IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK

BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.108/CTK/2018
Assessment Year : 2012-2013

M/s. Sree Alankar, Big Bazar, Berhampur	Vs.	PR. CIT-1, Bhubaneswar.
PAN/GIR No.ABDFS 9511 L		
(Appellant)	..	(**Respondent**)

Assessee by : Sri S.K.Tulsiyan, AR
Revenue by : Shri Saad Kidwai, CIT DR

Date of Hearing : 11/09/ 2018
Date of Pronouncement : 12 /09/ 2018

O R D E R

Per N.S.Saini, AM

This is an appeal filed by the assessee against the order of the Pr. Commissioner of Income Tax-1, Bhubaneswar dated 17.3.2017 for the assessment year 2012-13.

2. The assessee has raised the following grounds of appeal:

'1. That, the Ld. Principal CIT, on the facts and circumstances of the case, erred in law in having assumed jurisdiction u/s. 263 of the Act in order to substitute his subjective view in place of judicious view taken by the A.O. on the same set of facts, method of valuation & evidences on record, by holding that the order passed u/s. 143(3) of the Act dated 31.03.2015 was erroneous and prejudicial to the interests of revenue.

2. That, the Ld. Pr. CIT erred in having invoked jurisdiction u/s.263 of the Act completely under wrong notion that the valuation of closing stock of old jewellery by taking the cost price

of opening stock was not acceptable method though the appellant had filed year-wise quantitative details of opening & closing stock, purchases and sales evidencing that the closing stock represented unsold old design jewellery over the years and after verification of the same, assessment u/s. 143(3) was made.

3. That, the Ld. Pr. CIT further erred in having alleged that the A.O. has erroneously accepted the method of Tower of the cost price and net realizable value' for the purpose of valuation of the stock in spite of the admitted fact that since inception such recognized method has been consistently followed by the appellant and accepted by the department in earlier as well as subsequent years.

4. That, the Ld. Pr. C.I.T. further erred in having assumed jurisdiction u/s.263 of the Act on surmise and conjecture and passed consequential order directing the A.O. to make fresh assessment in spite of the fact that he himself did not point out any irregularity/deficiency in the tax audit certificate about method of valuation prescribed u/s.l45A and having been followed since past and the A.O. after considering the past accepted position and evidence on record has taken a possible and judicious view.

5. That, without any prejudice to the above, the order of the Ld. Pr. C.I.T. u/s.263 of the Act suffers from illegality inasmuch as, according to settled position in law, a valid method of accounting adopted by the taxpayer consistently and regularly cannot be discarded by the departmental authorities on the view that the taxpayer should have adopted a different method of keeping accounts or of valuation.

6. That, therefore, in view of the facts and circumstances of the case, the assessment order passed u/s. 143(3) of the Act accepting the method of valuation of closing stock adopted by the appellant being not erroneous and hence not prejudicial to the interests of revenue, the order passed u/s.263 of the Act directing to make fresh assessment de novo is without any basis, bad in law and liable to be quashed."

3. The brief facts of the case are that the Pr. Commissioner of Income Tax-1, Bhubaneswar observed that from the records, it is found that in the profit and loss account, the assessee has shown closing stock at Rs.5,54,19,940/-, which included gold jewellery of

Rs.5,20,66,830/- and silver jewellery of Rs.33,26,990/-. As per Tax Audit Certificate, method of valuation of closing stock employed during the previous year relevant to assessment year 2012-13 was *'at cost price or net realizable value whichever is lower'* and, therefore, there was no deviation from the method of valuation prescribed u/s 145 A of the Act. From the details of closing stock as submitted by the assessee, it was seen that the valuation of closing stock was made taking cost price as on 01.04.2012 *{Opening price of gold @ 657.51 per gram and Silver @ 10.17per gram)* instead of taking the average of opening and purchase price *(gold @ 1928.43 per gram and silver @ 33.14 per gram).* The valuation of closing stock by taking the cost price of opening stock was not an acceptable method for valuation of closing stock, where purchases had been made during the year. Further, there was no material available on record to substantiate the basis on which the rates of closing inventory were arrived. While completing the assessment, the Assessing Officer failed to properly examine the above issue. Hence, proceedings u/s 263 of the Income Tax Act, 1961 was initiated and a show cause dated 17th January, 2017 was issued to the assessee.

