

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

Before **Shri N.V.Vasudevan, Judicial Member** and  
**Shri Waseem Ahmed, Accountant Member**

<b>ITA No.136 &amp; 200/Kol/2010</b> Assessment Year :2005-06
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Stadmed Pvt. Ltd. Block-AA21, Sector-I, Salt Lake City, Kolkat-700 064 <b>[PAN No.AAECS 1530 Q]</b>	<b>V/s.</b>	DCIT, Circle-10, P-7, Chowringhee Square, Kolkata-69
DCIT, Circle-10, P-7, Chowringhee Square, 3 <sup>rd</sup> Floor, Kolkata-69	<b>V/s.</b>	M/s Stadmed Private Ltd. Block-AA-21, Sector-I, Salt Lake, Kolkata-64
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

आवेदक की ओर से/By Assessee	None
राजस्व की ओर से/By Revenue	Shri Rajat Kumar Kureel, JCIT-SR-DR
सुनवाई की तारीख/Date of Hearing	16-11-2016
घोषणा की तारीख/Date of Pronouncement	18-01-2017

**आदेश /O R D E R**

**PER Waseem Ahmed, Accountant Member:-**

These cross-appeal by the assessee and Revenue are against the common order of Commissioner of Income Tax (Appeals)-XII, Kolkata dated 27.10.2009. Assessment was framed by DCIT, Circle-10, Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 10.12.2007 for assessment year 2005-06.

2. At the outset it was observed that neither anybody appeared nor any adjournment application was received on behalf of assessee when the appeal was called for hearing. It was further observed by the Bench that the case is very old and on earlier occasion also notices were issued through RPAD by the Tribunal and Revenue but found no response. On the last one of the occasion the notice issued vide registered A/D No. 1878 dated 7.4.2016 by the Tribunal was unserved with the remark 'LEFT'. Therefore, in the absence of any plausible reason we decided to dispose of the appeal on merit after hearing Shri Rajat Kumar Kureel, Ld. Departmental Representative appeared on behalf of Revenue.

3. Both the appeals are heard together and are being disposed of by way consolidated order for the sake of convenience.

4. Briefly, the facts are that assessee is a Private Limited Company and engaged in manufacturing of allopathic medicines. The assessee for the year under consideration has filed its return of income declaring total income of ₹34,15,360/-. Subsequently, the case was selected under scrutiny and accordingly notice u/s. 143(2)/142(1) of the Act was issued upon assessee. The assessment was framed u/s 143(3) of the Act vide order dated 10.12.2007 at a total income of ₹1,20,28,390/- after making certain additions / disallowance to the total income of the assessee.

5. First we take up assessee's appeal in ITA No.136/Kol/2010. First issue is general in nature and does not require any adjudication.

6. Second issue raised by assessee in this appeal is that Ld. CIT(A) erred in confirming the order of Assessing Officer by sustaining the disallowance of ₹20,000/- out of travelling expense on account of non-availability of external supporting evidence for verification.

7. The assessee for the year under consideration has claimed travelling expenses for ₹ 63,27,475/-. During the scrutiny proceedings, AO observed that several travelling expenses were claimed on the basis of self-made vouchers. Therefore the genuineness and reasonableness of expenditure were not verified. Accordingly the AO disallowed a sum of ₹ 50,000/- and added to the total income of assessee.

8. Aggrieved, assessee preferred an appeal before Ld. CIT(A) who reduced disallowance to ₹20,000/- by observing as under:-

*"I have considered the submissions of the appellant. It is a fact that there are self-made vouchers and this kind of expenditure is generally seen under 'local travelling'. However, the AO has segregated such expenditure. Instead he made an ad-hoc disallowance. Though an element of self made vouchers do exist, the proposition of such expenditure could not be very substantial. As such the disallowance made at Rs.50,000/ is on a higher side. I feel it would be reasonable to disallow Rs.20,000/- instead of Rs.50,000/- to meet the ends of justice. Accordingly, I direct the AO to restrict the disallowance to Rs.20,000/-. The appellant gets a partial relief on this count."*

Being aggrieved by this, assessee has come up in appeal before us.

