

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'डी' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ D ” BENCH, AHMEDABAD

सर्वश्री प्रदीप कुमार केडिया, लेखा सदस्य एवं महावीर प्रसाद, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
And SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.1585/Ahd/2015
(निर्धारण वर्ष / Assessment Year : 2011-12)

Maruti Dyechem Industries, C-1, B-6, Rajmata Rubber Products Compound, GIDC, Naroda, Ahmedabad - 382330	बनाम/ Vs.	The JCIT, Range – 3, Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAEFM 6593 L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri A. C. Shah, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri V. K. Singh, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	23/11/2017
घोषणा की तारीख/Date of Pronouncement	19/12/2017

आदेश / ORDER

PER MAHAVIR PRASAD, JUDICIAL MEMBER :

This is an appeal by the assessee against the order of the Commissioner of Income Tax(Appeals)-7, Ahmedabad, dated 03/03/2015 for the Assessment Year (AY) 2011-12, on the following Grounds:

- i. *The learned CIT(A) has erred in holding that Section 145A is applicable on the facts of the case and thereby has erred in confirming the addition of Rs.6,06,260/- being the cenvat credit in as much as Section 145A is not applicable to the assessee on the facts of the case since the assessee follows the exclusive method of accounting and that the learned CIT(A) erred in giving direction to the AO to give credit of cenvat credit in the*

- 2 -

opening stock instead of holding that Section 145A is not applicable on the facts of the case.

- ii. *The learned CIT(A) has erred in confirming the addition of Rs.6,37,681/- the direct expenses to the value of semi finished goods in as much as the assessee follows the method of valuation of semi finished goods consistently and that the learned CIT(A) has also erred in directing the AO to give the credit of direct expenses in the opening stock.*

2. The relevant facts as culled out from the materials on record are as under:-

The assessee is partnership firm and deriving income mainly from manufacturing and trading of reactive dyes. During the course of assessment proceedings assessee was asked to submit details of closing stock and basis of its valuation. Assessee has submitted the same and perusal of explanation reveal that no proper justification has given in respect of valuation of closing stock relating to semi finished goods. Therefore assessee was asked to furnish the details of the same. The assessee submitted explanation regarding closing stock valuation of semi finished goods and has stated that in the closing stock valuation of semi finished goods to the tune of Rs.6,37,681/- is required to be made as direct expenses pertaining to the same has not been added and Rs.6,37,681/- is being added to the total income.

2.2 On verification of Col. No.13(b) of Form 3CD Annexure to Audit report u/s 44AB of the Act, it is seen that there is unutilized tax credit of Rs.6,06,260/- which has not been either credited in the profit and loss account or the same has not been considered for the valuation of closing stock. In view of the above, show cause notice was issued to the assessee

to show cause as to why the unutilized tax credit of Rs.6,06,260/- should not be considered for the valuation of closing stock. In response to which the assessee furnished reply stating that as follows:-

"Regarding 145A we have to Submit as under:

- 1. The Institute of Chartered Accountants Of India has issued a Guidance Note, Whereby, it has recommended two alternative methods for accounting for MODVAT. According to this Guidance Note MODVAT can either be included in all Purchases and Stocks, and finally adjusted it from Raw Material Consumption or in an alternative method MODVAT can be excluded where accounting is done on "net — basis". However w.e.f. 01.04.1999 the accounting for MODVAT can be done only on the "net basis" as the ICAI has withdrawn the other method of accounting for MODVAT from the guidance Note. This view is also supported by (Revised) Accounting Standard -2[AS-2] issued by ICAI. inclusive method is not permitted by AS-2, which is made mandatory from accounting year beginning on or after 01.04.1999.*
- 2. Guidance Note on Tax Audit U/s.44-AB, According to the Guidance Note issued by the ICAI section — 145 A, Provides that the valuation of Purchase and Sale Of Goods and inventory for the purpose of computation of income from business or profession shall be made on the basis of the method of accounting regularly employed by the assessed but this shall be subject to certain adjustments, Therefore it is not necessary to change the method of valuation of purchase, Sale And Inventory regularly employed in the book of accounts. The adjustment It may be noted that when the adjustment are made in the valuation of inventories, this will affect both the opening as well as closing stock. Whatever adjustment is made in the valuation of closing stock, the same will be reflected in the opening stock also. It is now well settled that if any adjustments is required to be made by a statue, effect to same should be given irrespective of any consequences on the computation of income for tax purpose. Section 145A starts with the non obstinate clause "Not withstanding anything to the contrary conjoined m section 145". Therefore to give effect to Section 145A, the opening stock will have to be increased by any tax, duty, cess or fee actually*

- 4 -

paid or incurred with reference to such stock if he same has, not been added for the purpose of valuation in the accounts.

