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§-2, 4-6

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

+ ITA 783/2016 &amp; CM No. 41564/2016

PR. COMMISSIONER OF INCOME TAX-6 ..... Appellant  
Through: Ms. Lakshmi Gurung, Adv.

versus

NATIONAL FERTILIZERS LTD. .... Respondent  
Through: Mr. Ved Kumar Jain, Mrs. Rano Jain  
and Mr. Pranjal Srivastava, Adv.

+ ITA 785/2016 &amp; CM No. 41566/2016

PR. COMMISSIONER OF INCOME TAX-6 ..... Appellant  
Through: Ms. Lakshmi Gurung, Adv.

versus

NATIONAL FERTILIZERS LTD. .... Respondent  
Through: Mr. Ved Kumar Jain, Mrs. Rano Jain  
and Mr. Pranjal Srivastava, Adv.

+ ITA 815/2016

PR. COMMISSIONER OF INCOME TAX-6 ..... Appellant  
Through: Ms. Lakshmi Gurung, Adv.

versus

NATIONAL FERTILIZERS LTD. .... Respondent  
Through: Mr. Ved Kumar Jain, Mrs. Rano Jain  
and Mr. Pranjal Srivastava, Adv.

+ ITA 816/2016 &amp; CM No. 43356/2016

PR. COMMISSIONER OF INCOME TAX-6 ..... Appellant  
Through: Ms. Lakshmi Gurung, Adv.

versus

NATIONAL FERTILIZERS LTD. .... Respondent  
Through: Mr. Ved Kumar Jain, Mrs. Rano Jain  
and Mr. Pranjal Srivastava, Adv.



**CORAM:**  
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**  
**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**ORDER**

% **08.02.2017**

1. The revenue's grievance with respect to the order of the Income Tax Appellate Tribunal (ITAT) in these four appeals concerning the Assessment Years 2006-07, 2007-08, 2008-09 & 2009-10 is that the common impugned order was an error in affirming the valuation adopted by the assessee for its Slow-Moving Stock. The assessee, a public sector unit engaged in manufacture and distribution of fertilizers, carried *inter alia* stock which was reflected in its balance sheet. For AY 2004-05 the Comptroller and Auditor General (CAG) observed as follows:

*"2(a) Further to our comments in the Annexure referred to in paragraph 1 above, we report that: provisions for diminution in value of obsolete/ surplus/ non moving items of stores and spares have been am de based on Management assessment. Pending final detailed analysis of these stocks, consequential impart thereof, if any, on the accounts remains unascertained."*

2. In view of the above observations, the assessee approached an engineering valuer, who made an item-wise appraisal of the stock in question (i.e. Slow-Moving Stock) and indicated the values thereof. The assessee, accordingly, accepted the report and based upon it valued its Slow-Moving Stock at ₹ 47.76 crores. The Assessing Officer (AO) in the course of assessment rejected the valuation and he



made a corresponding addition. Whilst the AO acknowledged that accounting standard changed could be resorted to; in the present case the assessee had urged that it followed AS-2, in his opinion the valuation made i.e. at 5% of the original cost, was not on a scientific basis. He, therefore, rejected it.

3. The CIT(A) confirmed the AO's order. On appeal, the ITAT accepted the assessee's contention and held *inter alia* as follows:

*“... 9.1 On perusal and careful consideration of the matter, we are of the view that, having regard to the procedure of valuation adopted by the assessee, genuineness and bona fide of the claim cannot be doubted. The observation of CAG reproduced at page 96 of the Paper Book referred to hereinabove, indicated that the assessee had changed the method of valuation from Assessment Year 2006-07, which was based on the valuation report submitted by M/s K.D. Kohli Associate, New Delhi, an independent Engineering Valuer, engaged by the company to carry out the valuation of inventory of stores and spares in the background of AS-2 related to valuation of 'inventory', which has been issued by ICAI, New Delhi.*