9. Before us the Id. DR fully supported the orders of the Authorities Below.

10. We have heard the Id. DR and perused the materials available on record before us. The main issue before us is that the assessee claimed the travelling expenses amounting to Rs.63,27,475/- out of which some expenses were claimed on the basis of self made vouchers. Therefore the AO on ad-hoc basis disallowed a sum of Rs. 50,000/- which was subsequently restricted to Rs. 20,000/- by the Ld. CIT(A). Now, we have to see whether the Ld.CIT(A) was justified in his action. On careful examination of the findings of both the lower authorities, we notice that both of them have disallowed the expenses on the ground that many vouchers were self made for the travelling expenses. But none of them have pointed out that the expenditure were not incurred for the purpose of the business. In our view, it is very pertinent fact that collecting the external documentary evidence for each and every travelling cost is not

realistic. It is because the nature of such expenses cannot be organized or systematically incurred for the purposes of the business. In such a situation, the reliance is placed to see the purpose for which it was incurred. If the purpose of travelling is found having nexus with the business and amount of such expenditure is reasonable then the issue of disallowance is not warranted. There is no specific section for allowing deduction for expenses relating to business tours. The claim has to be preferred in terms of section 37(1) of the Act under which the following conditions are required to be satisfied for claiming deduction namely—

- Expenditure has to be in the nature of revenue expenditure—not in the nature of capital expenditure;
- It must be laid out or expended wholly and exclusively for the purpose of business or profession;
- It must not be of the nature described in sections 30 to 36; and
- The expenditure should not be personal expenditure of the assessee.

In the context of travel/tour expenses, Specially in the cases of non-corporate assessees like individuals, Hindu undivided families, firms and partnerships, these tests are generally applied rigidly/instinctively with a set mind that considerable personal benefit is derived from such expenses and hence, at least part of these should be disallowed, treating the same as non-business expense. This causes considerable hardship to the taxpayers involving them in unfruitful litigation. However in the present case the assessee being corporate claimed such travelling expenses in the immediate preceding year for Rs.1,16,10,992/- but in the year before us it is considerably less. Therefore in the instant case *ad hoc* disallowance to the extent of Rs.20,000/- of the total expenses made on probabilities which is in our view not justified as no specific item or instance of personal expenditure was found in the circumstances of the case. We have noted that the fact of expenditure was well established by the self made vouchers but the lower authorities failed to bring any instance on record any unreasonableness in the amount of expenditure and the purpose for which it was incurred whether personal or commercial. On these facts, we see no reasons to make any addition/disallowance of travelling cost.

We, therefore, reverse the action of the Id. CIT(A) and allow the ground of appeal of the assessee.

11. Next issue raised by assessee in this appeal is that Ld. CIT(A) erred in confirming the order of AO by sustaining the disallowance of ₹20,000/- on account of general expenses though assessee claimed said expenses for ₹22,06,322/-.

12. During the course of assessment proceedings, AO observed that several expenses were claimed on the basis of self-made vouchers. Therefore the AO disallowed a sum of Rs.50,000/- and added to the total income of assessee.

13. Aggrieved, assessee preferred an appeal before Ld. CIT(A) who reduced the said disallowance to Rs.20,000/- by observing as under:-

*“The AO has given a finding that due to self made vouchers he could not verify the genuineness and reasonableness of entire expenditure. For the reasons given in earlier is directed to restrict the disallowance to Rs.20,000/-. The appellant gets a partial relief on this count.”*

Being aggrieved by this, assessee has come up in appeal before us.