We had maintain Our Books Of Accounts on Basis Price, Excise, E.cess, and H.E. Cess, Vat (In Put — Out Vat) A/c, Separately maintain, Means In Op. stock and Purchase, Sales and Closing Stock, Only Basis Prices Shawn, Separately, Accounts maintain For CENVAT, As Per Sec. 145-A, The Method Of Valuation Of Closing Stock must be Consistently followed from year to year and the method followed must be brought out clearly, If the CENVAT balance added in Only Closing Stock, if should be added in Opening Stock Also. We had Not Debited Purchase and opening Stock Side Cenvat and Vat as an Exps. Or not added in Purchase, same method we had not credited Sales and Closing Stock side Cenvat, And Vat as on Income or not added in Sales.”

2.3 But ld. AO was not convinced with the reply of the assessee hence, he made an addition of Rs.6,06,260/- on account of valuation of stock.

3. Against the said order assessee preferred first statutory appeal before the ld.CIT(A) who partly allowed the appeal of the assessee.

4. We have gone through the relevant record and impugned order. There is delay of eight days and ld. AR has filed an affidavit along with an application with the reasons stated therein for condonation of delay. We are satisfied with the reasons therefore, we condone the delay. In support of its contention appellants filed Profit & Accounts for Asst. Year 2011-12 and submitted a chart wherein details have been given with regard to exclusive and inclusive method being adopted by the assessee. Assessee has also filed an order of co-ordinate bench in ITA

No.278/ahd/2011 for Asst. Year 2007-08, wherein ITAT has decided the case in favour of the assessee by following observations:

“5. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. The issue in the present case is with respect to inclusion of unutilized CENVAT credit and other taxes to the closing stock. It is an undisputed fact that assessee is following exclusive method of accounting whereby it does not debits the taxes paid to the purchases, consumption of stock and the aforesaid method of accounting of taxes has been consistently followed by the assessee in earlier and succeeding years and is also stated to have been accepted by Revenue. We find that the Hon'ble Apex Court in the case of CIT vs. Indo Nippon Chemicals Co. Ltd. reported at (2003) 261 ITR 275 (SC) has observed that unavailed MODVAT credit cannot be construed as income and there is no liability to pay tax on such unavailed MODVAT credit. We further find that on identical facts, the coordinate bench of tribunal in the case of Shri Paragbhai Ramanlal Patel (supra) has decided the issue in favour of the assessee observing as under:

“8. We have heard the rival submission and perused the material on record. We find that ld.CIT(A) after relying on the decision cited in the order has held that assessee must show the effect of section 145A by following the inclusive method i.e. by including taxes, dues, cess etc. in the closing stock. He has further held that excise duty which is added to the closing stock has to be allowed u/s.43B of the Act on payment basis. Before us, Revenue has not brought any material on record to controvert the findings of ld. CIT(A) nor has brought any contrary binding decision in its support. We therefore find no reason to interfere with the order of ld. CIT(A). Thus this ground of Revenue is dismissed.”

5.1 Further, before us, Revenue has not brought any contrary binding decision in its support. In view of the aforesaid facts and following the decisions cited hereinabove, we are of the view that no addition can be made in the present case and thus this ground of Assessee is allowed.”

5. After going through the above said order, we allow the appeal of the assessee because similar grounds have been allowed in the above

- 6 -

mentioned ITAT order. Therefore, respectfully following the order of the co-ordinate bench, we allow the appeal of the assessee.

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

This Order pronounced in Open Court on	19/12/2017
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Sd/-
(प्रदीप कुमार केडिया)
लेखा सदस्य
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER
Ahmedabad; Dated 19/12/2017

Sd/-
(महावीर प्रसाद)
न्यायिक सदस्य
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Priti Yadav, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-7, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad