IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 165 of 2014 (O&M)

Date of Decision: 8.9.2015

The Commissioner of Income-tax, Panchkula

....Appellant.

Versus

Sh. Kuldeep Chand Jain (HUF)

...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest?

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.

PRESENT: Mr. Yogesh Putney, Advocate for the appellant.

Ms. Radhika Suri, Senior Advoate with
Ms. Rinku Dahiya, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (in short “the Act”) against the order dated 23.9.2013 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench “B”, Chandigarh (hereinafter referred to as “the Tribunal”) in ITA No. 705/CHD/2013 for the assessment year 2009-10, claiming the following substantial question of law:-

> Whether on the facts and circumstances of the case, the Ld. ITAT was right in deleting the addition made u/s 145(3) at ₹ 58,28,390/- on account of valuation of closing stock by ignoring the fact that invoking of provisions of Section 145(3) were validly invoked as the assessee had valued the closing stock on LIFO

basis as per his previous practice?

2. A few facts necessary for disposal of the present appeal as mentioned therein are that the assessee filed the return of income on 24.9.2009 for the assessment year 2009-10 declaring a total income of ₹ 9,15,800/-. Notice under Section 143(2) of the Act was issued to the assessee on 23.9.2010. The cognizance over the issue of valuation of closing stock was taken on the basis of the details submitted by the assessee and it was found that the closing stock was valued at ₹ 814.47 per gram which was much more down to the purchase cost and as per standard norms and practice, the closing stock should be valued either at market rate or cost price whichever is lower. The Assessing Officer framed the assessment vide order dated 13.12.2011 (Annexure A-1) by making an addition of ₹ 58,29,237/- on account of undervaluation of closing stock. The Assessing Officer observed that the assessee has failed to give any reasonable and justified explanation for not rejecting his books of account and for accepting his method of valuation of closing stock by adopting Last In First Out (LIFO) method. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), Panchkula [hereinafter referred to as "the CIT(A)"]. The CIT (A), Panchkula vide order dated 8.4.2013 (Annexure A-2) partly allowed the appeal and deleted the addition of ₹ 58,28,390/- made by the Assessing Officer on account of undervaluation of closing stock after rejecting the books of account of the assessee. Against the order, Annexure A-2, the revenue filed an appeal whereas the assessee filed cross-objections before the Tribunal. The Tribunal vide order dated 23.9.2013 (Annexure A-3) dismissed the appeal filed by the revenue upholding the deletion of ₹ 58,28,390/- on account of valuation of

inventory by the assessee and allowed the cross-objections filed by the assessee against addition of ₹ 1,50,000/- and restored the matter to the Assessing Officer to re-decide the same. Hence, the present appeal by the revenue.

3. Learned counsel for the revenue submitted that the true value of the closing stock could not be ascertained or determined by adopting the LIFO method and, therefore, valuation adopted by the Assessing Officer was justified. He has placed reliance upon the judgment of the Apex Court in **Commissioner of Income-Tax v. British Paints India Ltd. (1991) 188 ITR 44** in support of his contention.

4. Controverting the aforesaid submission, learned counsel for the assessee-respondent submitted that the Tribunal had recorded a finding of fact that the assessee had been following the LIFO method for earlier years as well and in such a situation, there was no occasion to deviate from the method of accountancy being followed by the assessee. The Assessing Officer has failed to show that the true value could not be determined except to urge so. Reference was made to the following judgments:-

I. **United Commercial Bank v. Commissioner of Income Tax (1999) 240 ITR 355 (SC);**

II. **Commissioner of Income-Tax v. Sant Ram Mangat Ram (2005) 275 ITR 312 (P&H);**

5. After hearing learned counsel for the parties, we do not find any merit in the appeal. The assessee is engaged in the business of sale and purchase of jewellery. The Tribunal had noticed that the assessee was following LIFO method for valuing its closing stock from year to year which is one of the prescribed methods of accounting

standards issued by the Institute of Chartered Accountants of India for valuation of inventory. The said method was also followed by the assessee in the assessment year 2007-08 and in the said year, the Assessing Officer had made an addition of ₹ 32,08,977/- on account of valuation of closing stock of gold ornaments. The Tribunal in ITA No. 1378/Chd/2010 relating to the assessment year 2007-08 in the case of the assessee upheld the decision of the CIT(A) deleting the addition made by the Assessing Officer with the following observations:-