14. Before us Ld. DR vehemently relied on the order of Authorities Below.

15. We have heard the Ld. DR and perused the materials available on record before us. The main issue before us is that the assessee claimed the general expenses for Rs. 22,06,322/-. But out of said expenditure some expenses were claimed on the basis of self made vouchers. Therefore the AO on ad-hoc basis disallowed a sum of Rs.50,000/- which was subsequently reduced to Rs.20,000/- by the Id. CIT(A). Now we have to see whether the Ld. CIT(A) was justified in his action. After considering the relevant records, we are inclined to disagree with the view taken by the lower authorities for the reasons set out in **para No. 10** in ground no. 2 in this appeal. We, therefore, reverse the action of the Id. CIT(A) and allow the ground of appeal of the assessee.

16. Next common issue raised by assessee in this appeal in ground no 3, 4 & 5 is regarding the disallowance of proportionate interest expenditure for the loan given to the directors.

17. Assessee in its balance-sheet has shown advances to the directors and others for Rs.15,06,514/- and Rs.41,42,250/- respectively. On question by AO about the nature of the advances, assessee submitted that it is not for the purpose of business. Accordingly, AO disallowed the proportionate interest on such advances for Rs.6.77 lacs and added to the total income of assessee.

18. Being aggrieved the assessee carried the matter before Ld. CIT(A) and submitted that advance to other for Rs.41,42,250/- represents the money advance to the suppliers and therefore it was given for the purpose of assessee's business. As regards the advance to directors, the assessee submitted that it was given out of the current account of assessee and no borrowed fund was utilized in making such advance payment to the directors. The assessee further submitted that the advance to the directors has been given out of its own fund of the assessee-company. Accordingly, Ld. CIT(A) deleted the addition made on account of advance to others for Rs.41,42,250/- but confirmed the interest pertaining to the advance to the directors for Rs.15,06,514/- by observing as under:-

*"I have considered the submissions of the appellant. As regards 'advances to others', the appellant stated that these advances were given to suppliers as in earlier years. The relevant schedule of advances has been filed. The AO commented that the advances given are not for the purpose of business. The AO has not elaborated the reasons/ observations on which he came to that conclusion. In any business, it is normal practice to give advances to suppliers. The AO has not brought on record any material evidence to say that these advances are not paid. The only point raised is that these advances are not for the purpose of business. This view of the AO is without any basis and hence not reasonable. Accordingly, I direct the AO to delete the interest portion disallowed relating to the advances to suppliers.*

*As regards loans given to directors, the appellant stated that the loan advanced to directors was not from borrowed funds but from current account. This kind of argument is not tenable. The point to be seen here is whether such loans are given for the purpose of business and are in the nature of*

*commercial expediency. Moreover the loans given from out of current account also affect the overall picture of the business as sizable amounts are diverted to non-business purposes. The Ld. AR also brought to my notice the Karnataka High Court decision in the case of CIT vs. Sridev Enterprises & Ors. (1991) 192 ITR 165 in support of the view that if sums are advanced from own funds then the interest should not be disallowed. The facts of this case are different from the present case. As such the disallowance of interest made proportionate to loans given to directors is upheld. In the result the appellant gets a partial relief."*

19. Being aggrieved by this, both assessee and Revenue have come up in appeal before us. The Revenue has raised the issue in ground no. 3 in its appeal **ITA 200/Kol/2010** as follows.

*3. That the facts and in the circumstances of the case, Ld. CIT(A) has failed to appreciate that advance of Rs.41,42,250/- given to others was not for business purpose and no benefit was derived out of such advance."*

20. Before us Ld. DR vehemently relied on the order of lower authorities in the appeal filed by the assessee. However in the appeal filed by the Revenue the Ld. DR has supported the stand of the AO by reiterating the arguments contained in the respective orders, which we have already adverted to in the Para-15 above and are not being repeated for the sake of brevity.