4. The assessee submitted that there was no deviation from the method of valuation of the stock prescribed u/s 145 of the

I.T.Act. It was stated that the closing stock was valued at cost price or at net realizable value whichever was lower. He further stated that from financial years 2007-08 to 2011-12, the closing stock of (Gold and Silver) was almost the same since the designs were very old and could not be sold. The sales made during the financial year was out of the purchases of that relevant year. He furnished year-wise opening and closing stock value, purchases and sales along with quantitative details. He also furnished copies of returns of income for Assessment years 2007-08, 2010-11, 2011-12 and 2012-13 alongwith tax audit reports with schedules besides tax audit report with schedules for Assessment years 2008-09 & 2009-10.

5. The Pr. Commissioner of Income Tax-1, Bhubaneswar further observed that the assessee's assertions were gone through. Though the assessee furnished year-wise quantitative details of the opening & closing stock, purchases and sales, the assertion that the closing stock represented unsold old design jewellery over the years, was not established vis-a-vis purchases - sale bills, the description of the design and the actual jewellery available as stock. He further stated that as the assessee did not furnish the purchase-sale bills and item-wise description of the closing stock and its correlation with actual purchase bills, the claim of the

assessee is not established beyond doubt and could not be accepted based on the details furnished.

6. In view of above, he observed that since the Assessing Officer has failed to examine the above issue properly, the assessment order is set aside to the file of the Assessing Officer on the above issue and the Assessing Officer is directed to examine the above issue afresh and do the assessment denovo.

7. Ld A.R. of the assessee during the course of hearing filed a written submission, which reads as under:

> "2. At the outset, kind attention of the Hon'ble Bench is drawn to the observation of the Ld. Pr. C.I.T., with regard to **valuation of stock,** in support of his invoking jurisdiction u/s.263 of the Act and **relevant facts in relation thereof** in the following table:

Observation of Pr. **C.I.T.**	**Appellant's stand as per evidence on record**	P/B **Page**
From the records it was found that in the P&L account the assessee had shown closing stock at Rs.5,54,19,940/- comprising of gold jewellery of Rs.5,20,66,830/-and silver jewellery of Rs.33,26,990/-. As per Tax Audit Certificate method of valuation of closing stock employed was *at cost price or net realizable value whichever is lower'* and there was no deviation from the method of valuation	The Ld. Pr. C.I.T. has rightly observed the facts, as would be evident from details of Gold & Silver opening & closing stock with quantity, value, rate per gram, value of closing stock/unsold stock etc. In the audited accounts of the year under appeal, details of closing stock in quantity of gold and silver comprising of opening stock, purchase, sale and resultant closing stock and closing stock in value have been given and verified by the Ld. A.O.	*12&13* 243

prescribed u/s.145AoftheAct.		
Though the appellant furnished year-wise quantitative details of opening & closing stock, the assertion that the closing stock represented unsold old design jewellery over the years was not established beyond doubt vis-a-vis purchases - sale bills, the description of the design and the actual jewellery available as stock.	(a) The appellant is a manufacturer of gold ornaments out of gold & gold bars purchased from various parties. There are hundreds of designs/samples of varying weight having been manufactured during the long span of jewellery manufacturing business out of those bars purchased for display in the show case for the purpose of attracting the customers. The intending customers have thus avenues in selecting their choice out of those samples displayed and on getting orders, ornaments are manufactured and sold to them. Resultantly. the items of ornaments manufactured only for	*14 to 39*
Hence inventory of closing stock at cost price of net realizable value whichever is lower' could not be accepted based on the details furnished.	display and attracting the customers remained unsold and accounted for as closing stock. At the same time, the Ld. Pr. C.I.T. did not dispute the gold bar purchased, out of which ornaments were manufactured. Purchase invoices of the unsold stock from FY 2005-06 to 2011-12 were submitted and already on record. Therefore, it is the source of material, which matters, out of which ornaments were made and not hundreds of varieties of designs of various kinds of ornaments. Once the purchase of gold bars and sale of ornaments are not disputed, the allegation of the Ld. Pr. C.I.T. that description of the design of jewellery available as stock was not given is impractical on the facts given above. (b) The Ld. Pr. C.I.T. has alleged that the appellant has not maintained	

