

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'C', BANGALORE

BEFORE SHRI. ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

AND

SHRI. VIJAY PAL RAO, JUDICIAL MEMBER

I.T.A No.1538/Bang/2013
(Assessment Year : 1990-91)

Deputy Commissioner of Income tax,
Circle – 12(1), Bangalore .. Appellant

v.

M/s. Sri Chamundeshwari Sugar Ltd,
No.76, Ulsoor Road,
Bangalore 560 042 .. Respondent
PAN : AACCSS004R

Assessee by : Vikram Vijayaraghavan, Advocate
Revenue by : Shri. Sunil Kumar Agarwala, JCIT

Heard on : 08.03.2016
Pronounced on : 18.03.2015

ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

This is an appeal filed by Revenue directed against an orderdt.23.08.2013 of CIT (A) – III, Bengaluru.

02. Of the four grounds taken by Revenue, grounds 1, 3 and 4 are general needing no specific adjudication. Effective ground 2 is reproduced hereunder :

“2. On the facts and in the circumstances of the case the learned CIT (A) erred in law in directing the AO to accept the value of closing stock at the value adopted by the assessee for A. Y 1990-91 without appreciating the fact that in spite of the directions of the Hon’ble High Court of Karnataka to the assessee to substantiate its claim with evidence before the AO, the assessee has not produced any evidence except reiterating its earlier stand during the course of reassessment proceedings.”

03. A reading of the above ground would show that the matter relates to directions given by the Hon’ble jurisdictional High Court on Revenue’s appeal in assessee’s own case in an earlier round of proceedings.

04. Assessee, engaged in the business of manufacture of sugar, had during the previous year relevant to A. Y. 1989-90 made a change in method of valuation of stock. Change was from net realisable value, to cost or market price whichever was lower. AO refused to accept the change in method of valuation in the assessment done for A. Y. 1989-90 and made an addition for suppression in valuation of stock. Since assessee had followed the new method for impugned assessment year also, AO

persisted with the earlier method and made an addition of Rs.61,55,000/-, as suppression in valuation.

05. On assessee's appeals for both assessment years 1989-90 and 1990-91, additions were deleted by CIT (A), and this was upheld by the Tribunal on Revenue's appeal.

06. Department had chosen to move in further appeal before the Hon'ble Jurisdictional High Court for both the assessment years. For A. Y. 1989-90 in which the change was made for the first time, their Lordship in their judgment dt.26.11.2007 in ITRC.2/2003, held as under at paras 3 to 7 :

“3. We have heard Sri.M.V.Seshachala, learned counsel appearing for the revenue and Srl.Thiruvengadam, learned counsel for the assessee. During the relevant year, the Board of Directors of assessing company passed the resolution, which reads thus:

"RESOLVED that the closing stock of sugar for the accounting year ending on 31st March, 1989, be valued at Cost Price or Market Price whichever is lower and the same of valuation be followed for each accounting year ending subsequent to 31st March, 1989".

In the case of CIT vs. BRITISH PAINTS INDIA LTD. (188 itr 45), the Supreme Court has held,

“Valuation of stock-in-trade at cost or market value whichever is lower is a matter entirely within the discretion of the assessee but whichever method he adopts, it should disclose a true picture of his profits and gains.”

4. *In the case on hand, apart from the resolution which has been extracted above, the assessee has not disclosed a true picture of its profits and gains before the assessing officer to adopt cost price to evaluate the stock-in-trade for the accounting year ending 31st March 1989.*

5. *The First Appellate Commissioner has taken into consideration the fluctuation in the sugar prices during the relevant period to reverse the order of the assessing officer. -The-First Appellate Commissioner and the Tribunal have not noticed settled principles of law relating to evaluation of stock-in-trade.*

6. *Therefore, we are of the considered opinion the matter requires a remand to the assessing officer. In view of the remand order, we do not answer the question of law raised in this reference.*

7. *Accordingly, we pass the following :*

O R D E R

The orders passed by the authorities below are set aside.

The matter is remanded to the assessing officer for re-consideration.

The assessee is at liberty to produce additional material, so also the revenue.

Copy of this order shall be sent to the Tribunal as required under Section 269 of the Act.”

07. For the impugned assessment year directions given in ITA.184/2001, dt.26.11.2001, by the Hon'ble Jurisdictional High Court were as under :

In ITRC.2/2003, which relates to the very assessee, we have remanded the matter to assessing officer to decide the legality or otherwise of the method adopted by the assessee in evaluating the closing stock for the accounting year ending 31st March 1981 in terms of the order in ITR No.2/2003 and according to law.

In this appeal, the assessee has called in question the method adopted by assessee for evaluating stock-in-trade for the assessment year 1990-91.

2. In view of the orders passed in ITRC. 2/2003, the orders passed by authorities below are set aside and the matter is remanded to the assessing officer for re-consideration in terms of orders passed in ITRC.2/2003 according to law.