21. We have heard the Ld. DR perused the materials available before us especially the impugned order. It was observed that the assessee has given advance to the directors amounting to Rs.15,06,514/- and to others for Rs.41,42,250.00 without any business purposes. Thus, the AO disallowed the interest expenses claimed by the assessee on pro rata basis to the total amount of loan as it was not used for business purposes. The Ld CIT(A) declined to interfere in the order of the AO in the case of the advance given to the directors but deleted the disallowance of interest in the case of the advances given others. The reasons for confirming the addition and deleting the additions have already been explained in the above paragraphs and are not being repeated for the sake of brevity.

The controversy arises in cases where funds are pumped out of business without any commercial purposes. And the funds of the business comprise both type of funds namely borrowed as well as own funds. In all such cases where mixed funds are used for both business and other than business purposes, there is no presumption that moneys used for other purposes came out of borrowed funds. It can be said that interest free funds given are out of own funds to the extent of capital and reserves, and this proposition is supported by the decision of Hon'ble Andhra Pradesh High Court in the case of *CIT Vs. Gopikrishna Murlidhar, 47 ITR 469 (AP)* and in the said case their Lordships accepted the contention that the assessee is entitled to withdraw from capital. The Facts of that case are that the assessee is a Hindu undivided family carrying on business on an extensive scale with a capital of nearly Rs. 20,00,000 (twenty lacs). During the year ended 9th November, 1950, the assessee made large borrowings for purposes of his business and paid interest amounting to Rs. 93,611/- on said borrowings. During the course of that year, the assessee withdrew from the business from time to time amount of Rs.1,77,984/- for his personal expenses. The Income-tax Officer disallowed a sum of Rs.13,500/- on *pro rata*, representing the interest element relating to Rs.1,77,984/-, since he was of view that amount of Rs.1,77,984/- withdrew was made in the name of the business but used for his personal purposes. According to him, money was withdrawn from the books of account to meet the personal expenditure of the assessee and, as this sum of money was not actually used for the business, the interest paid thereon could not be allowed as permissible deduction. However the Hon'ble Court in that case i.e. *Gopikrishna Murlidhar, (Supra)* has taken a contrary view. The relevant finding of the Court is reproduced below:-

*"We do not think that we can give effect to this argument. Indisputably, these amounts were borrowed only for the purpose of business of the family. The assessee drew out from time to time various sums of money aggregating to Rs. 1,77,984/- from the business. It is not a case where any particular sum purporting to be borrowed on behalf of the business was spent for household expenses. This is a case where the loans were taken for carrying on the business but the family used to withdraw some amounts from the business*

*whenever occasions arose. The family was surely entitled to withdraw from the capital supplied by it with the result of the capital being depleted. There is, therefore, no substance in the submission that the fact that part of the amount borrowed was later on used for personal expenses, would deprive the assessee of the benefits."*

With the help of this ratio of the judgment such problem can be resolved by examination and analyses of financial statements prepared on the basis of books of account maintained by the assessee. It is well accepted proposition that for the purpose of ascertaining profit and gains, the normal principles of commercial accounting should be applied, so long as they do not conflict with any express statutory provisions as held by the Hon'ble Supreme Court in *CIT Vs. U.P. State Industrial Development Corporation, 225 ITR 703(SC)*. Thus such problem can be resolved by analyzing statement of accounts and in particular balance-sheet. Where details of own capital, borrowed funds and interest free funds given or utilized for other purposes are available. There is no much difficulties in examination of right to replace own capital to borrow funds in case of individual and partnership firm. But in the case of company, capital is fund of public/ share holders which is managed by the Board of Directors. In the case of company there are certain restrictions under the Companies Act in use of capital/fund for personal benefits. Such replacement is required to be authorized by proper resolution and must be in conformity with the provisions of Companies Act and rules and regulations of regulatory bodies. Same are required to reflect in the financial statements prepared on the basis of audited books of account. The Auditor is also required to point out such replacement/utilization of funds. If funds are diverted in contravention of statutory provisions, then same may be subject to legal and penal consequences under the Companies Act and others. The onus is on the assessee to furnish the relevant material regarding replacement of borrowed funds by own capital and interest free funds available with the assessee.