	description/design-wise stock register and hence the method of "lower of the cost price and net realizable value" could not be accepted. To this, it is submitted that the principles of stock valuation are well settled and if the revenue chooses to disturb the valuation of closing stock, then the opening stock should also be re-valued with on the very same principles as those applied to the closing stock. Similar was the position in respect of closing stock of silver.	
The valuation of closing stock by taking the cost price of opening stock was not an acceptable method for valuation of closing stock where purchases had been made during the year	a) There is no dispute on facts that the appellant had valued its closing stock by following LIFO method which is an accepted and recognized method of valuation of stock. b) There is also no dispute that this method of valuation of stock is being followed year after year and the revenue has been accepting the same. Hence the regular system of accounting being followed by the appellant cannot be disturbed unless there is a finding that there are defects in the books of accounts or the stock register maintained by the assessee. There is no such finding. On the other hand, the Ld. A.O. after thorough examination has accepted the book results and has not rejected the books u/.s.l45 of the Act. c) There is no finding either from the A.O. or from the Ld. Pr. C.I.T. that the stock register containing purchase and sales details maintained by the appellant are not reliable. In fact, the quantitative details maintained in the stock registers have been accepted by the A.O. and the Ld. Pr. C.I.T. invoked jurisdiction u/s.263 of the Act only by illogically doubting the method of valuation of closing stock and not due to any	*Assessment Orders for Earlier and Subsequent Years 205-221*

	quantitative variations.	

2.1. Considering the above facts and evidence on record and also the fact that in past and subsequent assessment years, inventory of closing stock was valued consistently at *"lower of the cost price and net realizable value ",* the assessment for the year under appeal was finally completed u/s.143(3) of the Act.

2.2. Furthermore, as per provisions of sec. 145 A of the Act it is specifically mandated that inventories shall be valued in accordance with the method of accounting regularly employed by the assessee and that this section over rides sec. 145 of the Act.

2.3. To make the above issue more clear, reliance is placed on the following decisions, the ratios of which are clearly applicable to the case of the appellant.

- ***United Commercial Bank vs. CIT (1999) 240ITR 355 (SC)***

"The principles applicable in valuation of stock are (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, from that no firm conclusion can be drawn. A taxpayer is free to employ for the purpose of his trade, his own method ofkeepin2 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 the 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 recognised 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. "[Emphasis supplied]

- ***CIT vs. British Paints India Ltd. (1991) 188 ITR 44 (SC)***

"The question to be determined by the Assessing Officer in exercise of his power under section 145 is whether or not income can properly be deduced from the accounts maintained by the assessee, even if the accounts are correct and complete to the satisfaction of the Officer and the income has been computed in accordance with the method regularly employed by the assessee. ***What is to be determined by the Officer is a question of fact, i.e., whether or not income chargeable under the Act can properly be deduced from the books of account, and he must decide the question with reference to the relevant material and in accordance with the correct principles. "***

- ***ACIT vs. M/s. Jewel India Jewellers (ITA No.2085/Kol/2013, order dated 01.06.2016)*** –

By following the decisions of Hon'ble Apex Court in the case *of United Commercial Bank vs. CIT (supra); CIT vs. Sant Ram Mangat Ram (2005) 275 ITR 312 (P&H); CIT vs. Ema India Ltd. (2006) 296 ITR 510 (All.)* etc.

"..... *We find no merit in the said addition being made by the Assessing Officer where the valuation of closing stock has been changed vis-a-vis its value and not because of any difference in the quantity of stock.* ***The assessee was consistently following a particular method of accounting which is being accepted from year to year and in the absence of any contrary finding by the Assessing Officer, there is no merit in not adopting the method of valuation of stock being consistently followed by the*** *assessee.*

7.4. We find that the assessee has been consistently following LIFO method of accounting for valuation of its closing stock of gold which has been accepted by the department in the earlier years even in scrutiny assessment proceedings of the assessee. Then there is no justifiable reason to reject the same method during the year under appeal."

