

OD-13

ITAT/193/2019
IA No.GA/2/2019 (Old No.GA/2965/2019)

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME
TAX-4, KOLKATA

-Versus-

D.K. BASAK JEWELLERS PVT. LTD.

Appearance:
Ms. Sucharita Biswas, Adv.
Mr. Soumen Bhattacharyya, Adv.
...for the appellant.

Mr. J. P. Khaitan, Sr. Adv.
Ms. Swapna Das, Adv.
Mr. Siddhartha Das, Adv.
...for the respondents.

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 21st February, 2022.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' in brevity) is directed against the order dated 27th July, 2018 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (in short the 'Tribunal') in ITA No.2127/Kol/2016 for the assessment year 2011-12.

The revenue has raised the following substantial questions of law for consideration :

- "I) Whether on the facts and circumstances of the case, the Learned Income Tax Appellate Tribunal has erred in law in confirming deletion of Rs.14,43,06,905/- made by the order of the Learned Commissioner of Income Tax (Appeals), which amount was added by the Assessing Officer on account of difference in stock valuation as the assessee unlawfully followed the Last In First Out (LIFO) method of accounting for valuation of closing stock in violation of the accounting Standard-2 ?
- II) Whether on the facts and circumstances of the case, the Learned Income Tax Appellate Tribunal has erred in law in confirming the order of the Learned Commissioner of Income Tax (Appeals) without appreciating that the assessee unlawfully followed incorrect accounting on the pretext of consistency whereas the correct accounting standard is FIFO or Weighted Average Method according to the Accounting Standard-2 for making valuation of the inventory ?
- III) Whether on the facts and circumstances of the case, the Learned Income Tax Appellate Tribunal has erred in law in not appreciating that as per Company's rules all the companies registered under the Companies Act must follow the First in First Out (FIFO) method for valuation of the closing stock but the assessee has deliberately applied Last In First Out (LIFO) method for determining the valuation of the closing stock ?"

We have heard Ms. Sucharita Biswas, learned Counsel assisted by Mr. Soumen Bhattacharyya, learned Advocate for the appellant/revenue and Mr. J. P. Khaitan, learned senior Counsel

assisted by Ms. Swapna Das and Mr. Siddhartha Das, learned Advocates for the respondent/assessee.

As could be seen from the assessment order dated 19th March, 2014 under Section 143(3) of the Act, the entire matter commenced pursuant to a survey action conducted under Section 133A of the Act in the business premises of the assessee. The assessing officer, after taking note of the report submitted by the survey official, proceeded to issue show cause notice to the assessee and considered the matter. In the assessment order, the survey report has been extensively extracted and the crux of the same is an alleged admission by the assessee admitting a stock difference of Rs.8,82,68,862/- and agreeing to pay a sum of Rs.3 crores as additional advance tax. The assessing officer would state that out of the admitted amount only a sum of Rs.1 crore has been paid and, therefore, the assessment was taken up for consideration and the assessing officer faulted the assessee in not arriving at the value of the stock by applying the First in First out (FIFO) method and instead of which the assessee adopted the Last in First out (LIFO) method. After noting the factual details, the assessment was completed. Aggrieved by the same, the assessee preferred appeal before the CIT(A)-IV, Kolkata which appeal was allowed after examining the factual position. The revenue challenged the said order by filing appeal before the tribunal which was dismissed by the impugned order.

Ms. Biswas, learned counsel appearing for the appellant would vehemently contend that the assessee having admitted by giving a statement and agreeing to pay a sum of Rs.3 crores as additional advance tax but having failed to comply with the same in its entirety and having deposited only Rs.1 crore, the assessing officer was fully justified in proceeding to assess the income of the assessee. Furthermore, the rule of consistency with regard to valuation of the closing stock cannot be applied as the assessee is required to follow the accounting standard which states that such valuation is to be made by applying the FIFO method instead of LIFO method which was adopted by the assessee. The learned counsel for the appellant has extensively taken us through the assessment order and seeks to demonstrate before us that there is no error in the manner in which the assessment was completed.

