

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'सी' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" C " BENCH, AHMEDABAD

स्वश्री वसीम अहमद, लेखा सदस्य एवं महावीर प्रसाद, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.2479/Ahd/2016
(निर्धारण वर्ष / Assessment Year : 2012-13)

Asst. CIT, Cir - 7(2), Ahmedabad.	बनाम/ Vs.	M/s. ISOTEX CORPORATION, 181/283, GIDC Industrial Estate, Naroda, Ahmedabad - 382 345
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAIFI 3041 F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Dr. Jayant Jhveri, Sr.D.R.
प्रत्यर्थी की ओर से/ Respondent by :	Shri S. N. Divatia (Adv.)

सुनवाई की तारीख / Date of Hearing	08/05/2018
घोषणा की तारीख/ Date of Pronouncement	24/05/2018

आदेश / ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Revenue against the appellate order of the Commissioner of Income Tax(Appeals)-7, Ahmedabad [CIT(A) in short] vide appeal no.CIT(A)-7/24/15-16 dated 04/07/2016 arising in the assessment order passed under s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") dated 24/03/2015 relevant to Assessment Year (AY) 2012-13.

2. Revenue has raised following grounds of appeal :

- “1. That the Ld CIT(A) has erred in law and on facts in deleting the addition made by AO by Rs.30,29,969/- u/s 145A of the Act.
2. That the Ld CIT(A) has erred in law and on facts in deleting the disallowance made by AO of Rs.30,00,000/- towards Provision of Warranty.
3. That the department craves leave to add or alter any further grounds of appeal before or during the course of hearing.”

3. The first issue raised by the Revenue in this appeal is that Ld. CIT(A) erred in deleting the addition made by the AO for Rs.30,29,969/- u/s 145A of the Act.

4. Briefly stated facts are that the assessee is a partnership firm and engaged in the Manufacturing business of Energy Saving Devices, Spare Parts etc. The assessee in its balance sheet has shown closing stock as on 31-03-2012 for Rs.3,15,46,606/- without including the amount of VAT/Excise expenditure incurred on the purchases. The necessary details of the closing stock as on 31-03-2012 without including amount of VAT/Excise vis-à-vis after including the amount of VAT/Excise stands as under :

Product	Amount Rs. (Without VAT/Excise)	Amount Rs. With VAT/Excise	Difference
Burner	3283709	3375101	91392
Consumable Items	3089966	3318419	228453
Electric Goods	756651	812331	55680
Semi Finished Goods	4490772	4785044	294272
Raw Materials	5943208	6359097	415889
Burner Spares	1398847	1454939	56092
WIP	12583453	14471644	1888191

Total	31546606	34576575	3029969
		TOTAL	3029969

5. However, the AO was of the view that the assessee should have valued its closing stock as on 31-03-2012 after including the amount of VAT/Excise as per the provisions of Section 145A of the Act. On being confronted, the assessee submitted that it has been following exclusive method of accounting for the purchase, sale and valuation of inventories as per the guidance note issued by the Institute of Chartered Accountants of India. The method of valuation of the inventory has been followed by it consistently over the period of several years. The assessee also submitted that it has not included the VAT/Excise cost while recording the purchase, sale and inventory and further claimed that if the element of VAT/Excise is considered while recording the purchase, sale and inventory then the effect on the profitability of the assessee would remain nil. However, the AO disregarded the contention of the assessee and held that the assessee was under the obligation to include the amount of VAT/Excise, while valuing the closing stock as on 31-03-2012 as per the provisions of Section 145A of the Act. Accordingly, the AO added the sum of Rs.30,29,969/- in the valuation of closing stock.

6. Aggrieved, assessee preferred an appeal before the Ld. CIT(A). The assessee before the Ld. CIT(A) submitted that the provisions of Section 145A of the Act requires the assessee to include the amount of taxes, duty, cess and fee actually paid or incurred in connection with the purchase, sale of goods and inventory for the determination of the profit under the head business and profession. Thus, the provision of Section 145A of the Act requires the assessee to use inclusive method of accounting for reflecting the figures of purchase, sale and inventory (opening and closing).

However, accounting standard for the valuation of the inventories requires to exclude the amount of duties and taxes incurred on the purchases and which are subsequently recoverable by the assessee from the taxing authorities. Accordingly, the assessee has adopted exclusive method of accounting with regard to the recording of purchase, sale and inventory of the goods.

