

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A', NEW DELHI**

**BEFORE SH. AMIT SHUKLA, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 6060/Del/2014
Assessment Year : 2010-11

M/s. Bigesto Technologies Ltd., B-11, Mahendru Enclave, Delhi	Vs.	DCIT, Circle-3(1), New Delhi
PAN : AAACB3036E		
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Sh. R.C. Danday, Sr.DR

Date of hearing	14.09.2017
Date of pronouncement	06.10.2017

ORDER

PER O.P. KANT, A.M.:

This appeal by the assessee is directed against order dated 09/09/2014 of the Commissioner of Income-tax(Appeals)-VI, New Delhi [in short ~~the~~ CIT-(A)] for assessment year 2010-11 raising following grounds of appeal:

'On the facts and in the circumstances of the case and in law, the CIT (A) incorrect and unjustified in:

- a) Dismissing the appeal of the assessee.*
- b) Holding that the AO was justified in including the amount of excise duty in the value of the closing stock.*
- c) Passing the appeal order without considering the Judgments including the Judgment of the Hon'ble The Supreme Court of*

India in the case of Torrent Cables Ltd. (210 TM-579) whereby excise duty amount is not includible in the value of the closing stock and that too without any reason to differ with the same and also when the CIT (A) was judicially required to follow the same.

d) Ignoring the continuity and consistency.

e) Ignoring the method employed by the assessee in all the earlier and subsequent years.

f) Without prejudice to above and only on alternative ground the CIT (A) erred in uphold the additions without making any adjustment in the Opening Stock.

g) Upholding the addition of Rs.1,50,000/- without any reason basis and also without considering the submissions made by the assessee in appeal proceedings.

h) Upholding the addition of Rs.1,50,000/- on ad-hoc basis based on personal sweet will and how the CIT(A) found the addition or disallowance reasonable.

2. At the outset, it is mentioned that notice of hearing was sent to the appellant i.e. by registered post fixing the date of hearing on 14/09/2017, however neither anyone appeared on behalf of the assessee nor filed any application for adjournment and therefore case was heard *ex parte* qua the assessee.

3. Facts in brief of the case are that the assessee filed return of income on 14/10/2010 declaring total income of Rs.64,31,373/-. The case was selected for scrutiny and notice under section 143(2) of the Income Tax Act, 1961 (in short ~~the Act~~) was issued and complied with. In the assessment completed, the Assessing Officer made addition of the excise duty to the closing stock in terms of section 145A of the Act, amounting to Rs.8,77,134/- and made disallowance of Rs.1,50,000/- out of travelling expenses on account of personal use by the directors.

3.1 The assessee challenged the disallowance before the first appellate authority, however, the Ld. CIT-(A) upheld both the addition/disallowance made by the Assessing Officer.

3.2 On the issue of addition of excise duty to the closing stock, the finding of the Ld. CIT-(A) is reproduced as under:

“4.1 I have carefully considered the submission of the appellant. I have also gone through the relevant orders passed in this case.

4.1.1. In this case, during the course of regular assessment, the AO observed that the assessee company is following exclusive method for valuation of closing stock i.e. excise duty has been excluded from the valuation of closing stock. To verify the claim the AO asked the appellant company to furnish “Details of excise duty component in closing stock. The appellant was requested to submit the computation of closing stock in accordance with “inclusive method” as prescribed by Section 145A of the I.T. Act, 1961. In response, the assessee submitted as below:

“Valuation of closing as given in Balance if exclusive of Tax, Cenvat etc. ICAO has introduced revised accounting standard As-2 which is mandatory w.e.f 01.04.1999. This standard closely follows IAS-2. As per AS-2 of ICAI, inventories are assets (a) held in ordinary course of business (b) in the process of production for such sale or (c) in the form of material or supplies to be consumed in the production or in the rendering of services. Inventory is classified as (i) Raw Material and Components (ii) WIP (iii) Finished Goods (iv) Stores and spares and (v) Loose tools.