*9.2 In the present case, the assessee had to adhere to AS-2 due to the remarks by CAG in the annual report for immediate previous year i.e. F.Y. 2004-05. This change was done on the basis of the remarks by Auditors which was supported by opinion of highly reputed engineer valuer, after proper on the spot duty of nature of plant & machinery and associated non moving stocks of stores and spares held in inventory. Thus, there was no mala fide in valuing the slow moving/ surplus/ obsolete Stores and Spare parts as per the valuation report received from engineering valuer.*



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9.3 In the instant case, the valuation of slow-moving/ surplus/ obsolete stores, spares was made on the basis of the report of the approved valuer, and it can be said that the amount written off was not an arbitrary one and claim of loss on this account was actual. Assessee has followed this policy consistently in subsequent years. It is an established principle in context of section 145, that 'Regular' does not mean 'Permanent' for system of accounting. The statute stipulates that the income shall be computed on the system of accounting 'regularly' followed by the assessee. However, the provision u/s 145 cannot be interpreted to mean that once a system of accounting is adopted, it can never be changed. It has not been pointed out with reference to any provision that a change is impermissible or barred even when it is warranted by an existing situation....”

4. The ITAT also took note of the judgment of the Bombay High Court in *CIT vs India Rare Earth Ltd. (2015) 375 ITR 276*. In that decision the Bombay High Court had interpreted Section 145A in the following terms:

“....8. In our view, the objection raised by the assessee on account of the method of accounting is not justifiable, inasmuch as Section 145A deals with 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” and it requires the assessee to follow the method regularly employed by the assessee. In the present case, it is not in dispute that the method of accounting had been altered with effect from the Assessment Year 2001-02. However, the facts reveal that the write off was on account of deterioration in the condition of the non-moving stores since the assessee’s



*plants were located in remote places and near the sea. The non-moving stores and spares were corroded over a period of time due to wear and tear. This method of accounting having been adopted in the earlier years, there was no reason for the Assessing Officer to disallow the same on the ground that the accounting method had changed.*

*9. Accordingly, we are of the view that the judgment of this Court in the case of Heredilla Chemicals will not affect the write off by the assessee in the present case being distinguishable on facts. It is not merely on the basis of obsolescence of any particular equipment that the assessee has claimed write off of the slow/ non-moving items. The write off claimed is essentially on the basis of deterioration of various materials, including raw-materials and in particular slow moving items of machinery. In the circumstances, we are of the view, that no substantial question of law arises in these Appeals and the same are accordingly dismissed. There will be no order as to costs....”*

5. This Court is of the opinion that the Revenue's contentions are unmerited. The assessee was all along reflecting the full value of the stock; for the year i.e. AY 2004-05 the CAG had made an observation that Slow-Moving Stock had to be realistically valued. This resulted in a fresh valuation by an engineering expert. Based upon this exercise the valuation was reduced to ₹ 47.76 crores.

6. Having regard to these circumstances, the Revenue's contention that the acceptance of 5% as the basis for valuing the Slow Moving Stock being unscientific, is baseless in our opinion. Once the engineering expert examined all the heads of stock and valued them,



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to the best of his judgment, and in the absence of any finding that the 5% was not relatable to such valuation without an alternative valuation or that it is a flawed method of valuation, the AO could not have rejected what was offered as the reduced value of the Slow-Moving Stock. In other words, there is nothing on the record to doubt the bonafides of the valuation. In the event of likelihood of the stocks realising a higher amount than the value shown, the same would be reflected in the subsequent year in the income or profit of the assessee, the Revenue's contention is without any merit.

7. Nor do we find any reason to subscribe and uphold the AO's adverse observations that the change in method of valuation was without basis. In fact the observations of the CAG in this case led to the change and adoption of AS-2, which was not previously resorted to.

8. For the above reasons, no substantial questions of law arise in the appeals. They are, accordingly, dismissed.

  
S. RAVINDRA BHAT, J

  
NAJMI WAZIRI, J

**FEBRUARY 08, 2017/kk**