21.1 On the basis of above discussion a proposition / Formula can be laid down that if an assessee having sufficient interest free funds, in the form of

capital reserves and other funds without interest bearing from relatives and friends not related to business, to cover funds given interest free or utilized other than for business purposes, no disallowance is warranted. If the own funds are not sufficient to cover interest free advances, a proportionate disallowance is warranted. While examining interest free funds available with assessee and interest free funds given a care is required to be taken that these funds were not related to business of the assessee. Capital and Reserves are certainly assessee's own interest free funds. This proportion has been fortified by the following decisions :

- 1) Hon'ble ITAT in the case of Torrent Financers V. ACIT, 73 TTJ 624 (Ahd.),
- 2) Hon'ble Allahabad High Court in the case of CIT V. Prem Heavy Engineering Works P. Ltd., 285 ITR 554 (All.),
- 3) Hon'ble Supreme Court in the case of Munjal Sales Corporation V. CIT, 298 ITR 298 (SC).

If we apply the formula laid down in the case of ACIT vs *Gopikrishna Murlidhar*, (*Supra*) we find that the assessee has submitted that it has its own funds of Rs. 5,22,90,200.00 as on 31.3.2005. Therefore it is clearly established that the assessee was having its own capital greater than the loans and advances given to the directors. We are, therefore, of the considered view that no addition is warranted. Therefore, the addition of Rs.6,77,000/- is deleted.

Now coming to the Revenue's appeal we find on perusal of the details of the advances placed on pages 91 to 92 of the paper book that the assessee has advanced money in the course and for the purpose of the business. It is normal practice in any business organization to advance the money to the employees, suppliers, projects, taxes etc. The Id. DR has not brought anything on record contrary to the findings of Id. CIT(A). Hence we see no reason to interfere in the findings of Id. CIT(A). Hence the ground raised by the Revenue is dismissed.

In the result, the appeal filed by the assessee is allowed.

**Now coming to remaining issue of Revenue's appeal in ITA No.200/Kol/2010.**

22. Next issue raised by Revenue in this appeal is that Ld. CIT(A) erred in directing the AO to treat the subsidy received from Government of West Bengal as capital receipt.

23. During the year, assessee has received subsidy from the Govt. of West Bengal for ₹29,53,161/- under Industrial Promotion Assistance Scheme and said subsidy was given for the expansion of capacity, modernization and improving the marketing capability of assessee-company. The AO called upon the assessee to explain why the said amount should not be added to the total income by treating the subsidy as revenue in nature. In compliance thereto, assessee submitted that the Co-ordinate Bench in assessee's own case for AYs 1997-98, 1998-99 and 2001-02 as treated capital receipt. However, AO treated the subsidy as revenue in nature because option was given to the assessee to adjust the subsidy with the commercial taxes. The AO also observed that the subsidy amount has not been reduced from the capital asset. In view of above, AO treated the subsidy as revenue in nature and added to the total income of assessee.

24. Aggrieved, assessee preferred an appeal before Ld. CIT(A) whereas assessee submitted that the subsidy was given for the purpose of expansion and modernization of its unit and nowhere it was connected with revenue receipt. The assessee also submitted that similar issue was decided by the Co-ordinate Bench in favour of assessee for AYs 1996-97 to 1998-99 and 2001-02. Similarly, Ld. CIT(A) also decided the issue in favour of assessee for AYs 1999-00, 2001-2002 and 2003-04 respectively. Accordingly, Ld. CIT(A) deleted the addition made by AO by observing as under:-

*"The fact of the case and the issue involved in the present case is similar to facts of the cases decided by the jurisdictional Kolkata Tribunal and High Court. I find in the earlier years in the appellant's own case my predecessor following the jurisdictional ITAT decisions [Rasoi Ltd. Mendine Pharm. Ltd. (supra)] held the WBIPA as capital receipt. I am also of the view that the sole*

*purpose behind the grant of assistance is to tide over the financial crisis and promotion of industries and that both these activities are related to capital field and cannot be linked up with day to day operations of the appellant in any manner. Respectfully following the jurisdictional Kolkata ITAT and High Court decisions discussed earlier, I treat WBIPA as a capital receipt and direct the AO to delete the addition of Rs.29,53,161/-“*

Being aggrieved by this, Revenue has come up in appeal before us.