As per section 145A of Income Tax Act, stock valuation should be inclusive of any tax, duty, cess or fee actually paid by assessee to bring the goods to the place of its location and condition as on date of valuation, even if such tax or duty is includible even if any right arise as a consequence to such payment. Thus, duty paid on in puts will have to be added while valuing stock, even if Cenvat credit availed of such duty paid. In respect of finished stock, excise duty payable should be added to the inventory valuation even if not paid as goods are still lying in the factory. Both opening as well as closing stock should be

valued on same basis. The amended section 145A is effective from 01.04.1999 and will apply to A.Y. 1999-2000 and onwards.

However, as per Account Standard of ICAI (AS-2), inventory cost should comprise of all cost of purchases, cost of conversion and other costs incurred in bringing the inventories to the present location and condition. Cost of purchases should be exclusive of duties which are recoverable from the taxing authorities, (e.g. Convat). Inventory should be valued at lower of cost or net realizable value. Inventory should be valued on FIFO (First in First Out) method or weighted average. (LIFO is not permitted). The AS-2 has been made mandatory w.e.f. 1st April 1999.

For purposes of Income Tax, inventory is required to be valued inclusive of excise duty, even if assessee is entitled to get Cenvat credit of duty. However, for purposes of balance sheet as per Companies Act, inventory should be valued exclusive or excise duty, if assessee is entitled to get Cenvat credit of duty paid on inputs. In view of this conflict, Institute of Chartered Accountant of India has advised that in the company accounts, inventory of inputs should be valued without considering Cenvat (i.e. first method should be adopted.)

In our case the assessee company has calculated the opening and closing stock of finished goods are Rs.2,44,55,672.38 and Rs.88,62,330.23 respectively. If we add the excise duty components in opening and closing stock then our profit will down since our opening stock is more than the closing stock. In this circumstances we request your honor not to consider inclusive method in valuing the closing stock.

4.1.2. Section 145 of the i.T. Act, 1956 provides that Profit and Gains of Business or Profession shall be computed in accordance with either cash or mercantile system of accounting, as regularly employed by the assessee. In CIT Vs. Me Millan & Co(1958) 33ITR 182 (SC), it was held that the choice of method of accounting lies with the assessee, but the assessee must show that they have followed the method regularly for their own purposes. Therefore, the accrual or arising of income is generally dependent on the method of accounting employed by the assessee. In cash system of accounting, the accrual or arising of the income is independent of its receipt. So long as the amount is due to the assessee, the system of accounting would envisage the amount being treated as having

accrual to the assessee (Refer CIT Vs. Planters Co. Pvt. Ltd. (1980) 123 ITR 648 (Mad). In the mercantile system of accounting, the profit or loss at the end of the accounting period is not based on the difference between what was actually received and what was actually paid out, but on the difference between the right to receive and the liability to pay. Therefore, even under the mercantile system, a mere claim by the assessee is not sufficient to make income accrue. The profit must actually become due. Likewise, a mere claim against the assessee is not sufficient to justify a deduction; a liability must definitely arise (Refer-Godhra Electricity Co. Ltd. Vs. CIT (1997) 225 ITR 746 (SC).

4.1.3. Further, section 145A provides that the valuation of purchase and sale of goods and inventory for determining the income chargeable under the head "profit and gains of business or profession" shall be

(a) In accordance with the method of accounting regularly employed by the assessee

(b) Further adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods to the place of its location and condition as on the date of valuation.

