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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA 566/2019**

PR. COMMISSIONER OF INCOME TAX (CENTRAL)- 3 ..... Appellant

Through: Mr. Sanjeev Menon, Adv. for Mr. Zoheb Hossain, Sr. SC.

versus

SH . CHARCHIT AGARWAL ..... Respondent

Through: Mr. Rajiv Saxena, Ms. Sumangla Saxena, and Mr. Shyam Sundar, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **06.02.2024**

CM APPL. 29649/2019 (133 Days Delay)

1. This is an application filed by the appellant seeking condonation of 133 days' delay in filing the present appeal.

2. For the reasons stated in the application, the delay of 133 days in filing the appeal is condoned.

3. Application is disposed of.

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4. We have heard Mr. Menon, learned counsel appearing in support of the appeal. The Department seeks to question the correctness of the decision rendered by the Income Tax Appellate Tribunal ["**ITAT**"] dated 22 February 2018. They have for our consideration proposed the following questions of law:

A. Whether the ITAT has erred in law and on facts in confirming the Commissioner of Income Tax (Appeals)'s ["**CIT(A)**"] deletion of Rs. 3,38,58,247/- and in allowing further relief of Rs. 1,02,10,375/- by accepting the assessee's change of method of valuation of stock to the cost price following FIFO method without considering the fact that the assessee had already accepted the method of average rate of cost of stock adopted by approved valuer at the time of search?

B. Whether the ITAT has erred in accepting the assessee's change of valuation method on the ground that the closing stock for the year naturally becomes the opening stock of the next year and therefore is revenue neutral without considering the fact that the assessee would not have pressed for change had it been the case?

5. We, however, find that the issues which have sought to be canvassed are purely questions of facts as would be evident from the ultimate findings and conclusions which came to be recorded and rendered by the ITAT. This would be evident from paragraphs 8 and 9, which are extracted herein below:

> "8. With respect to ground No. 1 of the appeal of the assessee as well as ground No. 2 of the appeal of the revenue are pertaining to the addition on account of unaccounted stock. During the course of search the assessee was asked to reconcile the difference while Q. No. 12 of his statement recorded on 14.12.2005 to show that total jewellery is being 188599 grams of gold whereas, as per stock register total stock is 68822.475 grams resulting into difference of 119776.525 grams. Assessee submitted that he has received gold ornaments of 11500 for the job work and further 4527.34 grams received by bill has not been entered in books of accounts. It was further stated that he received jewellery for repairs for polishing from various customers and around 800 grams are lying with him for repairing. In Question No. 13 he disclosed Rs. 4 crores as

additional income on account of difference in the stock. Consequently, he also gave the break-up of disclosure of 44079512.09 in his revised return. The ld Assessing Officer on query was explained by the assessee that total quantity of jewellery found was 188599 grams, goods received for approval is 28866.60 grams, goods received for repairs is 8015.490 grams and therefore, the excess stock is only 81691.389 grams. The revenue has taken its value at Rs. 57169471/- where the assessee has taken its value at Rs. 4744079512/-. Therefore, the revenue is challenging the adjustment in the quantity of gold given by the ld CIT(A) of goods received in approval of 28866.60 grams and 8015.490 grams on account of repairs received. In the submission the assessee has provided the details with respect to the above two items providing the date of transaction, bill no, name of the party and quantity mentioned in those bills. It was noted that all these transactions are with respect to dates prior to search. The copies of such bill where the name, address, TIN No., as well as the detail of VAT charge is provided for in case of sale. The ld Assessing Officer despite having those details have not examined the parties about the genuineness of the bills. It is also not the case of the ld Assessing Officer that rate at which the gold is purchased duly supported by the bills is not prevalent at market rate on that date. Further, with respect to the purchase of the jewellery which remains to be accounted for identical details of the parties is provided. Assessee has further provided in one case the mistake in sales quantity which increases the stock and similar mistake on three occasions which decreases the quantity. The assessee has also shown that it has received certain Jewellery from M/s. Sunil Jeweller and Sonilalaji Pitambar Das from Ahmadabad. The copies of bills of those parties are also provided showing their GST no, complete address and telephone nos, the assessee has also shown the details of jewellery received for repairing from various Jewelers providing their name, address and the copies of the respective documents. The Assessing Officer was asked to comment in remand proceedings and the ld AO could not show any Infirmity in these details submitted by the assessee. The ld DR also could not show that what is the error made by the assessee in the reconciliation statement submitted qua the quantity. We have also verified the reconciliation statement and we also find that such kind of difference is possible at the time of search in case of a jeweler who is engaged in the trading, repairing as well as recording sales on approvals. May that be the case but despite showing and making a statement with the evidence which is not refuted by the revenue it is not possible to reject the same and refuse to grant credit of or/adjustment of such quantities. Therefore, we do not find any merit in the appeal of the revenue where the ld CIT(A) has accepted the reconciliation which is supported by the documentary evidences showing the name, address and sales tax no of the parties. In the result we do not find any infirmity in the order of the ld CIT(A) in deleting the addition on account of unaccounted stock to the extent of Rs. 33858247/-. In the result ground No. 2 of the appeal of the revenue is dismissed.

9. Coming to the ground of assessee on the similar issue wherein, assessee has stated that valuation of the excess stock should be given at the cost determined by the assessee. The assessee submitted that assessee has purchased the excess stock of various grades and the all designs of gold ornaments which are found are not fast selling. In fact the most of the gold ornaments is of old style therefore, the valuation of the stock deserves consideration. He submitted the statement at page No. 79 of the paper book wherein he has tabulated the dates on which the standard gold and gold ornaments were purchased. According to the chart such valuation for 70098.001 grams comes to Rs. 40029898/- arising at average cost of Rs. 571.06 per gram. In the chart assessee has submitted the date of the purchases, the parties from which it has been purchased and the quantity along with the amount for purchases. Similarly, for the closing stock of standard gold of 7000 grams assessee submitted similar kind of details where the average cost is Rs. 704.68 per grams. Based on this the assessee has worked out the total disclosure of Rs. 44962675/. It is not disputed by the revenue that the quantity of gold or gold ornaments are different. According to section 69 of the Act the valuation is required to be taken according to the investment made by the assessee but the nature and source of such investment are not explained. In fact the investment made by the assessee has been shown at a particular rate which is at cost only. This is also an accepted method of valuation by the assessee as already decided in the case of the assessee from Assessment Year 2000-01 to 2005-06 in ITA No. 3132 to 3137/Del/2008. In the present case the assessee has taken the average cost price which was the claim of the revenue in earlier years. However there is no dispute in taking the valuation at the cost. It was also not the case of the revenue that the change in the method from the cost to the average cost is not bona fide. It was stated before us that revenue has accepted the same in the subsequent years. Further, according to accounting standard 2 "valuation of inventory" the assessee is entitled to value the stock at the cost or the market value whichever is less. It is not the case of the assessee that this policy has been changed by the assessee subsequently also. The assessee has merely valued the cost of goods on FIFO basis. Even otherwise the above issue is only the valuation of inventory in case of the assessee which was found during the course of search. Such stock either is found to be in the valuation of closing stock for the year which will naturally become opening stock of the next year or sold during the year generating profit/loss, or lying in closing stock, therefore, at the most the issue can be said to be revenue neutral."

6. We, thus find no substantial question of law which may be said to arise. Consequently, the appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

FEBRUARY 06, 2024/p