- ***Rupam Jewellers vs. ACIT (ITA No.267/Kol/2017, A. Y. 2013-14***

On mere identical facts, the Hon'ble ITAT, Kolkata Tribunal in their recent judgment dated 16.03.2018 in the said has decided the issue of valuation of closing stock in a business of gold ornaments. Some relevant portions of the judgment is relevant to the facts of the appellant's case, which is given below:

"8.6.....The formula used in determining the stock of an item of inventory needs to be selected with a view to

providing the fairest possible approximation to the cost incurred in bringing the item to its present location and condition. Thus AS-2 does not specifically mention the LIFO method of valuation of closing stock is not an approved method. The choice of the method is always with the assessee. The only condition is that, it has to be regularly and consistently followed.

8.7.....Section 145A supports the above view expressed by us and also over rides section 145 of the
Act. The Act mandates that the valuation of inventory should be made in accordance with the method of accounting regularly employed by the assessee. Thus the AO is wrong in disturbing the method of accounting regularly employed by the assessee for valuation of closing. Hence the addition is bad in law.

8.8. Even otherwise, the AO as well as the Id. CIT(A) have committed an error by revaluing of the closing stock only by adopting weighted average method of costing and arrived at the profits of the year without doing the same method of valuation to the opening stock of the assessee. This gives absurd results. The opening stock of the assessee should also be valued in the same manner in which the closing stock of the assessee is valued. Thus, by not valuing the opening stock of the assessee by employing weighted average stock method, the revenue authorities committed a mistake. Hence on this ground also the addition is bad in law."

3. Next, without any prejudice to the above, undersigned would further submit that as stated above in para 2 of the Statement of facts of the Appellant, **entire detailed enquiry** was **conducted by the Ld. A.O.** during the course of the scrutiny assessment proceedings and all the documents/information as per requisitions during the course of scrutiny assessment proceeding were filed/produced by the appellant. The same are enclosed herewith with this Submission before your Honours. Also the details of the same, which have been extracted above are all placed in the paper book as pointed out in the above para 2.

There is, therefore, no denying the fact that the Ld. A.O. had duly conducted required enquiries and was satisfied about the maintenance of books of accounts, stock details, purchase and sales and no defect whatsoever was found either in maintenance of stock register or in the quantity of gold/silver and hence books were not rejected u/s.145 of the Act.

4. It is pertinent here to reiterate that the Ld. Pr. C.I.T. invoked jurisdiction u/s. 263 of the Act solely on the presumption in his

own term that ***"the Assessing Officer had failed to examine the above issue properly ".***

From the above allegation which was the basis for initiating proceeding u/s. 263 of the Act, it is evident that the Ld. Pr.C.I.T. himself has not denied enquiry conducted by the A.O., rather he suspected not much investigation which should have been done by the A.O. Therefore, the requisite enquiries conducted by the Ld. A.O. (details of which have been given in para 2 above) would not definitely go to establish the baseless allegation of the Ld. Pr.C.I.T. that the assessment order has been found to be passed without proper enquiry.

5. In the said context, it is further brought to the kind notice of the Hon'ble Bench that the impugned scrutiny assessment was not for reason of any information, search result and directions from higher authorities, rather as a matter of normal proceeding, the assessee's case was selected for scrutiny assessment.

The objective of scrutiny assessment u/s. 143(3) was to confirm that the taxpayer has not understated the income or has not computed excessive loss or had not underpaid the tax in any manner. To confirm the above, the Assessing Officer carries out a detailed scrutiny of the return of income, as deemed fit, and satisfies himself regarding various claims, deductions etc. made by an assessee in the return of income.

Therefore, to reiterate, the exercise is aimed at ascertaining whether the income in the return is correctly shown and whether the claims for deductions etc. are factually & legally correct. This has not been shown to be fallacious.

The Ld. Pr. C.I.T. in the case of the appellant has subjected the assessment order to proceeding u/s. 263 of the Act mainly on the ground that the Assessing Officer allegedly found to be committed some errors on the issue of valuing the quantum of closing stock of old jewellery without proper examination into the matter.

As a matter of fact, as narrated above, the Ld. A.O. after having called for several details, information & evidences as deemed fit for the impugned assessment and after hearing the appellant on several dates got himself satisfied on his own perceptions about the correctness or otherwise of the return of income filed by the appellant.

Therefore, the exercise aimed at ascertaining the correct income of the appellant has been fulfilled by the Ld. A.O. by exercising his

quasi-judicial functions vis-a-vis passing the impugned assessment order u/s. 143(3) of the Act.