4.1.4 In CIT Vs. British Paints(India) Ltd. (1991) 188 ITR 44(SC),it has been held that the AO has power to substitute correct method in place of wrong method of valuing closing stock adopted by the assessee. Merely because the wrong method was consistently followed, it cannot be accepted. Consistency should be with reference to the correct method. Therefore, the AO was justified in substituting correct method in the place of incorrect method. The Apex Court laid down the following principles:

- It is not only the right but the duty of the AO to consider whether or not the books disclose the true state of accounts and the correct income can be deduced.*
- It is incorrect to say that the officer is bound to accept the system of accounting regularly employed by the assessee, the correctness of which had not been questioned in the past. There is no estoppel in these matters and the officer is not bound by the method followed in earlier years.*

- *The officer has to consider the material placed before him or her if upon such consideration, he or she is of the opinion that correct profits & gains could not be derived from the accounts, the officer will then be obliged to have recourse to the proviso to Section 145 which provides that opportunity shall be given by the AO by serving a notice for a best judgement assessment.*

4.1.5. Section 145 of the Act also requires that the Central Government shall prescribe accounting standards to be followed by all the assesses following the mercantile system of accounting. The CBDT has issued a Notification No. 5.0.69(E), dated 25 January, 1996 and notified the following accounting standards to be followed by all the assesses, following the mercantile system of accounting:

- *Relating to disclosure of accounting policies (AS 1)*
- *Relating to disclosure of prior period and extraordinary items and changes in accounting policies (AS2)*

These two accounting standards were similar to the corresponding standards issued by ICAI i.e. AS1 & AS 5, respectively.

4.1.6. Further Accounting Standard (AS) 2, issued by ICAI relates to Valuation of Inventories. A primary issue in accounting for inventories is the determination of the value at which inventories are carried in the financial statements until the related revenues are recognized. This standard deals with the determination of such value, including the ascertainment of cost of inventories and any write down thereof to net realizable value. As per this A.S., net realizable value is the estimated selling price in the ordinary course of business less the estimated costs of completion & the estimated costs necessary to make the sale. Further, it states that Inventories are usually written down to net realizable value on an item by-item basis. In some circumstances, however, it may be appropriate to group similar or related items like inventory of same product line that have similar purposes or end uses and are produced and marketed in the same geographical area & cannot be practically evaluated separately from the other items in that product line. However, it is not appropriate to write down inventories based on classification of

inventory e.g. Finished Inventory or all the inventories in a particular business segment.

4.1.7. Accordingly, reliance is placed on the following judgments:

(i) CIT Vs. Majestic Auto Ltd. [2013] 39 taxmann.com 114 (Punj. & Har.) wherein it was held that items may be small and also, may be numerous, but each item, which is in stores of the assessee, is required to be valued and, therefore, assessee could not be permitted to assert that stock of spares was not required to be valued in closing stock. However, since the assessee was maintain average stock of 15 days, addition needed to be required to stock of 15 days instead of one month.

(ii) Krishi Discs (P.) Ltd. Vs. CIT [2013] 32 taxmann.com 136/215 Taxman 132 (All.) wherein it was held that where the assessee was liable to pay excise duty on finished goods, revenue authorities were justified in adding amount of excise duty so payable during relevant year at time of valuation of closing stock.

4.1.8. Considering the matter in its entirety, the action of the AO is upheld and this ground of appeal of the appellant is dismissed being not tenable.”

3.3 The disallowance of Rs.1,50,000/- out of travelling expenses was adjudicated by the Id. CIT(A) as under:

4.3. Ground No.3: During the course of assessment proceedings, the AO noted that appellant has claimed travelling expenses to the tune of Rs.22,07,565/- including Director Travelling expenses amounting to Rs.9,45,059/-. After perusal of submission filed by the appellant before the AO, the AO found that expenses to the tune of Rs.1,50,000/- of personal in nature. Accordingly, the AO disallowed an amount of Rs.1,50,000/- and added back to the total income of the appellant.

4.3.1. I have carefully considered the submission of the appellant and assessment order. The addition made by the on account of personal use to the extent of Rs.1,50,000/- found reasonable, therefore, this ground of appeal is dismissed.”

3.4 Aggrieved, the assessee is in appeal before the Tribunal, raising the grounds as reproduced above.

4. Before us, the Ld. Sr. DR supported the order of the lower authorities and submitted that additions/disallowance might be upheld.

5. We have heard the submission of Ld. Sr. DR and perused the relevant material on record. The ground No. (a) raised by the assessee being general in nature, we are not required to adjudicate upon. In ground Nos. (b) to (d), the assessee has challenged addition of excise duty to the closing stock. In our opinion, the assessee has not followed the provision of section 145A of the Act, which provides that valuation of purchase and sale of goods and inventory should be adjusted to include the amount of any tax, duty, cess or fee actually paid or incurred by the assessee. In the submission before the Ld. CIT-(A), the assessee has accepted this fact, however, the assessee submitted that for the purpose of balance sheet as per the Companies Act, inventory should be valued exclusive of excise duty, if assessee is entitled to get Cenvat credit of duty paid on inputs. The assessee further submitted before the Ld. CIT-(A) that in view of this conflict with section 145A of the Act, the Institute of Chartered Accountants of India advised that in the company accounts, inventory of inputs should be valued without considering Cenvat. In our opinion, as far as computation of income for the purpose of Income Tax Act is concerned, if there is a conflict in provisions of the Income Tax Act and Companies Act or guidance of the Institute of Chartered Accountant, then the assessee is required to follow the provisions of the Income Tax Act and not the provisions of the companies Act or the guidance of the Institute of Chartered Accountant. In principle, we agree with the finding of the Ld. CIT-(A) that assessee should follow the provision of section 145A of the Act. However, we do not agree with the approach of the authorities in invoking the provision of section 145A only for valuation of

the closing stock. In ground No. (f), the assessee has made alternative payer of allowing the corresponding adjustment to opening stock.

5.1 In our opinion, following the provisions of section 145A of the Act, effect of taxes or duty etc. paid has to be given to purchase and sales of goods and inventory including, both the closing and opening stock, which the authorities have not considered. Accordingly, we feel it appropriate to restore the issue to the file of the Ld. CIT-(A) with the direction to adjudicate the issue of the effect of section 145A of the Act in the case of the assessee in a comprehensive manner on purchase, sales and inventory (both opening and closing stock) instead of applying selectively only on the closing stock. The assessee shall be afforded adequate opportunity of being heard. Accordingly, the grounds of the appeal from (b) to (f) are allowed for statistical purpose.

7. In ground No. (g) the assessee has challenged disallowance of Rs.1,50,000/- out of the travelling expenses. The assessee has claimed total travelling expenses of Rs.20,07,565/- which included director travelling expenses amounting to Rs.9,45,059/-. On perusal of the Ledger accounts for travelling expenses, the Assessing Officer held that some of the expenses were personal in nature, and, therefore, he disallowed expenses of Rs.1,50,000/- on estimate basis for personal nature of expenditure. The learned CIT-(A) upheld the disallowance.

7.1 Before the learned CIT-(A), the assessee pleaded that the finding of the Assessing Officer on the issue in dispute was not correct as the copy of foreign travelling expenses does not reveal any expenditure of personal nature. The assessee also submitted that no disallowance could be made in the hand of the company and Assessing Officer, if so desires, could treat such expenses as perquisite in the hand of the directors.

7.2 We find that the Ld. CIT-(A) has not considered the objection of the assessee that there were no expenditure of personal nature in foreign travelling expenses. In our opinion, if expenditure has not been incurred wholly and exclusive for the purpose of business then said disallowance could be made under section 37(1) of the Act. Since the Ld. CIT-(A) has sustained the disallowance without taking into account objection of the assessee and verifying the factual claim of the assessee that no expenses of personal nature were incurred, we feel it appropriate to restore the issue to the file of Ld. CIT(A) to decide the issue-in dispute after taking into consideration objections of the assessee. The assessee shall be afforded adequate opportunity of being heard.

8. In the result, appeal of the assessee is allowed for statistical purposes.

The decision is pronounced in the open court on 6th Oct., 2017.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 6th October, 2017.

RK/(D.T.D)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Asst. Registrar, ITAT, New Delhi