



ITA No.6115/Mum/2016  
Gala Precision Technology Private Limited  
Assessment Year 2007-08

**आयकर अपीलीय अधिकरण "जी" न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"G" BENCH, MUMBAI**

श्री सी. नागेंद्र प्रसाद, न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।

**BEFORE SHRI C.N. PRASAD, JM AND**  
**SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./I.T.A. No. 6115/Mum/2016  
(निर्धारण वर्ष / Assessment Year: 2007-08)

Gala Precision Technology Private Ltd. 102-A, Orion Business Park Near Cine Wonder Ghodbunder Road Majiwada, Thane (W) 400 610	<b>बनाम/</b> Vs.	<b>Asstt. Commissioner of Income Tax</b> Range 6(3) Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. <b>AAACG-1777-F</b>		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

<b>Assessee by</b>	:	Anuj Kisnadwala, Ld. AR
<b>Revenue by</b>	:	V.Vidhyadhar, Ld. DR

सुनवाई की तारीख / <b>Date of Hearing</b>	:	15/03/2018
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	/03/2018

**आदेश / ORDER**

**Per Manoj Kumar Aggarwal (Accountant Member)**

1. The captioned appeal by assessee for Assessment Year [AY] 2007-08 contest the order of Ld. Commissioner of Income-Tax (Appeals)-13 [CIT(A)], Mumbai Appeal No.CIT(A)-13/ACIT-



7(1)(1)/25/2015-16 dated 18/07/2016. The assessment for impugned AY was framed by Ld. Assistance Commissioner of Income Tax, Circle-6(3) on 04/12/2009 u/s 143(3) of the Income Tax Act, 1961. The assessee is aggrieved by confirmation of certain additions u/s 35D and addition of *MODVAT credit* u/s 145A.

2. Facts leading to the same are that the assessee being *resident corporate assessee* engaged in *manufacturing & marketing of engineering products* has been assessed for impugned AY at Rs.79.69 Lacs after certain additions / disallowances under normal provisions as against returned income of Rs.76.09 Lacs filed by the assessee on 31/10/2007.

3. The first issue is related with addition u/s 35D on account of *Share issue expenses* for Rs.1,19,315/- which has been disallowed, *inter-alia*, by following rulings of Apex Court rendered in *M/s Broke Bond (I) Ltd. [225 ITR 798]* & *PSIDC [225 ITR 792]*. The Ld. Authorised Representative for assessee [AR] fairly conceded that issue stood covered against the assessee by the order of Tribunal in assessee's own case for AY 2006-07 vide ITA No.5512/Mum/2011 dated 25/07/2014, a copy of which has been placed on record. In view of admitted position, this ground of appeal stands dismissed.

4. The second issue pertains to addition of *CENVAT credit* for Rs.10,80,330/- u/s 145A. The Ld. AR drew attention to the fact that this issue is also recurring in nature and already delved upon by the Tribunal in AYs 2005-06 & 2006-07 where the matter has been remitted back with certain directions. Upon perusal of the cited order of the Tribunal in assessee's own case for AY 2006-07, we concur with the stand of Ld.



AR and find that the matter has been remitted back by the Tribunal in earlier years with following directions:-

5.4 The contention of the assessee was that it was following consistently exclusive method of MODVAT account and it has added unutilized MODVAT credit to the closing stock. However, the AO has added unutilized MODVAT credit to closing stock of raw material. By the impugned order, CIT(A) confirmed the addition by observing that mandatory provision of Section 145A is applicable. We found that exactly similar issue has been considered by the Tribunal in assessee's own case in the immediately preceding year 2005-06, where matter has been restored to the file of the AO with the following observations :-

"9. The next grievance of the assessee relates to addition of MODVAT of Rs.32,43,539/- under Section 145A. We found that exactly similar issue was decided by the Tribunal in aforementioned order dated 30-7-2010, wherein the matter was restored to the file of AO with the following observations :-

"7. The next ground was with respect to addition of closing balance of MODVAT credit of Rs. 4,78,362/- as a part of the closing stock The Ld. CIT(A) upheld the contention of the AO by adding closing balance of Modvat credit of Rs. 4,78,362/- to the closing stock. We find that the issue is covered in assessee's own case in ITA No-5760/M/2005 for the A.Y. 2003-04 wherein it has been held as follows :-

"since the issue under consideration is identical to that of Hawkins Cookers Ltd. in ITA No. 505/M/04 vide order dtd.11.8.2008, we remit the matter back to the file of the AD with a direction to decide the issue by following the guidelines given in Hawkins Cookers' Ltd. Thus this ground of the appeal of the assessee is allowed for statistical purposes"

Respectfully following the earlier year order we remit back the issue to the file of the AD and redo the working in the light of the decision of Hawkins Cookers Ltd.(supra)."

We have considered rival contentions. As facts and circumstances during the year under consideration are the same as discussed by the Tribunal in its order dated 30-7-2010, therefore, we restore this ground with regard to addition on account of MODVAT to the file of the AO for deciding afresh in terms of direction given by the Tribunal as quoted above."

5.5 As the facts and circumstances during the year under consideration are same, respectfully following the order of Tribunal in assessee's own case, the issue is restored back to the file of the AO for deciding afresh as per the direction given by the Tribunal in its order dated 30-7-2010. We direct accordingly.

Since a view has already been taken, respectfully following the same, the matter stands remitted back to the file of Ld. AO on similar lines for re-adjudication. This ground stands allowed for statistical purposes.



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5. In nutshell, the assessee's appeal stands partly allowed for statistical purposes.

*Order pronounced in the open court on 15<sup>th</sup> March, 2018.*

**Sd/-**  
**(C.N.Prasad)**

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated :15.03.2018

Sr.PS:- ---

**Sd/-**  
**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**