

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'एच', मुंबई।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES, 'H' MUMBAI**

**श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखा सदस्य, के समक्ष**

**Before Shri Joginder Singh, Judicial Member, and  
Shri Manoj Kumar Aggarwal, Accountant Member**

**ITA No.150/Mum/2017  
Assessment Year: 2013-14**

DCIT-14(2)(1), Room No.432, 4 <sup>th</sup> Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020	<b>बनाम/ Vs.</b>	M/s Koch Chemical Technology Group India Pvt. Ltd. 10 <sup>th</sup> Floor, Corporate Park-II Sion Trombay Road Chembur, Mumbai-400071
(राजस्व /Revenue)		(निर्धारिती /Assessee)
<b>PAN. No. AABCK3688G</b>		

राजस्व की ओर से / Revenue by	Shri Rajat Mittal-DR
निर्धारिती की ओर से / Assessee by	NONE

सुनवाई की तारीख / <b>Date of Hearing:</b>	<b>18/06/2018</b>
आदेश की तारीख / <b>Date of Order:</b>	<b>18/06/2018</b>

**आदेश / O R D E R**

Per Joginder Singh(Judicial Member)

The Revenue is aggrieved by the impugned order dated 27/10/2016 of the Ld. First Appellate Authority, Mumbai, in granting relief to the assessee with respect to inclusion of excise duty/CENVAT, while valuing the inventory ignoring the provisions of section 145A of the Act, which was introduced w.e.f. 01/04/1999.

2. During hearing, none was present for the assessee, whereas, Shri Rajat Mittal, Ld. DR, advanced arguments, which is identical to the ground raised by defending the addition made by the Ld. Assessing Officer.

2.1. We have considered the submissions of Ld. DR and perused the material available on record. The facts, in brief, are that the assessee company is engaged in the business of design, manufacturing, supply, installation and erection of mass transfer equipments, declared income of Rs.41,31,20,111/-, which was processed under section 143(1) of the Income Tax Act, 1961 (hereinafter the Act). The case of the assessee was selected for scrutiny under CASS, therefore, notice under section 143(2) and 142(1) of the Act

were issued, along with questionnaire, to the assessee. The assessee attended the assessment proceedings and made submissions. On verification of the details, filed by the assessee, it was found that the assessee had valued a stock of inventories net of excise duty incident thereon. As per the Revenue, the assessee was required to value closing stock in accordance with the provisions of section 145A of the Act, therefore, was asked to explain the same with the help of supporting evidence. The assessee explained that in case any adjustment, as contemplated by section 145A of the Act is required to be made, then such adjustments are to be considered in entire trading account of the assessee and not only to closing stock. The submission of the assessee made vide letter dated 24/02/2016 has been reproduced in the assessment order. The Ld. Assessing Officer concluded that the element of excise duty/CENVAT has to be included by valuing the inventory, therefore, in view of the provisions of section 145A of the Act, the closing stock as on 31/03/2013 was enhanced by Rs.58,58,087/- after making adjustment in opening stock and computed the income accordingly.

2.1. On appeal before the Ld. Commissioner of Income Tax (Appeal), the CBDT Circular, relied upon by the Ld. Assessing Officer along with the decision like Chainrup Sampatram vs CIT (24 ITR 481)(Supreme Court), Mahavir Aluminum Pvt. Ltd. (297 ITR 77)(Del.), Hawkins Cooker Ltd. vs Income Tax Officer (ITA No.505/Mum/2014) and CBDT Circular No. 772 dated 23/12/1998 were considered along with the decision from Hon'ble jurisdictional High Court in Mahalaxmi Glass Works Pvt. Ltd. (2009) 318 ITR 116 (Bom.) and granted relief to the assessee. The Revenue is aggrieved and is in appeal before this Tribunal.