6. Therefore, on the facts and in the circumstances of the case and submissions made above, the case of the appellant is evidently not a case of 'No Enquiry' although the Ld. Pr.C.I.T. has alleged not proper examination on his wrong notion and without examining the case in true and proper perspective, warranting possible different view. Therefore, certainly it **is not even a case wherein adequate enquiries at the assessment stage were not carried out, far less 'no enquiry'.**

Hence the very initiation of proceeding u/s. 263 was void *ab initio* and thus order passed on such invalid notice is liable to be quashed.

6.1. In this regard reliance is also placed on the decision of Hon'ble Calcutta High Court in the case of ***CIT vs. J.L. Morrison (India) Ltd. (2014) 366 ITR 593 (Cal),*** the relevant finding **of** which **is** applicable to the facts of the present appellant:

"55. *Whether the assessment order dated March 28, 2008, was passed without application of mind is basically a question of fact. The learned Tribunal has held that the assessment order was not passed without application of mind.* ***The records of the assessment including the order-sheets go to show that appropriate enquiry was made and the Assessee was heard from time to time.*** *In deciding, the question the court has to bear in mind the presumption in law laid down in section 114 clause (e) of the Evidence Act: "that judicial and official acts have been regularly performed. "*

86. ***Therefore, the court has to start with the presumption that the assessment order dated March 28, 2008, was regularly passed. There is evidence to show that the Assessing Officer had required the Assessee to answer 17 questions and to file documents in regard thereto.*** *If the A.O. cannot be shown to have violated any form prescribed for writing an assessment order, it would not be correct to hold that he acted illegally or without applying his mind. "* [Emphasis given]

6.2. Even in a case of **inadequate enquiry,** if at all, as held by Hon'ble Delhi High Court in the case of ***CIT vs. Sunbeam Auto Ltd. (2011) 332ITR 167 (Del),***

"if there was any inquiry, ***even inadequate that would not by itself give occasion to the Commissioner to pass orders***

under section 263 of the Income-tax Act, 1961, merely because he has a different opinion in the matter.

It is only in cases of lack of inquiry that such a course of action would be open.

7. Also in the instant case of the appellant, the order of the Ld. Pr. C.I.T. cannot be sustained on the principle of erroneous' nature of the order of the A.O., as it is not erroneous.

In the instant case, to reiterate, there was **no allegation by the Ld. revenue authorities that the evidences produced were fictitious or invented,** thus accepted the authenticity of the same.

Such an order cannot be called erroneous and prejudicial to interests of revenue **only because the A.O. made the assessment without discussing such details therein,** as held by the Hon'ble Tribunal, Kolkata in the case of ***Chroma Business Ltd. vs. DCIT (2004) 82 TTJ 540 (Cal).***
Further support in this connection is taken from the decision of Hon'ble Delhi High Court in the case of ***CIT vs. Vikas Polymers (2012) 341 ITR 537 (Del).*** Relevant part of the observation in this regard reads as under :

"This is for the reason that if a query is raised during the course of scrutiny by the Assessing Officer, ***which was answered to the satisfaction of the Assessing Officer, but neither the query nor the answer was reflected in the assessment order, that would not by itself lead to the conclusion that the order of the Assessing Officer called for interference and revision****."* [Emphasis supplied]

8. Further, according to the decision of Hon'ble I.T.A.T., Hyderabad in the case of ***Manisha Agri Biotech P. Ltd. vs. CIT (2014) 36 ITR (Trib.) 42-***

"The respondent had ***no different or new material*** *to take a different view from the one taken by the Assessing Officer and the reasons given by him to reopen the assessment and sustain the revision are totally unacceptable. The respondent is not vested with any power under section 263 to initiate proceedings for revision in every case and start re-examination and fresh enquiries in matters which have already been concluded under the law. "*

9. Next it is submitted that what is an opinion formed as a result of these enquiries and verification of the materials is something

which is in exclusive domain of the Assessing Officer, and even if Ld. Pr. Commissioner does not agree with the results of such enquiries, the resultant order cannot be subjected to revision proceedings **merely based on change of opinion.**

It is a settled position in law that provisions of sec. 263 of the Act do not permit substituting one opinion by another opinion.
In this connection, reliance is placed on the decision *of* ***Hon'ble I.T.A.T., Kolkata*** *in the case of Smt.* ***Juthika Kar vs. ITO [I.T.A. No.ll28/Kol/2009, dated 16.5.2012 J,*** wherein it has **been** held as under