25. Before us Ld. DR vehemently relied on the order of AO.

26. We have heard the Ld. DR and perused the records available. The assessee has received grant from the West Bengal Government amounting to Rs.29,53,161/- under the Industrial Promotion Scheme of W.B. The AO has treated the same as revenue in nature and accordingly added the same to the total income of the assessee. However the Ld. CIT(A) has allowed the same based on the facts which is already discussed above. Now the main crux of the controversy is as to whether the grant received by the West Bengal Government is Capital or Revenue in nature. At the outset we find that the issue is already covered in favour of assessee in its own case in **ITA No. 772/Kol/2005** for the AY 2001-02 vide order dated 26-082005. The relevant operative portion of the said order is reproduced below:-

*“18. We have given our careful consideration to the rival submissions made before us and have perused the orders of tax authorities. We have also considered the case law cited by both the parties and the appellate orders earlier passed by the Coordinate Bench of ITAT, Kolkata as referred above. We find that the same issue came up for consideration before the ITAT ‘C’ Bench, Kolkata in the case of Mendine Pharmaceutical (P) Ltd. for assessment year 1997-98 in **ITA No. 2403/Kol/2003**. In its order dated 26<sup>th</sup> March, 2004, the Tribunal recorded the following material finding.:-*

*‘We have perused the orders of the Tribunal placed on record. We find that the scheme under which the assessee before us received the financial assistance, has been examined in detail in those earlier orders by the Tribunal. The Tribunal in those cases has observed that there is nothing in the scheme which would be considered to help the industries in carrying on their operations on day to day basis. When financial crisis is faced by some business, pumping in of fresh capital is required to help the business to tide over such financial crisis. The financial help, in this regard has, therefore, got to be considered as having an enduring effect of dragging the business out of poor financial*

conditions being faced by the industries. The scheme of the West Bengal Gov. does not envisage giving any subsidy in respect of specific items of expenses like sales-tax, power, water, etc. and hence the same cannot be regarded to be of revenue nature. Since the assessee has received the financial assistance under the same scheme, in our view, the CIT(A) was justified in following the earlier order of the Tribunal and hence we uphold the same.'

*Since the facts and circumstances of the present case are identical to the facts in assessee of M/s Medine Pharmaceutical (P) Ltd (supra), we see no reason to differ from the view earlier taken by the Bench. Respectfully following the aforesaid order, we decide the issue in favour of assessee and against the Revenue."*

Respectfully following the same, we decline to interfere in the order of Id. CIT(A). Hence the ground of appeal of the Revenue is dismissed.

27. Next issue raised by Revenue in this appeal is that Ld. CIT(A) erred in deleting the addition of Rs.48,28,867/- on account of excise duty pertaining to finished goods.

28. During the course of assessment proceedings, AO observed that assessee has not included excise duty payable on the closing stock of finished goods lying in factory. The AO called upon the assessee for explanation in compliance thereto. Assessee submitted that the liability for making payment of excise duty arise at the time of removal of goods. Therefore the same was not included in the closing stock. However, AO disregarded the claim of assessee in view of provisions of Sec. 145A of the Act. Thus the excise duty for Rs.48,28,867/- was added to the total income of assessee.

