

**IN THE INCOME TAX APPELLATE TRIBUNAL “B”  
BENCH, MUMBAI**

**BEFORE SHRI G. S. PANNU, AM &  
SH. SANDEEP GOSAIN, JM**

आयकरअपीलसं./ I.T.A. No. 7307/Mum/2016  
(निर्धारणवर्ष / Assessment Year: 2011-12)

DCIT 14(2)(1) R. No. 432, Aayakar Bhavan, M. k. Road, Mumbai-400020	<b>बनाम/ Vs.</b>	Koch Chemical Technology Group India Pvt. Ltd. 10 <sup>th</sup> Floor, Coporative Park II sion Trambey Rd, Chembur, Mumbai-400071
स्थायीलेखासं ./जीआइआरसं ./PAN No. AABCK3688G		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Suman Kumar
प्रत्यर्थीकीओरसे/Respondentby	:	None

सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	26/02/2018
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	28/02/2018

आदेश / ORDER

**Per Sandeep Gosain, Judicial Member:**

The present Appeal filed by the revenue is against the order of Ld. CIT (Appeal) – 22, Mumbai dated 23.09.16 for AY 2011-12 on the grounds mentioned herein below:-

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*Koch Chemical Technology Group India Pvt. Ltd.*

*1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating that fact that in view of provision of section 145A which was introduced w.e.f. 01.04.99 clearly, unambiguously and without any exception provides that the element of excise duty /CENVAT has to be included while, valuing the inventory.*

*2. The appellant craves leave to add, amend, vary omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of appeal.*

*3. The appellant prays that the order of CIT(A) on the above ground be set aside and that of the assessing officer be restored.*

2. At the very outset, it is noticed that none has appeared on behalf of assessee in spite of several calls and even no application for adjournment was moved. On the other hand Ld. DR is present in the court and is ready with arguments. Therefore we have decided to proceed with the hearing of the case ex-parte with the assistance of the Ld. DR and the material placed on record.

3. The brief facts of the case are that the assessee company is engaged in the business of design, manufacturing, supply, installation and erection of mass transfer equipments. The return of income for the year under consideration was filed on 21.09.11 declaring total income at Rs. 22,71,73,380/-. Later on, the case was selected for scrutiny and after serving statutory notices and seeking reply, order of assessment u/s 143(3) was completed by the Ld. AO thereby making additions.

Aggrieved by the order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the case of both the parties partly allowed the appeal of the assessee.

Now before us, the revenue has preferred the present appeal by raising the above grounds.

**Ground No. 1**

4. This ground raised by the revenue relates to challenging the order of Ld. CIT(A) in not appreciating the fact that in view of provision of section 145A which was introduced w.e.f. 01.04.99 clearly, unambiguously and without any exception

provides that the element of excise duty /CENVAT has to be included while, valuing the inventory.

5. We have heard Ld. DR and we have also perused the material placed on record as well as the orders passed by revenue authorities.

Before we decide the merits of the case, it is necessary to evaluate the orders passed by Ld. CIT(A). The Ld. CIT(A) has dealt with the above grounds raised by the revenue in its detailed order. The operative portion of the order of Ld. CIT(A) is contained in para no. 5.3 of its order and the same is reproduced below:-

*5.3 I have considered the facts of the case and the appellant's submissions. I find that the Hon'ble ITAT, Mumbai in the appellant's own case for A.Y. 2007-08 in ITA No.8091/Mum/2011 vide order dated 30.09.2015 had decided the issue in favour of the appellant by observing and holding as under:*

*"26. We have considered the rival submissions and have perused the orders of the authorities below and the material available on record. As could be seen,*

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during the assessment proceedings, the Assessing Officer proposed to make adjustment of unutilized CEN VAT credit both in respect of purchase of raw material as well as purchase of capital goods. It was the contention of the assessee before the Assessing Officer that it is following the exclusive method of accounting by reducing the CENVAT from the cost of capital goods as well as raw material while accounting the purchase value in the books of account. Therefore, as the purchase value of raw material and capital goods are net of CENVAT credit, there is no need to make adjustment of closing stock by including the unutilized CENVAT credit. It is the further contention of the assessee that in case CENVAT credit is included in the closing stock, then corresponding adjustment has to be made to the opening stock in the next year. Hence, in either case, it will be revenue neutral. On a perusal of the assessment order, it is seen that as far as adjustment of CEN VAT credit on purchase of capital goods is concerned, the Assessing Officer has accepted assessee's explanation and no adjustment has been made to the closing stock. However, as far as raw material is concerned, the Assessing Officer has added the difference of CENVAT credit as on 31st March 2007 and 1st April 2006, amounting to 1,04,59,372. We do not find any justifiable reason for such

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*differential treatment. When the assessee has reduced the CENVAT from the purchase value of raw material and accounted for the purchase value in the books net of the closing stock only by including the unutilized CENVAT credit. Though section 145A of the Act provides for adjustment by including any tax, duty, cess or fee while valuing the purchase and sale of goods and inventor)/ but as held by the Hon'ble Delhi High Court in CIT v/s Mahavir Aluminum Ltd., [2008] 297 ITR 77 (Del.), whenever any adjustment is made in the valuation of inventory, it will affect both the opening stock and closing stock If any adjustment is required to be made in terms with section 145A, effect to the same should be given irrespective of any consequences on the computation of income for tax purposes. The Court held for giving effect to section 145A of the Act, if there is change in the closing stock of the relevant previous year, then there must necessarily be a corresponding adjustment made in the opening stock as on the beginning of the relevant previous year. The aforesaid view of the Hon'ble Delhi High Court was accepted by the Hon'ble Jurisdictional High Court in the case of CIT v/s Mahalaxmi Glass Works Pvt. Ltd., [2009] 318 ITR 116 (Born.). In the present case, since the assessee has not made any adjustment to the opening stock by including the CEN VAT credit, there is no need to make adjustment to the closing stock only by including*

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*the unutilised CENVAT credit. On the flip side, if adjustment is made to the closing stock, then corresponding adjustment has to be made to the opening stock of raw material for the next year. In either case, it will be revenue neutral. Hence, in our view, the adjustment of ' 1,04,59,372, made by the Assessing Officer and confirmed by the learned CIT(A) is not sustainable. Accordingly, we delete the same. Ground raised by the assessee is allowed."*

*Respectfully following the above decision of the Hon'ble jurisdictional Tribunal in the appellant's own case, the disallowance of Rs.1,10,17,475/- u/s.145A made by the Assessing Officer is deleted. The appellant's grounds of appeal are allowed.*

After having gone through the facts of the present case as well as considering the orders passed by revenue authorities and Hon'ble ITAT as mentioned above in assessee's own case, we find that the identical issue has already been decided by the Hon'ble ITAT in assessee's own case in ITA No. 7165/Mum/2014 for AY 2010-11. Even before us, the Ld. DR could not demonstrate any difference in factual position from that of AY 2010-11. The Ld. CIT(A) has also based its finding on the

orders of Hon'ble ITAT in assessee's own case for AY 2010-11, therefore respectfully following the decision of the coordinate bench and in order to maintain judicial consistency which is applicable mutatis mutandis in this case, we dismiss this ground. Resultantly, this ground raised by the revenue stands **dismissed**.

**Ground No. 2 & 3.**

6. These grounds are general in nature, thus requires no specific adjudication.

7. In the net result, the appeal filed by the revenue stands **dismissed**.

*Order pronounced in the open court on 28<sup>th</sup> Feb. 2018*

*Sd/-*

(G. S. Pannu)

लेखासदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated :

*Sr.PS. Dhananjay*

*Sd/-*

(Sandeep Gosain)

न्यायिकसदस्य / Judicial Member

28.02.2018

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT,  
Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार**

(Dy./Asstt.Registrar)

**आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**