> "10. We have heard the rival contentions and perused the record. The assessee is engaged in the business of sale and purchase of jewellery. The assessee, in order to value its closing stock is following LIFO method which is one of the prescribed method of accounting standards issued by the Institute of Chartered Accountants of India for valuation of inventory. The said method of valuing the closing stock of gold ornaments has been consistently followed by the assessee from year to year. Similar method was followed by the assessee in assessment year 2007-08. The Assessing Officer in assessment year 2007-08 had made an addition of Rs.32,08,977/- on account of valuation of closing stock of gold ornaments. The Tribunal in ITA No. 1378/Chd/2010 relating to assessment year 2007-08 in DCIT Vs. Shri Kuldeep Chand Jain, HUF, vide order dated 24.04.2012, had held as under:
>
> > "4. We have carefully perused the rival

submissions, facts of the case and relevant record. The brief facts of the case are that the appellant is a wholesale & retail sarafa merchant. The assessee filed return of income on 31.10.2007, declaring income of Rs.29,20,088/-. A survey u/s 133A of the Act was conducted, on the business premises of the assessee, on 13.10.2009, during which appellant surrendered an additional income of Rs.26 lacs (Rs.17 lacs on account of unexplained old gold and diamond jewellery and Rs.9 lacs on account of excess cash found). The AO framed assessment u/s 143(3) at an income of Rs.61,29,065/- after making disallowance of Rs.32,08,977/- on account of under valuation of closing stock. AO also rejected the books of account of the appellant and treated the surrendered amount of Rs.26 lacs as deemed income.

5. In the course of assessment proceedings, the assessee informed the AO, that LIFO method of accounting was followed in valuation of closing stock. The contention of the assessee was not found acceptable by the AO. The AO referred to A.S.-2, that specifies of only three methods of determining the cost of inventories i.e. specific identification method,

FIFO and Weighted average cost method. The AO made an addition of Rs.32,08,977/- following the weighted average cost method of the closing stock. The ld. CIT(A), on appreciation of the case laws and submissions filed before her, gave her findings in para 5.2 of the appellate order, which are reproduced hereunder:-

> "5.2. I have carefully considered the submissions filed by the appellant, it was informed that the AO has accepted the calculation error in the closing stock valuation and has rectified the same by passing order u/s 154 dated 30.06.2010 vide which the difference in stock stand reduced from Rs.32,08,977/- to see that during the A.Y. 2003-04, 2005-06 and 2006-07 assessment for which was completed u/s 143(3), the method of valuation of closing stock has been accepted by the AO including by the AO who has passed the assessment order for the year under appeal. Therefore, the AO cannot reject the method of valuation of closing stock which is consistently followed by the appellant and has also been accepted by the AO in the past. I agree with the appellant that rule of

consistently has to be followed and observed. Further, it is seen that the Hon'ble Punjab and Haryana High Court in appellant's own case CIT vs. Sant Ram Mangat Ram (195 CTR 345) observed as under:-

> "It is an admitted position that from the inception of its business, the assessee had continuously adopted the same method of valuation of the closing stock and no objection was raised by the Department in any of the previous years. Rather, the competent authority accepted the method adopted by the assessee and accordingly, made assessment. This being the position, we do not find any valid ground to accept the argument of Shri Bindal that the method adopted by the assessee for valuation of the stock was legally impermissible and on that account, the additions made by the Inspecting Assistant Commissioner should be restored. In United Commercial Bank v. CIT (1999) 240 ITR 3545, their Lordships of the Supreme Court held that the method which was consistently followed by the appellant-

> bank for valuing the stock-in-trade could not be rejected by the accessing authority in a particular year."