29. Aggrieved, assessee preferred an appeal before Ld. CIT(A) whereas assessee submitted that it has been valuing its closing stock of finished goods without inclusion of excise duty consistently. Considering the same, Ld. CIT(A) deleted the addition made by AO by observing as under:-

*"The other argument of the appellant is that it neither paid nor incurred nor debited such excise duty. According to appellant, payment of excise duty arises on removal of finished goods from factory premises. The decisions of*

*Madras High Court in the case of CIT vs. English Electric Co. Ltd. (243 ITR 512) and CIT vs. Dyna Vision Ltd (267 ITR 600) support the appellant's view wherein it was held that excise duty payable on closing stock did not form part of the valuation of closing stock. Following the above decisions, the Madras High Court in the case of CIT vs. Ashok Leyland Ltd. [2007] 294 ITR 380 held that "while calculating valuation of closing stock customs and excise duty component had to be excluded". The court further held that 'customs and excise duty were to be allowed u/s. 43B which were paid on goods manufactured though lying in stock'. The Bombay High Court in the case of Cartini India Ltd vs. ACIT & Ors (2007) 291 ITR 355 supported the above view, wherein it was held that 'as far as exclusion of excise duty from closing stock is concerned, excise duty could not form part of the closing stock as the payment was not debited to the P&L a/c'. The court further observed that 'if the amount was treated as the part of the closing stock then it should have been allowed for deduction u/s. 43B'*

The Hon'ble ITAT, Allahabad Bench in the case of Shyam Biri Works Ld vs. ACIT (2006) 108 ITD 489 held that "Excise duty is payable either at the point of time of manufacture or at the time of removal of such manufactured goods kept at an approved place of storage. Sec. 145A clearly provides that excise duty is includible in closing stock only when it is actually paid. Since the assessee had not paid excise duty on goods kept in bonded warehouse, question of including it in the closing stock did not arise."

*In view of the above detailed discussion and respectfully following the cited judicial decisions, I direct the AO to delete the addition made on account of excise duty to the value of closing stock."*

Being aggrieved by this, Revenue has come up in appeal before us.

30. The Id. DR before us vehemently relied on the order of AO.

31. Heard Ld. DR and perused the materials available on record. We find that the AO has made the addition of the excise duty on the closing stock of finished goods as per the provisions of section 145A of the Act. However we find that the liability for the payment of the excise duty arises at the time of removal of the goods and in the instant case the finished goods are lying in the closing stock. Therefore there is question of including the excise duty in the closing stock of the finished goods. In this connection we rely in the case of CIT Vs. SVP Industries Limited reported in 228 taxman 104. The relevant extract is extracted below :

*"Section 145A of the Income-tax Act, 1961 - Method of accounting - In certain cases (Excise duty) - Assessment year 2004-05 - An addition was made to*

*income of assessee-company on account of non-inclusion of excise duty inclosing stock of finished products - On last date of accounting year, goods were lying in bonded warehouse – Neither excise duty was paid nor duty was incurred - Further, duty had not been included and did not form part of cost as it was not claimed in profit and loss account – Whether excise duty being payable at time of removal of goods and not at time of manufacture, duty would be payable only at time of unbonding and, thus, addition was to be deleted - Held, yes [Para 10] [In favour of assessee]”*

Respectfully following the same, we decline to interfere in the order of Id. CIT(A). Hence the ground of appeal of the Revenue is dismissed.

32. In the result, Revenue’s appeal stands dismissed.

**33. In the result, assessee’s appeal stands allowed and that of Revenue stands dismissed.**

Order pronounced in the open court 18/01/2017

Sd/-  
(न्यायिक सदस्य)  
(N.V.Vasudevan)  
(Judicial Member)  
Kolkata,

Sd/-  
(लेखा सदस्य)  
(Waseem Ahmed)  
(Accountant Member)

\*Dkp, Sr.P.S

दिनांक:- 18/01/2017 कोलकाता ।

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

1. आवेदक/Assessee-Stadmed Pvt. Ltd. Block-AA-21, Sector-I, Salt Lake City, Kol-64
2. राजस्व/Revenue-DCIT, Circle-10, P-7, Chowringhee Square, Kolkata-700 069
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 ।