

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

**INCOME TAX APPEAL NO.297 OF 2014**

Commissioner of Income Tax 25 .... Appellant  
Vs.  
Uday M. Ghare .... Respondent

Mr. Arvind Pinto for the Appellant.  
Dr. K. Shivaram, Senior Counsel with Ms Neelam C.  
Jadhav for the Respondent.

**CORAM:** S.C. DHARMADHIKARI &  
B.P. COLABAWALLA, JJ.

**DATE :** MARCH 06, 2017

**P.C:**

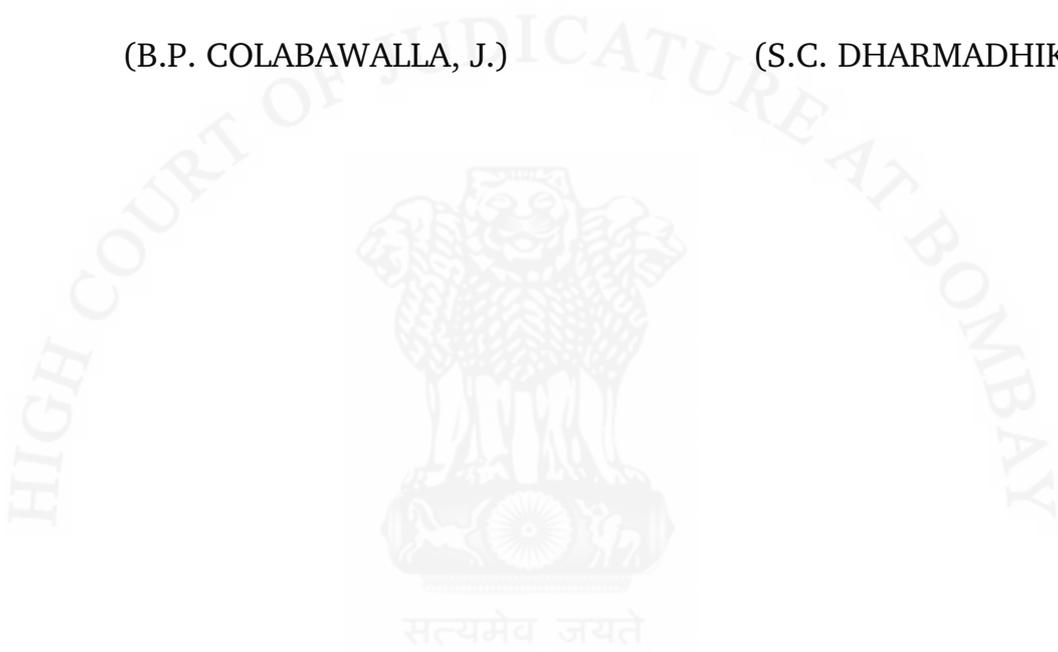
Having heard Mr. Pinto at some length and perusing with his assistance the order, dated 19-7-2013, passed by the Income Tax Appellate Tribunal, "F" Bench, Mumbai in Income Tax Appeal No.4125/Mum/2012 for the Assessment Year 2009-10, we are of the view that the same does not raise any substantial question of law. On the own of the Assessing Officer he sought to question the method of accounting only because

the assessee has not been regularly following the same or the income is not computed in accordance with the standards notified under sub-section (2). We do not find that there was any material with regard to the standards and notified. It is only whether the assessee was consistent in following the method of accounting provided in sub-section (1) of Section 145 of the Income Tax Act, 1961. If that is the other eventuality in which the Assessing Officer derives his power in terms of Section 145, then, in para 12 the Tribunal has found that the assessee has maintained proper books of account. No defect has been pointed out by the Assessing Officer either in the purchases or in the sales. The assessee was in the business of manufacturing and trading of jewellery. If the method of valuation of closing stock was not acceptable, then, the Assessing Officer was obliged to not only discard the explanation of the assessee but also satisfy the Appellate Authority and the Tribunal in this case as to why such average cost method was accepted by the Assessing Officer in the earlier orders. Once the Tribunal comes to such a finding, then, that belies the contention of Mr. Pinto and particularly in

relation to the average cost method followed consistently by the assessee. There has been no deviation from the same. In such circumstances, we do not think that the Tribunal's order raises any substantial question of law. The appeal is devoid of merit. It is dismissed.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)