There is merit in the appellant's submissions that the principle of judicial discipline requires that the order of the Higher Appellate Authority should be followed unreservedly by the subordinate authorities. Therefore, in view of the above stated facts, assessee having consistently employed the same method of valuation of closing stock and AO having no questioned the same and in fact having accepted it in the previous assessment years, it is held that the method of valuation of closing stock could not be rejected. Therefore, the addition made by the AO which by her order of rectification u/s 154 stands reduced to Rs.19,45,073/- on account of difference in valuation of closing stock is deleted. This ground of appeal is allowed."

6. A bare perusal of the findings of CIT(A) reveals that on the basis of the doctrine of consistency in relation to method of calculation of inventory as also the decision of the jurisdictional High Court in assessee's own case, she recorded findings in favour of the assessee. Having regard to the fact-situation of the case, decision of the Hon'ble Jurisdictional High Court, relied upon by the ld. CIT(A), and the relevance of consistency principle in the matter, we do

not find any infirmity in the findings of the CIT(A), and hence, the same are upheld. Thus, the ground of appeal of the revenue is dismissed."

6. The Tribunal upheld the order of the CIT(A) in deleting the addition of ₹ 58,28,390/- by holding that the assessee had been consistently following the LIFO method of valuation of its inventory.

7. Apex Court in **United Commercial Bank's case (supra)** dealing with a case of valuation of stock held that a method of accounting adopted by the tax-payer consistently and regularly cannot be discarded by the revenue on the view that different method of keeping accounts or of valuation ought to have been adopted by the assessee. The broad principles of valuation of stock had been summarized by the Supreme Court as under:-

"(1) That for valuing the closing stock, it is open to the assessee to value it at the cost or market value, whichever is lower;

(2) In the balance-sheet, if the securities and shares are valued at cost but from that no firm conclusion can be drawn. A taxpayer is free to employ for the purpose of his trade, his own method of keeping accounts, and for that purpose, to value stock-in-trade either at cost or market price.

(3) A method of accounting adopted by the taxpayer consistently and regularly cannot be discarded by the departmental authorities on he view that he should have adopted a different method of keeping accounts or of valuation.

(4) The concept of real income is certainly applicable in judging whether there has been income or not, but, in every case, it must be applied with care and within their recognized limits.

(5) Whether the income has really accrued or arisen to the assessee must be judged in the light of the reality of the situation.

(6) Under section 145 of the Act, in a case where accounts are correct and complete but the method employed is such that in the opinion of the Income-tax Officer, the income cannot be properly deduced therefrom, the computation shall be made in such manner and on such basis as the Income-tax Officer may determine."

8. Following the aforesaid pronouncement, a Division Bench of this Court in **Sant Ram Mangat Ram's case (supra)** had held as follows:-

"It is an admitted position that from the inception of its business, the assessee had continuously adopted the same method of valuation of the closing stock and no objection was raised by the Department in any of the previous years. Rather, the competent authority accepted the method adopted by the assessee and accordingly, made assessment. This being the position, we do not find any valid ground to accept the argument of Shri Bindal that the method adopted by the assessee for valuation of the stock was legally impermissible and on that account, the additions made by the Inspecting Assistant Commissioner should be restored."

9. Undisputedly, in the earlier years, the revenue had accepted the LIFO method for valuation of closing stock of the assessee. Learned counsel for the revenue could not demonstrate that the approach of the Tribunal was erroneous or perverse in any manner warranting interference by this Court.

10. Now we proceed to examine the judgment in **British Paints India's case (supra)** relied upon by the learned counsel for the revenue. The Supreme Court held that before the Assessing Officer can adopt method of valuation of stock different from the one adopted by the assessee, the Assessing Officer is required to determine whether or not income chargeable under the Act can be properly deduced from the books of account and the question must be decided with reference to the relevant material and in accordance with correct principles. The principle of law enunciated therein is well recognized but in view of factual matrix noticed hereinbefore in the present case, it does not advance the case of the revenue.

11. In view of the above, no substantial question of law arises in this appeal. Accordingly, finding no merit in the appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

September 8, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**