

**IN THE INCOME TAX APPELLATE TRIBUNAL
"F" Bench, Mumbai**

**Before Shri Jason P. Boaz, Accountant Member
and Shri Sandeep Gosain, Judicial Member**

ITA No. 5189/Mum/2014
(Assessment Year: 2010-11)

A C I T - Circle 25(3)
Room No. 308, 3rd Floor
Pratyakshakar Bhavan, BKC
Bandra (E), Mumbai 400051

Vs.

Shri Uday Mahadev Ghare
1, Sandesh Bhavan, Bajaj Cross
Road, Kandivali (W)
Mumbai 400067

PAN - AAKPG5304N

Appellant

Respondent

Appellant by: Shri Mukundraaj M. Chate
Assessee by: Shri K. Shivaram &
Ms. Neelam C. Jadhav

Date of Hearing: 01.03.2016
Date of Pronouncement: 02.03.2016

ORDER

Per Jason P. Boaz, A.M.

This appeal by the Revenue is directed against the order of the CIT(A)-35, Mumbai dated 24.06.2014 for A.Y. 2010-11.

2. The facts of the case, briefly, are as under: -

2.1 The assessee, Proprietor, M.K. Ghare Jewellers, engaged in the business of manufacture and trading of jewellery, filed his return of income of A.Y. 2010-11 on 30.09.2010 declaring total income of ₹1,32,24,443/-. The return was processed under section 143(1) of the Income Tax Act, 1961 (in short 'the Act') and the case was subsequently taken up for scrutiny. The assessment was completed under section 143(3) of the Act vide order dated 30.03.2013, wherein the income of the assessee was determined at ₹2,57,63,030/- in view of, inter alia, the following additions: -

- | | | |
|-------|---|--------------|
| (i) | On account of suppression of profits | ₹94,01,024/- |
| (ii) | On account of undervaluation of closing stock | ₹31,07,560/- |
| (iii) | Deemed Rental income | ₹30,000/- |

2.2 On appeal, the CIT(A)-35, Mumbai, following the decision of the Coordinate Bench of this Tribunal in the assessee's own case for A.Y. 2009-10 in ITA No. 4125/Mum/2012 dated 19.07.2013, allowed the assessee relief on the additions listed in para 2.1 (supra) at (i) on account of suppression of profits - ₹94,01,024/- and (ii) undervaluation stock ₹31,07,560/-. The addition at (iii) in respect of deemed rent of ₹30,000/- was upheld by the CIT(A). In this manner, the impugned order of the learned CIT(A) dated 24.06.2014 for A.Y. 2010-11 allowed the assessee partial relief.

3. Revenue, being aggrieved by the order of the learned CIT(A)-34, Mumbai dated 24.06.2014 has preferred this appeal raising the following grounds: -

- “(i) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the Assessing Officer to delete the addition on account of suppression of profits of Rs.94,01,024/- and under valuation of closing stock of Rs.31,07,560/- without appreciating the fact that average cost method would decrease the value of cost resulting in less profit.*
- (ii) The appellant prays that the order of the Ld. CIT(A) on the above ground be set aside and that of the AO be restored.*
- (iii) The appellant craves leave to amend or alter any ground or add a new ground.”*

3.2 We have heard the rival contentions of both the learned D.R. for Revenue in support of the grounds raised and the learned A.R. for the assessee in support of the impugned order of the learned CIT(A) and have perused and carefully considered the material on record. At the outset, the learned A.R. for the assessee brought to our notice that the issue raised in the grounds of appeal (supra) have been considered and held in favour of the assessee by the order of the Coordinate Bench of this Tribunal, in the assessee's own case for A.Y. 2009-10, in ITA No. 4125/Mum/2012 dated 19.07.2013.

3.2.1 We have perused the aforesaid order of the Coordinate Bench of the Tribunal in the assessee's own case for A.Y. 2009-10 (supra) and find that as contended by the learned A.R. for the assessee, the Coordinate Bench in

its order in ITA No. 4125/Mum/2012 dated 19.07.2013 has considered the issue in favour of the assessee; holding as under at para 5 thereof: -

“5. We have perused the records and considered the rival contentions carefully. The dispute is regarding additions made by AO on account of method of accounting being followed by the assessee and on account of valuation of closing stock. The assessee was in the business of manufacturing and trading of jewellery. The assessee had maintained proper books of accounts and had maintained quantitative details. The assessee had followed average cost method of valuation of closing stock taking average over the opening stock and the purchases. The AO has not accepted the method followed and held that Lifo method is required to be followed. He has therefore taken the entire opening stock as sold and the average cost has been computed only over the purchases. He has also rejected the accounting results and has proceeded to compute the profit in respect of opening stock and purchases separately which have resulted into substantial additions. In our view the approach adopted by the AO is not correct. The assessee has maintained proper books of accounts in which no defects have been pointed out by the AO either in the purchases or in the sales. The accounting results as per the profit/loss and trading account prepared by the assessee could not be rejected unless some defects are pointed out in the books of accounts. The AO has not accepted the method of valuation of closing stock, which was the average cost basis. The assessee has explained the difficulty in following the Lifo or Fifo method as in the sale bills only the net rate and value have been given and it was not possible to correlate various items or inputs which have gone into the manufacturing of jewellery. In such a situation the average cost method has been followed. The average cost method is one of the accepted methods of valuation of as held by the Tribunal in case of ACIT Vs. Jagdish Chand (Supra). Such method has also been held valid in several other cases. Secondly in this case, the AO himself has accepted the average cost method in the earlier years as well as in the subsequent year as claimed by the assessee which has not been controverted before us. It is a settled legal position that the profit has to be computed as per the method of accounting regularly followed by the assessee. Therefore, once the average method has been accepted in the earlier year as well as in subsequent years, the same cannot be rejected in the intervening period. The AO has also not placed on record any material to show that gross profit rate or net profit rate declared by the assessee was lower compared to in the earlier years or in relation to similar comparable cases. In these circumstances we do not see any infirmity in the order of CIT (A) deleting the addition made by AO. The order of CIT (A) is accordingly upheld.”

3.2.2 Following the above cited decision of the Coordinate Bench of this Tribunal in the assessee's own case for A.Y. 2009-10 (supra), we do not find

any reason to interfere with the findings of the learned CIT(A) in the impugned order on this issue and consequently uphold the same.

4. In the result, Revenue's appeal for A.Y. 2009-10 is dismissed.

Order pronounced in the open court on 2nd March, 2016.

Sd/-
(Sandeep Gosain)
Judicial Member

Sd/-
(Jason P. Boaz)
Accountant Member

Mumbai, Dated: 2nd March, 2016

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) – 26, Mumbai*
4. *The CIT – 15 Mumbai*
5. *The DR, "F" Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.