7. The assessee further submitted that there is no impact on the profit declared in the Income Tax return for using the exclusive method of accounting. The assessee, in this regard, demonstrated the impact on the profit by using exclusive method of accounting, which is represented as under:

	Increase in Profit (in Rs.)	Decrease in Profit (In Rs.)
Increase in opening stock as a result of inclusion of VAT on which VAT credit is available/availed		96,467/-
Increase in cost of raw material on inclusion of VAT on which VAT credit was available/availed		91,35,663/-
Increase in sales of finished goods on inclusion of VAT/CST	90,94,139/-	
Increase in closing stock on inclusion of VAT	1,37,991/-	
	92,32,130/-	92,32,130/-

8. The Ld. CIT(A) after considering the submission of the assessee deleted the addition made by the AO by observing as under:

“5.2 I have considered the assessment order and the submissions made by the appellant. The Hon'ble Supreme Court in the case of CIT Indo Nippon Chemicals Co. Ltd. (2003) 130 Taxman 179 has held as under:

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".....there are two possible methods of valuation of stock. The first would be the "gross method", in which the stock is valued at cost price inclusive of the excise duty element. If this method is adopted, then the unconsumed stock also must necessarily be valued in the same manner. The other method is the "net method", in which the raw material purchased is valued at the actual cost, that is the actual purchase price and, on this, Modvat credit would be available. If this method is to be adopted, then uniformly the same method must be adopted while valuing the unconsumed stock at the end of the year. Whichever method one adopts, the result would be the same....."

5.2.1 It is seen that the AO has only partially followed the provisions of Section 145A of the I.T. Act. I am inclined to agree with the contention of the appellant that it is not appropriate to include the amount of tax etc includible in the value of closing stock only without modifying the figures of purchases, sales and opening stock. Moreover, the appellant has been following this method of accounting for the past many years. The method of accounting regularly followed by the taxpayer which was accepted by the AO in the past cannot be rejected in future years without expressing a dissatisfaction about the correctness or completeness of the accounts of the taxpayer, which has not been done in this case, view of the facts of the case and the decision of the Hon'ble Supreme Court, the said addition of Rs.30,29,969/- u/s. 145A made by the Assessing Officer is deleted. Ground of appeal Nos. 2.1 to 2.3 is allowed."

Being aggrieved by the order of the Ld. CIT(A) Revenue preferred second appeal before us.

The Ld. DR before us vehemently supported the order of AO, whereas, the Ld. AR before us filed a Paper Book comprising of Pages from 1 to 141 and submitted that in identical facts and circumstances the Jurisdictional Tribunal in the case of DCIT vs. Transformers and Ractifiers (India) Ltd. in ITA No.505/Ahd/2015 pertaining to the assessment year 2011-12 vide order dt.11-12-2017 decided the issue in favour of the assessee, the relevant extract of the order as reproduced below:

“7. We have carefully considered the orders of the authorities below. We find force in the contention of the learned counsel for the assessee. The assessee has been consistently accounting for the raw material and other inputs purchased as per exclusive method i.e. billed cost minus amount of input tax credits available/availed of. Correspondingly, the stock of unconsumed materials is also valued as per exclusive method. In our considered view, if the provisions of section 145A has to be followed, the purchases would have to be adjusted for the duty/tax credits and correspondingly unconsumed stock of materials would also be valued at billed cost. In any case, parity has to be maintained and while making the addition on account of unutilised MODVAT/CENVAT credit, it disturbs the party of accounting. We also find that the assessee has also given a statement showing inclusive method and exclusive method under section 145A of the Act vide annexure to form 3CD by which it has proved that even if inclusive method of accounting has been followed by the assessee, there would not have been any impact on the profit of the assessee for the assessment year under consideration.

8. Considering the fact in totality, we do not find any reason to interfere with the findings of the CIT(A).”

9. In the result, appeal filed by the Revenue is dismissed.”

The Ld. AR vehemently supported the order of Ld. CIT(A).

9. We have heard the rival contentions and perused the materials available on record. The issue in the present case relates to the disallowance made by the AO on account of non-inclusion of Excise/VAT in the closing stock of the inventory. As per the AO, the assessee was under the obligation to include the value of Excise/VAT while valuing the inventories at the end of the financial year. However, the view taken by the AO was subsequently reversed by the CIT(A) by observing that the provisions of Section 145A requires to include the amount of tax in the value of purchase, sale and inventory. But the AO erred in including the element of taxes only in the closing stock of inventories. The Ld. CIT(A) also observed that the assessee has been following its method of valuation for the

inventory, purchase and sale consistently for the last several years and no defect in the method of accounting for the inventories was recorded by the AO in his assessment order.