The learned senior counsel for the respondent has placed reliance on the decision in the case of *Commissioner of Income Tax vs. S. Khader Khan Son* reported in [2008] 300 ITR 157 (Mad) wherein the court took into consideration a circular issued by the Central Board of Direct Taxes (CBDT) dated March 10, 2003 with regard to the confession of additional income during the course of search and seizure and survey operation. It is submitted that in the said circular the Board has categorically spelt that no attempt should be made to obtain confession as to undisclosed

income when search and seizure or survey operation is being conducted.

After having elaborately heard the learned counsels for the parties and carefully considering the arguments and the materials of record, we find that the assessing officer could not have based his conclusion solely on the alleged admission of the director of the assessee during the survey operations. At this juncture, it would be relevant to take note of the circular issued by the CBDT which reads as follows:

"Instances have come to the notice of the Board where assessees have claimed that they have been forced to confess the undisclosed income during the course of the search and seizure and survey operations. Such confessions, if not based upon credible evidence, are later retracted by the concerned assessees while filing returns of income. In these circumstances, on confessions during the course of search and seizure and survey operations do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income Tax Department. Similarly, while recording statement during the course of search and seizure and survey operations no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely."

The above directive issued by the CBDT is a straight answer to the contention advanced by the learned standing counsel. Thus, if the report of the survey team is eschewed, then it has to be seen as to in what manner the assessing officer could have completed the assessment. The crux of the issue revolves around the valuation of the closing stock. The revenue faults the assessee for not adopting the FIFO method. The tribunal has considered the correctness of the submission and pointed out that the assessee has consistently adopted the LIFO method which has been accepted by the assessing officer in all the previous years and in the assessee's own case in the respect of the assessment year 2009-10, the matter travelled upto the tribunal and the method of valuation of closing stock adopting LIFO method was approved. Therefore, the tribunal concluded that consistency has to be maintained in the matter.

Learned counsel for the appellant would vehemently contend that in terms of the statutory rule, the accounting standard as prescribed under the rule ought to have been followed. The learned counsel submits that it is mandatory for the assessee to follow the Accounting Standard -2 in terms of the relevant rules from the year 1999 and the relevant rules of the year 2006 is applicable.

Section 145 of the Act deals with the method of accounting. Sub-Section (1) of Section 145 of the Act states that income chargeable under the head "Profits and gains of business or

profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. Sub-section (2) of Section 145 states that "The Central Government may notify in the Official Gazette from time to time income computation and accounting standards to be followed by any class of assessee or in respect of any class of income.

Sub-Section (3) states that where the assessing officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) of Section 145 or accounting standard as notified under sub-Section (2) have not been regularly followed by the assessee, the assessing officer may make an assessment in the manner provided in Section 144. Section 145A of the Act, as it stood at the relevant time (A.Y. 2011-12) commences with a non-obstante clause stating that notwithstanding anything to the contrary contained in Section 145, the method of accounting in various types of cases have been spelt out. It is an admitted case that the assessee has been continuously adopting the LIFO method which has been accepted by the revenue for all the earlier assessment years and in respect of the assessment year 2009-10, the matter travelled upto the tribunal and the manner of valuation of the closing stock done adopting LIFO method was approved. Therefore, in our considered view, the tribunal was right in affirming the order passed by the CIT(A). An identical issue came

up for consideration in the case of *Commissioner of Income Tax vs. Sharad Mohanlal Shah* reported in [2019] 108 taxmann.com 353 (Guj.) wherein it was held that the assessee therein was following the LIFO method and the CIT(A) therein as well as the tribunal concurrently held that such method was already recognised in law and in any case consistently followed in several orders and, therefore, the appeal filed by the revenue was dismissed. The Special Leave Petition filed before the Hon'ble Supreme Court was dismissed as reported in [2019] 108 taxmann.com 354 (SC).

Thus, for all the above reasons, the tribunal rightly affirmed the order passed by the CIT(A).

In the result, the appeal filed by the revenue stands dismissed and the substantial questions of law are answered against the revenue.

Consequently, the application for stay being IA No.GA/2/2019 (Old No.GA/2965/2019) also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)