**IN THE INCOME TAX APPELLATE TRIBUNAL  
"F" Bench, Mumbai**

**Before Shri Rajendra Singh, Accountant Member and  
Dr. STM Pavalan Judicial Member**

**ITA No. 4125/Mum/2012  
Assessment year 2009-10**

ACIT CIR 25(3) 308 C-11 Bandra Kurla Complex, Bandra (E) Mumbai – 400051.	Uday M Ghare 1-A, Sandesh Bhavan, Bajaj Cross Rd. kandivali (W) Mumbai – 400067  PAN:- AAKPG5305N
<b>Appellant</b>	<b>Respondent</b>

Date of Hearing:	10/7/2013
Date of Pronouncement:	19/7/2013

Department By.	Shri CVK Nair
Assessee by:	Dr. K. Shivaram Mr. Paras Savla

**ORDER**

**Per Rajendra Singh, AM**

This appeal by the revenue is directed against the order dated 26.3.2012 of CIT(A) for the assessment year 2009-10. The disputes raised by the revenue in this appeal relate to addition on account of method of accounting and valuation of closing stock which have been deleted by the CIT(A).

2. The facts in brief are that the assessee who was carrying on the business of manufacturing and trading of jewellery through the proprietor concern, had declared sales of Rs. 15.97 crore, the opening stock of Rs. 2.54 crore and closing stock of Rs. 5.49 crore. The gross profit declared by the assessee was Rs. 1.79 crore. The AO asked the assessee to give the break up of all the items traded and their prices as shown in the opening stock, purchases, sales and closing stock. The AO noted from the details filed, that the assessee

had valued the closing stock on the basis of average price of opening stock and purchase. The assessee explained that the method followed by the assessee was correct and should be accepted. AO however did not accept the explanation given. It was observed by him that the value of stones, gold and diamond jewellery depended on each piece according to size purity and colour. The AO, therefore did not accept the average method in case of 22/23 carret gold jewellery bar and gold coin. He followed the *fifo* method. He computed the profit in respect of opening stock separately taking the entire stock having been sold. He thus determined the gross profit in respect of sales of opening stock of 22/23 carret gold, 18 carret gold and gold coin at Rs. 84,35,261/- . Similarly he determined the profit in respect of purchase made during the year which had been sold by deducting quantity of opening stock from the quantity of sales. He thus computed the profit in respect of 22/23 carret gold, gold coin and gold bars at Rs. 1,17,66,780/-. The Total gross profit in respect of both opening stock and purchase was thus computed at Rs. 2,02,02,041/- . The assessee had declared the gross profit in the P&L Account at Rs. 30,05,455/-. The AO, therefore, made addition of Rs. 17196586. Thereafter the AO made valuation of closing stock on the basis of *fifo* method taking the opening stock already sold. He determined the average price of purchase and valued closing stock on that basis in respect of 22/23 carret gold, 18 carret gold and gold coins. He thus made addition of Rs. 15,52,246/- on account of suppression of closing stock.

3. The assessee disputed the decision of AO and submitted before CIT(A) that the assessee had valued the closing stock on the basis of average price over opening stock and purchase which had been consistently followed which was one of the recognized methods. The same method had been followed from assessment year 2006-07 to 2011-12. The assessee referred to the decision of Delhi bench of Tribunal in case of Ajanta Raj Proteings Ltd. Vs. DCIT (32 SOT 517) in which it has been held that once the assessee has chosen to adopt cost as the method of valuation and which had been regularly employed by the assessee, the assessee could not be permitted to change the method to some other basis. It was also submitted that the assessee had regularly followed the same method and had maintained quantitative details. The AO had not pointed out any defects in the books of accounts. Reference was also made to the judgment of Hon'ble High Court of Himachal Pradesh in case of CIT Vs. Himachal Pradesh State Civil Supplies Corporation Ltd. (301

ITR 402) and the decision of Ahmedabad Bench of Tribunal in case of D. Subhaschanra & Co. Vs. ACIT (309 ITR 102) in which average cost method of valuation has been upheld. Reference was also made to a decision of Mumbai Bench of Tribunal in case of ACIT Vs. D.P. Zaveri in ITA no. 1386/Mum/1992 in which the Tribunal held that the revenue is not going to gain by changing the method of accounting as the credit for advanced closing stock has to be given in the opening stock of the following year. The assessee also pointed out that net profit ratio was in the range of 6.04% to 40.81%. The AO had not given any finding that he was not satisfied about the correctness or completeness of the accounts. CIT (A) after considering the submissions of the assessee, agreed that the addition made by AO by changing the method of computation of profit was not justified. He, therefore, deleted the addition made, aggrieved by which the revenue is in appeal before Tribunal.

4. Before us, learned AR for the assessee supported the orders of CIT(A) and submitted that the same being reasonable should be accepted. It was argued that the assessee had been regularly following the said method of accounting which had been followed in the earlier years as well as in the subsequent year. Therefore, it was submitted that there was no justification for changing the method in the intervening period. The learned AR also submitted that the assessee was dealing in several items but the AO had changed the method only in respect of three items and the remaining was accepted. It was also submitted that the sale bill of ornaments only contained net rate and value and, therefore, details in respect of the purchases gone into manufacturing of jewellery was not available from the records. He referred to the sale bill dated 13.12.2007 and 15.2.2008 placed at pages 187 and 189 of the paper book to substantiate the claim. It was thus argued that average method which was accepted method was the most appropriate on the facts of the present case. He referred to the decision of Chandigarh Bench of Tribunal in case of ACIT Vs. Jagdish Chand (90 TTJ 943) in which the Tribunal held that the average rate of opening stock and purchases was an accepted method of valuation approved by the accounting standards issued by ICAI and the same method being followed in the earlier year, the method followed by assessee has to be accepted. Reference was also made to the decision of Mumbai Bench of Tribunal in case ACIT Vs. Gopaldas Vallabhdas (59 ITR 768) in which the assessee had argued that the closing stock consisted mostly of opening stock and, therefore, *lifo* should be followed. The Tribunal however observed that in the

absence of point to point tally of sales with purchases, the principle of *Lifo or FIFO* was not applicable. The claim was thus rejected and valuation on average cost price was upheld. The learned DR on the other hand supported the order of assessing officer and placed reliance on the findings given in the assessment order.

5. We have perused the records and considered the rival contentions carefully. The dispute is regarding additions made by AO on account of method of accounting being followed by the assessee and on account of valuation of closing stock. The assessee was in the business of manufacturing and trading of jewellery. The assessee had maintained proper books of accounts and had maintained quantitative details. The assessee had followed average cost method of valuation of closing stock taking average over the opening stock and the purchases. The AO has not accepted the method followed and held that Lifo method is required to be followed. He has therefore taken the entire opening stock as sold and the average cost has been computed only over the purchases. He has also rejected the accounting results and has proceeded to compute the profit in respect of opening stock and purchases separately which have resulted into substantial additions. In our view the approach adopted by the AO is not correct. The assessee has maintained proper books of accounts in which no defects have been pointed out by the AO either in the purchases or in the sales. The accounting results as per the profit/loss and trading account prepared by the assessee could not be rejected unless some defects are pointed out in the books of accounts. The AO has not accepted the method of valuation of closing stock, which was the average cost basis. The assessee has explained the difficulty in following the Lifo or FIFO method as in the sale bills only the net rate and value have been given and it was not possible to correlate various items or inputs which have gone into the manufacturing of jewellery. In such a situation the average cost method has been followed. The average cost method is one of the accepted methods of valuation of as held by the Tribunal in case of ACIT Vs. Jagdish Chand (Supra). Such method has also been held valid in several other cases. Secondly in this case, the AO himself has accepted the average cost method in the earlier years as well as in the subsequent year as claimed by the assessee which has not been controverted before us. It is a settled legal position that the profit has to be computed as per the method of accounting regularly followed by the assessee. Therefore, once the average method has been accepted in the earlier year as well as in subsequent

years, the same cannot be rejected in the intervening period. The AO has also not placed on record any material to show that gross profit rate or net profit rate declared by the assessee was lower compared to in the earlier years or in relation to similar comparable cases. In these circumstances we do not see any infirmity in the order of CIT (A) deleting the addition made by AO. The order of CIT (A) is accordingly upheld.

6. In the result appeal filed by the revenue is dismissed.

Order pronounced today i.e 19 -7-2013

Sd/-

**(Dr. STM Pavalan )  
Judicial Member**

Sd/-

**(Rajendra Singh)  
Accountant Member**

SK Sr. P.S, Mumbai dated 19.7.2013

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The concerned CIT(A)*
4. *The concerned CIT*
5. *The DR, "F" Bench, ITAT, Mumbai*

By Order

Assistant Registrar  
Income Tax Appellate Tribunal,  
Mumbai Benches, MUMBAI