It is disputed fact that the assessee has been following exclusive method of accounting for recording transaction in relation to purchase, sale and inventory consistently. If the effect of the provisions of Section 145A needs to be given then it should have been given to the purchase, sale and inventory but the AO has not done so. Therefore, in our considered view, it will be inappropriate to value the inventory of closing stock after including the element of taxes but without including the same in purchase and sale of goods.

Moreover, we also note that there is no impact on the taxable profit declared by the assessee in either case of the method of valuation of inventory adopted by the assessee. Thus, the taxable profit will remains same in both the methods of accounting for the valuation of inventories. Thus, we do not find any reason to interfere in the order of Ld. CIT(A). Hence, ground of appeal of the Revenue is dismissed.

The second issue raised by the Revenue is that Id. CIT-A erred in deleting the addition made by the AO for Rs. 30 lacs on account of provision of warranty.

10. The assessee, during the year has claimed provision for warrantee of Rs.30,00,000/- only in respect of unfinished installation charges of various boilers supplied to Garden Silk Mills Ltd. (GSML). On question by the AO, the assessee filed the copies of the ledgers for the financial year under consideration as well as financial year 2012-13 without any documentary evidence/justification for creating such provision of guarantee in the books of accounts. Accordingly, the AO was of the view that the deduction claimed for the provisions of

warranty represents un-accrued/un-ascertain/contingent liability. Therefore, same was disallowed and added to the total income of the assessee.

11. Aggrieved assessee preferred an appeal to Ld. CIT(A). Assessee before the Ld. CIT(A) submitted that it has supplied various energy saving devices and spare parts to GSML, which *inter alia* included following payments terms :

10.0 Terms of payment:

The terms of payment shall be as under:

- 1. 10% advance against ABG*
- 2. 70% Against delivery*
- 3. 10% Against performance bank guarantee*
- 4. 10% Against performance norms.*

Bank guarantees issued by any nationalized bank shall only be acceptable.

In view of above, GSML has retained a sum of Rs.30,76,230/- from the payment to be made to the assessee. However, the assessee booked the sales at 100% value without reducing the amount retained by GSML. But the assessee created a provision in its profit and loss accounts against the amount retained by GSML. Therefore, the assessee has created a provision in the round figure of Rs. 30,00,000/- during the year, whereas, GSML has retained a sum of Rs.30,76,230/-.

12. The assessee also submitted that the amount retained by GSML shall be released to it upon the satisfactory completion of the job assigned by GSML. As such the amount retained by GSML has not accrued to the assessee and therefore, cannot be liable to tax. The Ld. CIT(A) after considering the submission of the assessee deleted the addition made by the AO by observing as under:

“6.4 I have considered the assessment order and the submissions made by the appellant. The AO disallowed the provision for warranty claimed by the appellant for the reason that the same was not an ascertained liability. The appellant has submitted that as per the agreement between it and Garden Silk Mills Ltd., (GSML) the terms of payment itself specified that 70% payment was to be made against delivery and 30% was to be retained by GSML. It was submitted that the appellant credited the entire amount of sales in its books of accounts as sale proceeds but debited the amount retained by GSML under the head "provision for warranty account". It was stated that the same was actually retention money and could not be charged to tax since the same had not accrued to the appellant A perusal of the agreement signed between the appellant and GSML shows that the terms of payment are said to be as under:

- (i) 10% advance against ABG;*
- (ii) 70% against delivery;*
- (iii) 10% against performance bank Guarantee; and*
- (iv) 10% against performance norms.*

6.4.1 The submissions made by the appellant also show that the retention money does not accrue to the appellant till successful and satisfactory execution of the contract. Thus, while the appellant is right in contending that the said amount had not accrued to it during the year under consideration, what is also pertinent to note that is that the same must have been received by the appellant subsequently on satisfactory completion of the contract. The appellant has relied on various case-laws which have held that retention money that had not accrued to an appellant could not be taxed. Considering the case-laws on the subject, submissions made by the appellant and the discussion above, I am of the view that provision for warranty of Rs.30,00,000/- which was actually retention money not accrued during the year under consideration could not be added to the total income of the appellant for the year under consideration and the addition made on this account is deleted. However, the AO is directed to ascertain when this amount was actually received by the appellant subsequently on completion of contract with GSML and to tax it as income in the year in which it has been received. Ground of appeal Nos. 3.1 to 3.3 are allowed, subject to verification by the Assessing Officer.”