2.2. If the observation made in the assessment order, leading to addition made to the total income, conclusion drawn in the impugned order, material available on record, assertions made by the ld. DR, if kept in juxtaposition and analyzed, we find that the Tribunal in the case of the assessee for Assessment Year 2007-08, vide order dated 30/09/2015, which has been reproduced in the impugned order itself delete the addition made by the Assessing Officer. Likewise, Hon'ble jurisdictional High Court in CIT vs Mahalaxmi Glass Works Pvt. Ltd. 318 ITR 116 (Bom.) and

Hon'ble Delhi High Court in Mahavir Aluminum Pvt. Ltd. (297 ITR 77)(Del.) held that 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 of section 145A of the Act, effect to the same should be given irrespective of any consequences on the computation of income for tax purposes. The Hon'ble jurisdictional High Court in Mahalaxmi Glass Works Pvt. Ltd. ((supra)) held as under:-

1. The substantial question of law as raised in this appeal is as under :

"Whether, on the facts and circumstances of the case and in law, the hon'ble Tribunal was justified in confirming the order of the Commissioner of Income-tax (Appeals) whereby he directed the Assessing Officer to make adjustment of unutilized Modvat credit to the opening stock and thus ignoring the ratio laid down in *Melmould Corporation v. CIT* [1993] 202 ITR 789 (Bom) wherein it was held that changing the value of opening stock will lead to chain reaction and hence the same should not be done ?"

2. This question has been dealt with and answered by the Delhi High Court in the case of *CIT v. Mahavir Alluminium Ltd.* [2008] 297 ITR 77 (Delhi). This question concerns the method of valuation of inventory as contemplated by section 145A of the Income-tax Act. In the case before the Delhi High Court, the Assessing Officer contended that section 145A did not permit the assessee to make a change in the valuation of the opening stock as on April 1, 1998, though it permitted a change in the closing stock as on March 31, 1999. The question before the Delhi High Court was that the adjustment of excise duty could be made in the opening stock also. In this connection, relying upon the decision of the Privy Council in the case of *CIT v. Ahmedabad New Cotton Mills Co. Ltd.* AIR 1930 PC 56, the Delhi High Court took a view that to give effect to section 145A, if there is any change in the closing stock at the end of the year then there must necessarily be a corresponding adjustment made in the opening stock of that year. It has been held that this would not amount to giving double benefit to the assessee and would be necessary to compute the true and correct profit for the purpose of assessment.

3. We may reproduce here, the relevant observation in the judgment of the Privy Council in the case of *CIT v. Ahmedabad New Cotton Mills Co. Ltd.* reported in AIR 1930 PC 56 which was relied upon by the Delhi High Court and which is as under (page 56) :

"If the method of altering both valuation is not adopted it is perfectly plain that the profit which is brought forward is not the real one. It may be more or it may be less, but it has no relation to the true profit if the stock is valued on one basis when it goes out without considering the value of the stock when it comes in. When, therefore, there is undervaluation at one end, the effect is to cause both a smaller debit in respect of the stock introduced into the next account and a larger sum for profits realised by the sale, change in market value being immediately reflected in the price obtained for the goods that are sold ; in these circumstances to contend that there should be undervaluation at one end and not at the other is to raise an argument which their Lordships cannot accept."

4. We are in respectful agreement with the reasoning and the finding given by the Delhi High Court.

5. Apart from this, we find from the judgment of the Income-tax Appellate Tribunal that when counsel for the assessee contended that the closing stock of the previous year be taken as opening stock of the next year and that the Assessing Officer be directed to establish the valuation for closing stock as opening stock of the next year, the Departmental representative stated that he has no objection for the same. This concession has been recorded in the order.

6. In this view of the matter, we are of the opinion that the question of law as raised by the appellant does not arise. Accordingly, the appeal is summarily dismissed."

2.3. In the light of the above decisions and since the assessee has not made any adjustment to the opening stock, by including the CENVAT Credit, there is no need to make adjustment to the closing stock only by including the unutilized CENVAT credit. Respectfully following the aforesaid decisions, we find no infirmity in the order of the Ld. Commissioner of Income Tax (Appeal), consequently, the appeal of the Revenue is dismissed.

Finally, the appeal of the Revenue is dismissed.

This Order was pronounced in the open court in the presence of Ld. DR at the conclusion of hearing on 18/06/2018.

**Sd/-**

(Manoj Kumar Aggarwal)

लेखा सदस्य / ACCOUNTANT MEMBER

**Sd/-**

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 18/06/2018

*Shekhar, P.S./नि.स.*

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

1. अपीलार्थी / The Appellant (Respective assessee)
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai,
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