"8. With the leave and consent of my learned brother, however, I may add a few words to my learned brother 's analysis of Hon'ble Delhi High Court's judgment in the case of Gee Vee Enterprises (supra). Undoubtedly, as noted by their Lordships in that case, an Assessing Officer cannot remain passive in the face of a return which is apparently in order but calls for further enquiry. In such a case, revision proceedings can indeed be initiated and there seems to be no serious controversy in this respect. The fine point, however, one must bear in mind is the distinction between adequate enquiries not having been conducted and the result of such enquiries not having been dealt with by way of a speaking order or not having resulted in the conclusion that could be, in the wisdom of a person other than the Assessing Officer, more appropriate. Here is a case in which sufficient enquiries were conducted. As learned brother has rightly noted, the Assessing Officer called for specific details, confirmations and even copies of bills. It could not, therefore, be said that sufficient enquiries were not conducted. However, what is opinion formed as a result of these enquiries is something which is in exclusive domain of the Assessing Officer, and even if Commissioner has such results of enquiries, the resultant order cannot be subjected to revision proceedings. The conclusions arrived at as a result of enquiries cannot be tinkered with in the revision proceedings. The conclusions being drawn up as a result of enquiry is a highly subjective exercise and as to what is appropriate conclusion is something on which perceptions vary from person to persons. These variations in the perceptions of the Assessing Officer vis-a-vis that of the Commissioner, cannot render an order erroneous and prejudicial to the interest of the revenue.

9. Viewed in this perspective, and having noted that the Commissioner has subjected the assessment order mainly on the ground that the Assessing Officer did not reach the right conclusions as a result of his enquiry, the impugned revision order is indeed unsustainable in law. It is not a case in which adequate enquiries has not been carried out. " [Emphasis supplied]

Also it would be apt to refer to the decision of Hon'ble Gujarat High Court in the case of ***CIT vs. Arvind Jewellers (2003) 259ITR 502 (Guj.)*** wherein it has been held as under :

"Coming to the facts of the present case, it is the finding of fact given by the Tribunal that the assessee has produced relevant material and offered explanation in pursuance of the notices issued under section 142(1) as well as section 143(2) and after considering those materials and explanation; the Income Tax Officer has come to a definite conclusion. The Commissioner did not agree with the conclusion reached by the Income Tax ***Officer.*** *Section 263 does not empower him to take action on these facts to arrive at the conclusion that the order passed by the Income Tax Officer is erroneous and prejudicial to the interest of the revenue. Since the material was thereon record and the said material was considered by the Income Tax Officer and a particular view was taken, the mere fact that different view can be taken, should not be the basis for an action under section 263 and it cannot be held to be justified."* [Underlining ours]

10. Lastly, it would not be out of the context to rely on the decision of Hon'ble Allahabad High Court (the facts and circumstances of which are not only almost akin to those of the assessee's case rather stronger) in the case of ***CIT vs. Krishna Capbox (P.) Ltd. (2015) 372 ITR 310 (All).***

In this case, the facts on record found by the Hon'ble High Court were as under :

"The assessee's return for the assessment year 2008-09 was processed under section 143(1) of the Income-tax Act, 1961. Notice under section 143(2) was issued to the assessee. The Assessing Officer made certain queries, to which the assessee replied and after inquiry, and being satisfied with the assessee's answers to the queries, accepted his declared income and passed the assessment order. The Commissioner, however, issued a notice under section 263 on the ground that the Assessing Officer had not made inquiry on certain aspects. The assessee submitted a reply stating that on all these aspects, inquiry was made by the Assessing Officer but ***the Commissioner did not agree with the reply and observed that the Assessing Officer had accepted the version of the assessee without making any inquiry or verification* had passed the assessment order, which was substantially prejudicial to the interests*** *of* ***the Revenue.*** *Accordingly, he set aside the assessment and directed the Assessing Officer to pass a fresh order of assessment after considering all the evidence and affording an opportunity to the*

assessee. The Revenue took the defence before Tribunal that no inquiry was made by the Assessing Officer in respect to the queries set out in the notice issued under section 263 , and therefore, the order of the Commissioner passed under section 263 was wholly justified. The Tribunal found that the defence on the part of the Commissioner factually incorrect and contrary to record. On the question whether or not discussion of the queries and reply received from the assessee, in the assessment order, was necessary, ***the Tribunal held that once inquiry was made, a mere non-discussion or non-mention thereof in the assessment order could not lead to the assumption that the Assessing Officer did not apply his mind or that he had not made inquiry on the subject and this would not justify interference by the Commissioner by issuing notice under section 263. The Tribunal allowed the assessee's appeal.*** [Underlining ours]