08. Accordingly matter was considered once again by the AO. As per the AO, despite a number of opportunities given, assessee did not furnish any details in support of the change of method of accounting. He held that assessee had nothing to say with regard to the change in the method of

valuation of stock and made a similar addition of Rs.61,55,000/- once again.

09. Aggrieved assessee moved in appeal before the CIT (A). CIT (A) after considering the judgment of Hon'ble jurisdictional High Court and assessee's submissions sought a remand report from the AO. As per the CIT (A), AO did not examine the matter in the light of submissions made by assessee in such remand proceedings. CIT (A) was of the opinion that the change in method of valuation of stock from net realisable value to cost or market value, whichever was lower was to be accepted since the assessee had followed the new method consistently thereafter. As per the CIT (A) by virtue of the judgment of Hon'ble Apex Court in the case of CIT v. British Paints Ltd, [188 ITR 45], valuation of stock at cost or market price whichever was lower was an accepted method of valuation. Further as per the CIT (A), change in method of valuation was approved by the Board of Directors of the assessee. He thus deleted the addition made by the AO.

10. Now before us, Ld. DR submitted that the Hon'ble jurisdictional High Court had in the proceedings for A. Y. 1989-90 remitted the matter to the AO. Assessment for the said year was still to be completed. According

to him since the issues arising for the impugned assessment year also was emanating from the change in the method of valuation effected for the first time by the assessee in the immediately preceding assessment year, Ld CIT (A) fell in error in deleting the addition for the impugned assessment year. As per the Ld. DR, assessee despite giving adequate opportunities by the lower authorities failed to justify its new method of accounting. Thus according to the Ld. DR, CIT (A) erred in deleting the addition.

11. Per contra, Ld. AR in support of the order of CIT (A) submitted that change in method from net realisable value to cost or market value, whichever was lower was an accepted one by virtue of judgement Hon'ble jurisdictional High Court in the case of CIT v. Corporation Bank Ltd, [174 ITR 616]. Further according to him, similar view was also taken by Hon'ble Delhi High Court in the case of CIT v. Indian Sugar General and Gen. Industry Export Import [349 ITR 38]. As per the Ld. AR this method was consistently followed by the assessee in subsequent years and accepted by the Department. As per the Ld. AR, earlier to A. Y. 1989-90, assessee was following 30th September as its accounting year end, but by virtue of amendments made by Finance Act, 1989, assessee was compelled to follow financial year ending on 31st March as its previous year. Along with this

change assessee decided to change its method of valuation of stock also from net realisable value to cost or market value, whichever was lower. According to him, AO had failed to consider the various submissions made by the AO in this regard in the remand proceedings. Hence, as per the Ld. AR, CIT (A) was justified in deleting the addition.

12. We have perused the orders and heard the rival contentions. Hon'ble jurisdictional High Court had followed its own judgment for A. Y. 1989-90 while remitting the matter back to the AO, in its judgment. For A. Y. 1989-90, Hon'ble jurisdictional High Court had held that the lower authorities did not consider the settled principles of law relating to valuation of stock. As per the AO in the remand proceedings assessee failed to give the details regarding the change in method of valuation of stock. There can be no doubt that an assessee can change its method of valuation of stock, provided the new method which is adopted is one which is acceptable in normal commercial practice and such changed method is consistently followed. Valuation of stock at cost or market price whichever is lower is one of the methods accepted for valuation of closing stock as held by Hon'ble jurisdictional High Court in the case of Corporation Bank (supra). Same principle emanates from the Hon'ble Apex Court decision in

the case of British Paints Ltd (supra) also. As per the assessee, it was consistently following the new method since A. Y. 1989-90 and in subsequent years, Department had accepted the changed method of stock valuation. Assessment for A. Y. 1989-90 is still to be done pursuant to the judgment of Hon'ble jurisdictional High Court. None of the lower authorities have verified whether assessee's working of the cost or market price whichever was lower of the stock, as on 01.04.1989 and stock as on 31.03.1990 were correctly made. Though CIT (A) was justified in taking a view that assessee could change its method of accounting to cost or market price whichever was lower for valuing its stock, correctness of the cost arrived at by the assessee were not verified by any of the authorities below. Cost of opening stock will also depend on the assessment done by the AO for A. Y. 1989-90 pursuant to the judgment of Hon'ble jurisdictional High Court reproduced by us at para six above.

13. In the result, though we hold that assessee was justified in adopting a new method for valuation of stock, we are of the opinion that the matter requires a fresh look by the AO for verifying the correctness of the value arrived at by the assessee. We, therefore, set aside the orders of the authorities below and remit it to the file of AO for consideration afresh.

AO shall also consider the view taken by him for a. Y. 1989-90 while disposing of the remitted issues.

14. In the result, appeal of the Revenue is treated as allowed for statistical purpose.

Order pronounced in the open court on 18th day of March, 2016.

Sd/-

(VIJAY PAL RAO)
JUDICIAL MEMBER

Sd/-

(ABRAHAM P GEORGE)
ACCOUNTANT MEMBER

MCN

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order

Assistant Registrar