ – Therefore, the issue needs to be considered in light of the principles of doctrine of legitimate expectations and doctrine of promissory estoppel – As per said principles whatever be the nature of function the Government is discharging, it is subject to the rule of promissory estoppel – Therefore, the privilege granted to the assessee u/s 10B cannot be withdrawn by subsequent clarification or amendment – Concept of legitimate expectations means that the administrative decision-makers are bound by certain representations which they make to individuals who stand to be affected by their orders.”

6.1 Further, he relied in the jurisdictional High Court decision in the case of CIT v. Modern Terry Towers Ltd. 357 ITR 750 (Bombay) and decision of Hon’ble Supreme in CIT v. Hindustan Zinc Ltd. (291 ITR 391) (SC).

7. On the other hand, the Ld. DR relied on the orders passed by the lower authorities.

8. Considered the rival submissions and material on record. We noticed that the assessee is in the business of share trading and she is historically followed the method of valuing the closing stock on actual cost basis and subsequent to the notification from ICDS to value the closing stock based on the actual cost or market value as on the date of valuation date whichever is less. It is fact on record that the above said notification on valuation of closing stock was

postponed and effective from assessment year 2017-18. From the record, we noticed that the Assessing Officer rejected the method adopted by the assessee, considering the fact that it results in lesser value of closing stock and it effects the profit declared by the assessee. We also observed that the Ld. CIT(A) also of the view that the assessee should not have valued the closing stock considering the fact that the method of valuation as per ICDS is postponed and assessee is not obligated to adopt the same. In our considered view, the action and proposal of the tax authorities is not proper. It is fact on record that the value of the market price of the shares has gone down below the actual cost as per the books of the assessee and it is fact on record that the investment value of the shares is less compare to the market value existing on the date of valuation of closing stock. It is not mandatory that the assessee has to adopt the same valuation of stock historically adopted by the assessee and in consequence to the method to be adopted by the assessee based on the notification issued by the ICDS, the assessee came to know the actual value of stock and therefore, it is the choice of the assessee to adopt the prudent method of accounting and in our view, the assessee can change the valuation of closing stock at any point of time and afterwards it is the duty of the assessee to follow the same method consistently. We observed that the assessee has changed the method of accounting during this year and even though it is only recommendatory status of the notification issued by the ICDS for this assessment year and not mandatory for this assessment year. In our considered view, the assessee has right to change its method of accounting any time. Therefore, the method adopted by the assessee considering the fact on record that the actual value of investment which is realizable in the market is less in compared to original investment. Therefore, we find that method of accounting adopted by the assessee for this assessment year is within

her right and proper. Therefore, the ground of appeal raised by the assessee is hereby allowed.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 08/11/2021.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 08/11/2021

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)
ITAT, Mumbai