Being aggrieved by the order of Id. CIT(A) Revenue is in appeal before us. The Ld. DR before us submitted that the assessee has booked all the expense in respect of the goods supplied to M/s. GSML but the entire income on account of such supplies has not been offered to tax. In fact the amount withheld by GSML does not represent the retention of the money of the assessee rather it represents the profit on the goods supplied to GSML. Therefore, as per matching principle between the income and expense the assessee is required to offer the entire amount of sales without creating any provision for warranty against it. The Ld. DR vehemently supported the order of the AO.

On the other hand, the Ld. AR submitted that the assessee has been following the method for recording the provisions for guarantee consistently.

13. The amount of money retained by GSML has not been accrued to it as it will become due upon the satisfactory completion of work.

14. The Ld. AR also submitted that the amount was retained by GSML @10% on the total supplies of the goods made to it.

15. The Ld. DR in his rejoinder submitted that the provision for guarantee was created first time by the assessee during the year. The Ld. DR also submitted that the assessee during the year has supplied goods worth of Rs.1,60,89,262/- to GSML as evident from the purchase order placed on Page 11 of the Paper book. Accordingly, the assessee at the most was required to create the provision of Rs.16,08,926/- being 10% of total value of the purchase order. However, the assessee has created provision for Rs.30,00,000/- exceeding 10% of the total value of purchase order.

The Ld. AR in his rejoinder further submitted that the AO has allowed the deduction for the provisions of guarantee of Rs.16,00,000/- in consequence to the direction of the CIT(A) order. The Ld.AR vehemently supported the order of the ld. CIT(A).

16. We have heard the rival contention and perused the material available on record. The issue in the instance case relates to the disallowance made by the AO on account of the provisions created by the assessee against the supply of the goods to GSML. The assessee, during the year has created a provision of Rs.30,00,000/- on account of the money retained by M/s. GSML.

It is settled law the provisions created by the assessee on scientific basis are allowable as deduction while determining the profit under the head business and profession. It is undisputed fact that the provision was created by the assessee against the supply of goods to M/s. GSML as per the purchase order issued by GSML. Accordingly GSML was entitled to retain 10% of the invoice value raised by the assessee during the year. The amount retained by the GSML was offered by the assessee in subsequent year, when it was actually realized by it.

17. We also find support and guidance from the judgment of Jurisdictional High Court in the case of DIT (International Taxation) vs. Ballast Nedam International reported in 355 ITR 300, wherein, it was held as under:

A similar question had arisen in case of CIT. v. Simplex Concrete Piles (India) Pvt. Ltd. 179 ITR 8, (Cal.). Having regard to the facts and circumstances of the case, it was held in that case that, when there is a clause with regard to retention money, the assessee gets no right to claim any part of the retention money till the verification of satisfactory execution of the contract is concluded and, therefore, if there is no

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immediate right to receive the retention money, the said amount cannot be said to have accrued to the assessee.

18. In view of above, we hold that the provisions created on scientific basis can be claimed as deduction against the profit determined under the head business and profession.

It is undisputed fact that the total value of the goods as per the purchase order is of Rs. 1,60,89,262/- only. Thus, the assessee at the most was eligible to create the provision of Rs.16,08,926/- being 10% of purchase order. However, the assessee in the case of hand as created provision of Rs.30,00,000/-, which is in excess of the amount of retention money as quantified on the basis of purchase order. Therefore, we are inclined to restore this issue to the file of the AO for fresh adjudication with the direction to calculate the amount of retention money in the light of aforesaid facts and circumstances and in accordance with the provision of law. Thus, the ground of appeal raised by the Revenue is allowed for statistical purposes.

19. In the result, appeal of the Revenue is partly allowed for statistical purposes.

This Order pronounced in Open Court on	24/05/2018
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Sd/-
(महावीर प्रसाद)
न्यायिक सदस्य
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Ahmedabad; Dated 24/05/2018
Priti Yadav, Sr.PS

Sd/-
(वसीम अहमद)
लेखा सदस्य
(WASEEM AHMED)
ACCOUNTANT MEMBER

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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//

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आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad