

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “D” BENCH

**(BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

**ITA. No: 2979/AHD/2013
(Assessment Year: 2008-09)**

The DCIT (OSD)-1 circle- 4, Ahmedabad	V/S	Kiri Dyes & Chemicals Ltd. 7th Floor, Hasubhai Chambers, Ellisbridge, Opp Townhall Ahmedabad-380006
(Appellant)		(Respondent)

PAN: AAACK9025C

**Appellant by : Shri V.K. Singh, Sr. D.R.
Respondent by : Shri T. P. Hemani, A.R.**

(आदेश)/ORDER

Date of hearing : 04 -01-2018
Date of Pronouncement : 10-01-2018

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:

1. This appeal by the Revenue is preferred against the order of the Ld. CIT(A)-VIII, Ahmedabad dated 20.09.2013 pertaining to A.Y. 2008-09.

2. The sole grievance of the revenue is that the Id. CIT(A) erred in deleting the addition of Rs. 89,11,684/- made u/s. 145A of the Act on account of unutilized CENVAT credit.
3. During the course of the scrutiny assessment proceedings and on verification of the balance sheet of the assessee, the A.O. noticed that the balance of CENVAT receivable as on 01.04.2007 was Rs. 1,77,54,832/- as against the CENVAT receivable as on 31.03.2008 of Rs. 2,66,66,516/-. The A.O. was of the opinion that the difference in CENVAT receivable amounting to Rs. 89,11,684/- has to be added in the closing stock of the assessee as per the provisions of Section 145A of the Act. The A.O. accordingly completed the assessment by making addition of Rs. 89,11,684/-.
4. Assessee carried the matter before the Id. CIT(A) and vehemently stated that it is maintaining exclusive method of accounting since past many years. It was brought to the notice of the Id. CIT(A) that even if the assessee followed inclusive method of accounting, the effect thereto to the Profit and Loss account would have been zero. It was further contended that as per the guidelines issued by the ICAI, the assessee can have either “inclusive method” for accounting entries with regard to MODVAT or “exclusive method”.
5. After considering the facts and the submissions, the Id. CIT(A) was convinced with the contention of the assessee and drawing support from various judicial decisions directed the A.O. to delete the impugned additions.
6. Aggrieved by this, the revenue is before us.

7. The ld. D.R. strongly supported the findings of the A.O. Per contra, the ld. counsel for the assessee reiterated what has been stated before the lower authorities.
8. We have given a thoughtful consideration to the orders of the authorities below. It is true that the assessee has been following “exclusive method” of accounting which means that the cost of raw material debited in the purchase account is net of MODVAT element. A separate account for accounting for the excise duty payable and the MODVAT credit available is maintained in the “inclusive method”, the purchase of raw material debited in the books of accounts is inclusive of the corresponding MODVAT element. This means that if the assessee is following “inclusive method” then the closing stock has to be valued inclusive of MODVAT element. In either case, the effect would be neutral. This can be understood from the following chart:-

<i>Increase in Expenditure/Decrease in profitability</i>	<i>Amt (Rs.)</i>	<i>Increase in income/increase in profitability</i>	<i>Amt (Rs.)</i>
<i>Balance of MODVAT/CENVAT credit at the beginning of the Year.</i>	<i>1,77,54,832</i>	<i>MODVAT/CENVAT Credit utilized during the year.</i>	<i>21,75,73,749</i>
<i>MODVAT/CENVAT credit available during the year</i>	<i>22,64,85,433</i>	<i>Balance of MODVAT/CENVAT credit at the end of the year</i>	<i>2,66,66,516</i>
<i>Total</i>	<i>24,42,40,265</i>		<i>24,42,40,265</i>

9. A perusal of the aforementioned chart shows that there is no impact of profitability whether an assessee follows “exclusive method” or “inclusive method”. Accordingly, no addition is called for u/s. 145A of the Act. For this proposition we draw support from the decision of the Hon’ble Supreme Court in the case of Indo Nippon Chemicals Co. Ltd. 261 ITR 275 and Hon’ble High

Court of Gujarat in the case of Narmada Chematur Petrochemicals 327 ITR
369.

10. Considering the judicial decisions in favour of the assessee. We decline to
interfere with the findings of the ld. CIT(A). Appeal filed by the Revenue is
accordingly dismissed.

Order pronounced in Open Court on 10 - 01- 2018

Sd/

(MAHAVIR PRASAD)
JUDICIAL MEMBER True Copy
Ahmedabad: Dated 10 /01/2018

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad