

आयकर अपीलीय अधीकरण, न्यायपीठ – “C” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
 (समक्ष) Before श्री जे. सुधाकर रेड्डी, लेखा सदस्य एवं/and श्री ऐ. टी. वर्की, न्यायीक सदस्य)
 [Before Shri J. Sudhakar Reddy, AM & Shri A. T. Varkey, JM]

I.T.A. Nos. 1768 /Kol/2014
Assessment Year: 2010-11

Deputy Commissioner of Income-tax, Central Circle-VIII, Kolkata.	Vs.	M/s. Nezone Industries Ltd. (PAN: AABCN5479J)
Appellant		Respondent

&

I.T.A. Nos. 1769 /Kol/2014
Assessment Year: 2010-11

Deputy Commissioner of Income-tax, Central Circle-VIII, Kolkata.	Vs.	M/s. Nezone Alloys Ltd. (PAN: AABCN5478K)
Appellant		Respondent

Date of Hearing	08.06.2017
Date of Pronouncement	26.07.2017
For the Appellant	Shri G. Mallikarjuna, CIT, DR
For the Respondent	Shri Pankaj Baid, Advocate

ORDER

Per Shri A.T.Varkey, JM

Both these appeals filed by the revenue against the separate orders of Ld. CIT(A), Guwahati dated 01.05.2014 for AY 2010-11. Since grounds are common and facts are identical, we dispose of both the appeals of separate assessees by this consolidated order for the sake of convenience. The grounds of appeal for both the assessees are as under:

Grounds of appeal of M/s. Nezone Industries Ltd.

“1. That on the facts and in the circumstances of the case the Ld.CIT(A),Guwahati has erred in deleting the addition of Rs.90,03,535/- on account of Transport subsidy claimed by the assessee during the financial year.

2. That on the facts and in the circumstances of the case the Ld.CIT(A),Guwahati has erred in deleting the addition of Rs. 25,79,569/- on account of Interest subsidy claimed by the assessee during the financial year.

3. That on the facts and in the circumstances of the case the Ld.CIT(A),Guwahati has erred in deleting the addition of Rs.1,77,41,987/- on account of Central Excise duty refund claimed by the assessee during the financial year.

4. That on the facts and in the circumstances of the case the Ld.CIT(A),Guwahati has erred in deleting the addition of Rs. 3,64,23,957/- on account of Sales Tax Remission claimed by the assessee during the financial year.
5. That on the facts and in the circumstances of the case, the order passed by the Ld.CIT (A), Guwahati is not only erroneous but prejudicial to law.
6. That on the facts and in the circumstances of the case, the Ld. CIT(A), Guwahati has erred in relying on the decision of the Guwahati High Court in the case of M/s. Meghalaya Steels Ltd. for A.Y.-2006-07 which has not yet reached Judicial finality.
7. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearings.”

Grounds of appeal of M/s. Nezone Industries Ltd.

- “1. That on the facts and in the circumstances of the case the Ld. CIT(A) , Guwahati has erred in deleting the addition of Rs. 98,585/- on account of Interest Subsidy claimed by the assessee during the financial year.
2. That on the facts and in the circumstances of the case the Ld.CIT(A),Guwahati has erred in deleting the addition of Rs.36,177/-on account of Insurance Subsidy claimed by the assessee.
3. That on the facts and in the circumstances of the case the Ld. CIT(A), Guwahati has erred in deleting the addition of Rs.27 ,03,860/- on account of Central Excise Duty refund claimed by the assessee.
4. That on the facts and in the circumstances of the case, the Ld. CIT(A), Guwahati has erred in deleting the addition of Rs. 8,74,427/- on account of sales tax remission .
5. That on the facts and in the circumstances of the case, the order passed by the Ld.CIT(A), Guwahati is not only erroneous but prejudicial to law.
6. That on the facts and in the circumstances of the case, the Ld. CIT(A), Guwahati has erred in relying on the decision of the Guwahati High Court in the case of M/s. Meghalaya Steels Ltd. for AY 2006-07 which has not yet reached Judicial finality.
7. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearings.”

2. Since grounds of appeal are similar and the assessee companies are engaged in the similar business of manufacture of mild steel, black and galvanized tubes/pipes etc., ITA No. 1768/Kol/2014 is taken as lead case and the result of the same will be followed by the other appeal also. In this case, the AO did not consider certain subsidies claimed by the assessee as eligible for deduction u/s. 80IC of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) i.e. transport subsidy, central working capital interest subsidy, state power subsidy, sales tax remission. The Ld. CIT(A) allowed the claim of the assessee in respect to all the four subsidies. Now revenue is challenging the decision of the Ld. CIT(A) and one

of the grounds is that the Ld. CIT(A) has given the relief by relying on the decision of Hon'ble Gauhati High Court in the case of M/s. Meghalaya Steels Ltd. for AY 2006-07 which according to the Revenue has not reached judicial finality. We find that the issues agitated by the revenue in respect to subsidy stated above are no longer res integra. The Hon'ble Supreme Court in Civil Appeal No. 7622 of 2014 by judgment dated 09.03.2016 has upheld the order of the Hon'ble Guwahati High Court in the case of CIT Vs. Meghalaya Steels Ltd. (2013) 34 Taxman.com 34 (Gau) which has been acknowledged by the CBDT vide Circular No. 39/2016 dated 29.11.2016 whereby CBDT after taking cognizance of the decision of the Hon'ble Supreme Court in Meghalaya Steels Ltd. (supra) instructed the officers of the Department that subsidies of transport, power and interest given by the Government to the Industrial Undertakings are receipts which are reimbursed for cost of production relating to manufacture or sale of the products and, therefore, have a direct nexus with the profits and gains of the Industrial Undertaking. The CBDT further directed the officers in the field to allow deduction u/s. 80IC of the Act for such receipt also. The said Circular also mentions that appeals filed by the department on the above issue should not be pressed. In the light of the above, since the matter is no longer res integra and has reached finality and the Ld. CIT(A) has relied on the decision in the case of Meghalaya Steels Ltd., supra, we do not find any reason to interfere in the order of the Ld. CIT(A) which is confirmed and both the appeals of the revenue are dismissed.

3. In the result, both the appeals of revenue are dismissed.

Order is pronounced in the open court on 16.07.2017

Sd/-
(J. Sudhakar Reddy)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated : 26th July, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – DCIT, Central Circle-VIII, Kolkata.
2. Respondent – M/s. Nezone Industries Ltd., & M/s. Nezone Alloys Ltd.,
5th floor, DD Tower, Christian Basti, G. S. Road Dishpore, Guwahati-
781005.
3. The CIT(A), Guwahati
4. CIT , Guwahati
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Sr. Pvt. Secretary