On further appeal, the Hon'ble Allahabad High Court after referring to the decision **in CIT v. Fine Jewellery (India) Ltd. [2015] 372 ITR 303 (Bom)** upheld the order of the Tribunal by observing as under:

"Held, *dismissing the appeal, that* ***though the Revenue sought to re-argue before the court that no inquiry had been made by the Assessing Officer with respect to the queries set up in the notice issued under section 263 , when his attention was drawn to the order passed by the Tribunal recording contrary findings, he could not place anything to show that the findings recorded by the Tribunal were perverse or contrary to the record. "*** **[Emphasis given]**

11. Concluding the above, it is, therefore, submitted that on the facts and in the circumstances of the case, documents/evidences submitted in respect of each and every item of income & expenditure and other related information/documents filed by the appellant in relation to the assessment of the impugned assessment year, it is clearly established that the A.O. made requisite enquiries as he deemed proper to frame assessment u/s. 143(3) of the Act by calling supporting evidences and hearing the appellant and after getting himself satisfied, completed the scrutiny assessment.

That being so, there is hardly any scope to interfere with such an assessment order by invoking provisions of sec. 263 of the Act in view of the judicial pronouncements cited supra, the ratios of which are squarely applicable to the facts of the appellant's case.

> Therefore, the action of the Ld. Pr. C.I.T. u/s. 263 of the Act setting aside the assessment on the issue of valuation of closing stock for doing afresh in line with his direction elaborated in the impugned order is clearly outside the purview of sec. 263 of the Act and intention of the Legislature and the order passed u/s. 263 of the Act dated 17/03/2017 shall, accordingly, be liable to set aside.
>
> In view of our above submission with relevant evidences, it is prayed before the Hon'ble Bench that the order passed u/s. 263 of the Act by the Ld. Principal CIT may kindly be directed to be quashed and annulled and the appellant be given such relief(s) as prayed for."

8. On the other hand, ld D.R. supported the order of the Pr. Commissioner of Income Tax-1, Bhubaneswar.

9. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, the assessment was completed by the Assessing Officer originally u/s.143(3) of the Act vide order of assessment dated 31.3.2015 determining the total income at Rs.33,94,400/- after making disallowance out of various expenses. Thereafter, the Pr. Commissioner of Income Tax-1, Bhubaneswar issued a show cause notice dated 17.1.2017 u/s.263 of the Act on the ground that valuation of closing stock ought to have been done by taking the average of opening stock and purchase price. The Pr. Commissioner of Income Tax-1, Bhubaneswar vide the impugned order dated 17.3.2017 passed u/s.263 of the Act held the order of assessment dated 31.3.2015 as erroneous as well as prejudicial to

the interest of the revenue and set aside the same on the ground that the Assessing Officer has failed to examine the issue of valuation of closing stock properly and directed to examine the issue afresh and do the assessment denovo.

10. Ld A.R. of the assessee contended before us that the consistent followed system of valuation of closing stock at cost or net realisable value, whichever is less, cannot be disturbed merely because in the opinion of the Pr. Commissioner of Income Tax-1, Bhubaneswar, the weighted average of opening stock and purchase should have been adopted for valuing the closing stock. He also contended that it is not a case of lack of enquiry and, therefore, no order u/s.263 of the Act could have been validly passed.

11. On the other hand, ld D.R. supported the order of the Pr. Commissioner of Income Tax-1, Bhubaneswar.

12. We find from Question No.17 of notice dated 22.9.2014 issued u/s.142(1) of the Act by the Assessing Officer that the Assessing Officer has made enquiries in respect of valuation of closing stock.

