

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.4332/MUM/2023
Assessment Year: 2016-17**

Mr. Altaf H. Attari, Flat No.6, East And West Court, 103 Shahid Bhagat Singh Road, Mumbai - 400001 PAN: AAAPA9805B	Vs.	Income Tax Officer, WD – 17(1)(1), Kautilya Bhavan, G Block, BKC, Bandra (E) Mumbai - 400051
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Deepak Tralshawala, A.R.
Revenue by : Shri C.T. Mathews, Sr. D.R.

Date of Hearing : 21.05. 2024
Date of Pronouncement : 28.06. 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the assessee against the order dated 24.11.2023, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2016-17.

2. In this case, the Assessee being engaged in the business of trading in shares and securities, had declared his income at loss of Rs.52,843/- by filing his return of income on 10.10.2016, which was selected for scrutiny under CASS and therefore the statutory notices were issued to the assessee, in response to

which the assessee furnished relevant details. On perusing Form No.3CD it was seen by the Assessing Officer (AO) that at Sl. No.13(b) which deals with the issue of change in method of accounting employed vis-à-vis the method employed in the immediately preceding previous year, the auditor has mentioned that there is a change in the method of stock valuation. Further Sl. No.13(c) of form No.3CD states that owing to this change in method of valuation of stock there is a decrease in profit of Rs.44,77, 061/-.Consequently the AO asked the assessee to explain the rationale for changing the method of valuation of stock.

2.1 The Assessee in response, submitted that earlier the assessee was valuing his stock of shares at cost, however, after introduction of the ICDS (Introduction of Income Tax Computation and disclosure standards) introduced vide Notification No.32/2015 on March 31, 2015, the valuation on securities can be done only at cost or net realizable value whichever is lower. Therefore, the assessee changed his accounting policy in order to follow the standards/parameters laid down by ICDS. Subsequently, the application/implementation of ICDS was postponed for the A.Y. 2017-18 giving clarification on certain issues and amending certain clauses. However, as in the assessee's case audit report was signed on 26.09.2016 and therefore the assessee proceeded with the guidelines existed as on 26.09.2016. Whereas Notification No.87 which postponed the ICDS to A.Y. 2017-18 was issued only on 29.09.2016. Even otherwise though ICDS was postponed but still the valuation method prescribed is not wrong and that it had only led to pre-preponement of the event.

2.2 Though the aforesaid claim of the assessee was considered by the AO, however, not being satisfied/acceptable not found as correct mainly on the following reasons:

“that a notification No.87 was issued on 29.09.2016 whereas the change in method of valuation of stock adopted by the assessee was without any basis. Even if the argument of the assessee to the effect that the postponement of the ICDS was notified on 29.09.2016 i.e. after finalizing the audit, cannot be any avail to the Assessee, in view of the fact that the return of income of the assessee for the A.Y. 2016-17 was filed only on 10.10.2016 i.e. 12. days after the notification postponing ICDS to A.Y. 2016-17. Even otherwise in view of the changed position, it was the responsibility of the assessee to rectify his return of income voluntarily and not to take any advantage of the computation standards which was not available to him”.

The AO ultimately made the addition of Rs.44,77,061/- under section 145A of the Act on account of enhancing the value of the closing stock by the assessee.

3. The Assessee, being aggrieved challenged the aforesaid addition before the Ld. Commissioner, who affirmed the aforesaid addition by dismissing the appeal of the Assessee, against which the Assessee is in appeal before us.

4. We have heard the parties and perused the material available on record. The Assessee submitted that he acted in bonafide manner in following the circular No.10/2017 which was initially made applicable from the A.Y. 2016-17. As during the existence of said circular, the Assessee got audited/prepared and signed his audit report on 26.09.2016 and therefore the assessee continued to follow the ICDS which was initially made applicable from A.Y. 2016-17 but subsequently postponed/made affective from 2017-18 vide Notification No.87 issued on 29.09.2016,

which goes to show that the Assessee acted in bonafide manner and in good faith. On the contrary, the Ld. DR supported the impugned order.

5. On the rival contention of the parties, the question emerge whether the Assessee was right in adopting the method of accounting in pursuance to ICDS initially introduced from A.Y. 2016-17 which was subsequently made applicable from A.Y. 2017-18 onwards.

We observe that in the assessee's mother's case i.e. ITA No.4945/M/2019 Mrs. Khurshed H Attari vs. ITO, Ward-17(2)(1) decided on 08.11.2021, the Hon'ble co-ordinate Bench of the Tribunal dealt with the identical issue and allowed the method of accounting adopted by the assessee while following ICDS in the A.Y. 2016-17. For the sake of brevity and ready reference conclusion drawn by the Hon'ble Tribunal is reproduced herein below:

"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 decisionmakers 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.”

6.2 As the issue dealt with by the Hon'ble co-ordinate Bench of the Tribunal in the aforesaid case was exactly same, hence respectfully following the judgment of the co-ordinate Bench, we are inclined to delete the addition under consideration. Hence the addition is deleted.

7. Consequently, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 28.06.2024.

**Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.