

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "B" KOLKATA**

Before **Shri Mahavir Singh, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.337/Kol/2013 Assessment Year :2005-06
--

DCIT, Circle-1, Aayak Bhavan, 7 th Floor, P-7, Chowranghee Square, Kolkata-69	V/s.	M/s Exide Industries 59E, Chowringhee Road, Kolkata – 700 020 [PAN No.AAACE 6641 E]
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Sachindananda Srivastava, CIT-DR
प्रत्यर्थी की ओर से/By Respondent	Shri Bishan Kr. Seal, ACA
सुनवाई की तारीख/Date of Hearing	14.09.2015
घोषणा की तारीख/Date of Pronouncement	28.09.2015

आदेश /ORDER

PER Waseem Ahmed, Accountant Member:-

This appeal by the Revenue is arising out of order of Commissioner of Income Tax (Appeals)-XX, Kolkata in appeal No.103/CIT(A)-XX/Cir.1/2011-12/Kol dated 30.11.2012. Assessment was framed by DCIT, Circle-1, Kolkata u/s 143(3)(II) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 31.12.2008 for assessment year 2005-06.

2. The issue raised by Revenue in this appeal is that Ld. CIT(A) erred in deleting the addition of Rs.12,50,20,559/- made u/s. 43B of the Act on account of excise duty on closing stock.

3. Briefly stated facts are that assessee is a limited company and engaged in the business of manufacturing and trading of lead acid storage batteries and accessories thereof. During the year the assessee has valued the closing stock lying in the factory premises and at its depots at the year end after including the element of excise duty amounting to Rs.12,50,20,559/-. The assessee claimed the deduction of the same amount of excise duty on the closing stock of the goods by debited the profit and loss account. The assessee deposited/paid the same amount of excise to the excise department before filing return of income under section 139(1) of the Act. The assessee once again claimed the deduction of the same amount of excise in the computation of income u/s 43B of the Act. So that way the AO concluded that the assessee is claiming the double deduction of the same amount of excise duty i.e. one time by debiting the profit and loss account and second time in the computation of income. However the assessee demonstrated before the AO that there was no double deduction of the excise duty but the AO disregarded the claim of the assessee and added the amount of excise duty in the total income of the assessee.

Aggrieved, assessee is in appeal before Ld. CIT(A) who has deleted the addition made by AO.

Aggrieved Revenue is in appeal before us on the following ground:-

“1. That The Ld CIT(A) is erred in deleting the addition of Rs.12,50,20,559/- made U/s 43B on account of excise duty on closing stock”

Sri Sachidananda Srivastava, Ld. Departmental Representative appearing on behalf of Revenue and Sri Bishan Kr. Seal, Ld. Authorized Representative appearing on behalf of assessee.

4. The Ld DR vehemently supported the order of the AO. The Ld. AR submitted that the issue is already covered by the decision of the Kolkata Tribunal in **ITA No. 1640/Kol/2012** and Hon'ble jurisdictional High court in G.A. No. 3187 of 2013 in the own case of assessee wherein the appeal was decided in favour of the assessee . The Ld. AR has submitted the paper book running into pages from no.1 to 50. It was also explained that the amount of excise duty was debited in the profit and loss account of the assessee and credited the same amount of excise duty on the closing stock of finished goods (Both for Depot Stock and factory stock) in the profit and loss account of the assessee. It had neutralized the impact in the profit of the assessee. Now the said duty is allowable by virtue of the provisions of section 43B of the Act in the relevant year. And the duty which is allowed in the year in the computation of income, the same duty is offered to tax in the subsequent year in the computation of income in order to avoid the double deduction. This process of claiming the deduction and addition has been evidenced by producing the supporting documents in the form of paper book. The relevant nos. of pages of the paper books are 45-47 and 48-50 wherein the computation of income for the assessment years 2005-06 and 2006-07 have been furnished.

5. After careful study of the facts of the case and examination of the records, we find the AO has disallowed the claim of the assessee on the ground of double deduction. However from the submission of the assessee, we found that the effect of the excise duty in the profit and loss account has been made neutralized by debiting the P&L and by crediting the closing stock in P&L account. Besides the deduction claimed by the assessee in the computation of income by virtue of the provisions of section 43B, is offered to tax in the subsequent year. Hence the question of double deduction does not arise. We are also relying on the judgement of Hon'ble Supreme Court in the case of *Berger Paints (India) Ltd. vs. CIT 266 ITR 99 (SC)*. Therefore we are

dismissing the appeal of revenue and allowing the appeal in favour of the assessee.

6. **In the result, appeal of Revenue is dismissed.**

Order pronounced in the open court 28/09/2015

Sd/-
(Mahavir Singh)
(Judicial Member)
Kolkata,

Sd/-
(Waseem Ahmed)
(Accountant Member)

*Dkp

दिनांक:- 28/09/2015 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी / Appellant-DCIT, Cir-1, Aayaka Bhavan, 7th Fl.,P-7 Chowranghe Square, Kol-69
2. प्रत्यर्थी / Respondent- M/s Exide Inds. Ltd. 59E, Chowringhee Road, Kol-20
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।