13. The Hon'ble Calcutta High Court in the case of CIT vs. J.L. Morrison (India) Ltd., (2014) 366 ITR 593 (Cal) held as under:

"" 85….. The records of the assessment including the order sheets to go to show that appropriate enquiry was made and the assessee was heard from time to time. In deciding the question the court has to bear in mind the presumption in law laid down in section 114 clause (e) of the Evidence Act:

"that judicial and official acts have been regularly performed:"

86. Therefore, the court has to start with the presumption that the assessment order dated March 28, 2008 was regularly passed. There is evidence to show that the AO had required the assessee to answer-17 questions and to file documents in regard thereto. It is difficult to proceed on the basis that the 17 questions raised by him did not require application of mind. Without application of mind the questions raised by him in the annexure to the notice under section 142(1) of the Act could not have been formulated."

14. Further, we find the Kolkata Bench of the Tribunal in the case of Rupam Jewellers vs ACIT in ITA No.267/Kol/2017 for the assessment year 2013-14 order dated 16.3.2016 has held as under:

"c) in the case of CIT vs. J.P.Patel 263 ITR 421 (MP) it is held as follows.

"that it had not been disputed that in valuing stock the assessee had adopted the last in first out method which is a recognised method. Once a recognised method has been taken recourse to and the value of closing stock had been computed on the basis of average, no question of law would arise from its order."

8.5. Applying the above laid down proposition of law to the facts of this case we hold that it is well settled that the consistent method of accounting of stock valuation followed by the assessee cannot be disturbed by the AO, without pointing out the defects in the method. LIFO is a well accepted and recognised method of valuation of closing stock.

8.6……
The choice of the method is always with the assessee. The only condition is that, it has to be regularly and consistently followed.

8.7. Be it as it may section 145A of the Act mandates that

(a) the valuation of purchase and sale of goods and inventory for the purposes of determining the income chargeable under the head "Profits and gains of business or profession" shall be -
(i) In accordance with the method of accounting regularly employed by the assessee.

The section supports the above view expressed by us and also overrides section 145 of the Act. The act mandates that the valuation of inventory should be made in accordance with the method of accounting regularly employed by the assessee. Thus the AO, is wrong in disturbing the method of accounting regularly employed by the assesee for valuation of closing stock. Hence the addition is bad in law.

.8. Even otherwise, the AO as well as the Id. CIT(A) have committed an error by revaluing of the closing stock only by adopting weighted average method of costing and arrived at the profits of the year without doing the same method of valuation to the opening stock of the assessee. This gives absurd results. The opening stock of the assessee should also be valued in the same manner in which the closing stock of the assessee is valued. Thus, by not valuing the opening stock of the assessee by employing weighted average stock method, the revenue authorities, committed a mistake. Hence on this ground also the addition is bad in law."

15. In the instant case, we find that it is not in dispute that the assessee is consistently following the same method of valuation of closing stock which was also followed in the year under consideration. The profit was deduced in accordance with the method adopted by the assessee. Therefore, in our considered

view, the Pr. Commissioner of Income Tax-1, Bhubaneswar was not justified in disturbing the consistent method of valuation.

16. Further, we find that there is no direction in the impugned order to value the opening stock also by adopting the same method which was suggested in the valuation of closing stock. In this regard, we find that the Hon'ble Supreme Court in the case of Chainrup Sampatram (1953) 24 ITR 481 (SC) has held as under:

> *"It is a misconception to think that any profit "arises out of the valuation of the closing stock" and the situs of its arising or accrual is where the valuation is made. Valuation of unsold stock at the close of an accounting period is a necessary part of the process of determining the trading results of that period, and can in no sense be regarded as the "source" of such profits."*

17. In view of above, we find that the impugned order passed by Pr. Commissioner of Income Tax-1, Bhubaneswar cannot be sustained. We, accordingly, set aside the same and allow the ground of appeal of the assessee.

18. In the result, appeal of the assessee is allowed.

Order pronounced on 12 /09/2018.

Sd/- sd/-

(**Pavan Kumar Gadale)** **(N.S Saini)**
JUDICIALMEMBER **ACCOUNTANT MEMBER**

Cuttack; Dated 12 /09/2018
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : M/s. sree Alankar, Big Bazar, Berhampur
2. The Respondent. Pr. CIT-1, Bhubaneswar.
3. The CIT(A)-
4. Pr.CIT-
5. DR, ITAT, Cuttack
6. Guard file.

//True Copy//

By order

Sr. Pvt. Secretary,
ITAT, Cuttack