

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “C” BENCH

**(BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT
MEMBER & SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

**ITA. No: 1983/AHD/2016
(Assessment Year: 2012-13)**

The D.C.I.T.,Circle-1(1)(2), Ahmedabad	V/S	Vimalachal Print & Pack Pvt. Ltd. 5, Saket Industrial Estate, Village Moraiya, National Highway, Nr. Changodar, Tal.Sanand
(Appellant)		(Respondent)

PAN: AAACV7000Q

**Appellant by : Shri S. K. Dev, Sr. D.R.
Respondent by : Shri Bhavesh Shah, A.R.**

(आदेश)/ORDER

Date of hearing : 23 -10-2018

Date of Pronouncement : 17 -01-2019

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. This appeal by the Revenue is directed against the order of the Ld. CIT(A)-8, Ahmedabad dated 03.05.2016 pertaining to A.Y. 2012-13 and following grounds have been taken:

- 1) *“Whether on the facts of the case and in law the Ld. CIT(A) erred in allowing the depreciation on Goodwill of Rs. 44,545/-*
- 2) *“Whether on the facts of the case and in law the Ld. CIT(A) erred in deletion of addition amounting to Rs. 69,90,220/- made on account of non addition unutilized tax credits to closing stock as per provision 145A of the Act.”*

2. Brief facts of the case as per statement of facts filed by the appellant and assessment order, The appellant company is engaged in the business of Manufacture of flexible packaging materials (printed & laminated paper & film, printing ink, Polyester Film). A.O. while passing the order u/s 143 (3) of the Act dated 02.03.2015 determined the total income at Rs. 9,89,25,799/- as against the income of Rs. 9,14,39,847/- returned by the appellant after making various additions/disallowances of Rs. 74,85,592/-. The disallowances include Disallowance of depreciation on goodwill of Rs. 44,545/- relying on the judgment of Honorable ITAT Ahmedabad in the assessee's own case for A.Y. 2005-06 in ITA No. 3699/Ahd/2008 in which ITAT upheld the disallowance of depreciation on goodwill. The other addition which is under appeal is Addition U/s 145 A of the Act on account of unutilized balance of MODVAT/CENVAT credit Rs. 51,04,508/- . The AO stated that the assessee's contention to the extent of duties paid during the year is acceptable as the same has not been debited in the P & L account under exclusive method. However the duties which are not paid during the year and remained outstanding as on 31.03.201 1 and for which the assessee is having closing/unutilized balance in the books, need to be adjusted in value of stocks. Aggrieved by these additions, the appellant has filed this appeal.
3. At the outset, Id. A.R. cited an order of co-ordinate bench wherein in the Assessment Year 2010-11 for the same grounds relief has been granted by the Tribunal with the following observation:

“Ground No.-I relates to deletion of disallowance of depreciation on goodwill at Rs. 79,191/-. We find that assessee claimed depreciation on goodwill at Rs. 79,191/- which was acquired at the time of amalgamation of other companies as per the order of the Hon'ble High Court effective on OL04.1998. This claim was denied by the A.O. and thereafter by Ld. CIT(A). We further observe that Hon'ble Jurisdictional High Court in tax appeal No. 47/2009 and others order ' dated 21.06.2016 in the case of assessee adjudicated this very issue of allowability of depreciation on goodwill, allowed all the appeals of the assessee by following the judgment of Hon'ble Apex Court in the case of CIT, Kolkata vs. Smifs Securities Ltd. (2012) 348 ITR 302.

8. We therefore respectfully following the judgment of Hon'ble Apex Court as well as the Jurisdictional High Court find no reason to interfere in the finding of Ld. CIT(A) allowing the claim on depreciation on goodwill being intangible asset which was acquired as surplus of asset over liability recorded by the appellant in books of account on account of amalgamation duly approved by Hon'ble Jurisdictional High Court.”

4. In parity of conclusion drawn by the bench, we dismiss this ground of appeal.
5. Now we come to ground relating to deleting of addition amounting to Rs. 69,90,220/- made on account of non addition unutilized tax credits to closing stock as per provision 145A of the Act.
6. In this ground also, bench had decided matter in favour of Assessee for Assessment Year 2010-11 and relevant para of the same are reproduced:

Ground No. 2 relates to deletion of addition of Rs. 48,11,634/- made by the A.O. on account of increase and valuation of MOD VAT and Cenvat takes credit u/s. 145A of the Act.

11. We observe that the impugned addition was made by the A.O. on account of his observation; that the assessee has not included the value of MOD VAT and Cenvat credit in the value of closing stock which were shown as loans and advances in the balance sheet. We observe that. Hon'ble Jurisdictional High Court in the case of ACIT vs. Namiada Cheraatur Petrochemical Limited (2010) 233 CTR

(Gujarat) 265 have held that "duty of Central Excise is levied on the goods manufactured, i.e. excisable goods manufactured by an assessee. It is not a cost of goods purchased. It is not a part of manufacturing costs. It can be termed-as post- manufacturing costs. Therefore unless and until it is entered on one side, as an item of cost, it cannot be taken as a component of the value of the, closing stock on the other side.

12. Similar issue also came up before the Co-ordinate Bench in the case of Alpanel Industries vs. ACIT in ITA No. 169/170/Ahd/2005 which discussed the principle related to valuation of closing stock u/s. 145A of the Act and also gone through the guidelines explained by the institute of chartered accountant of India and concluded with the finding that there will not be any effect on the profit and loss arrived at either by following inclusive method of accounting or exclusive method of accounting.

13. We find that the issue raised in this ground stand already settled by the above referred judgment and decision. In the instant appeal also the Modvat/Centvat receivable which are shown as loans and advances in the balance sheet if it had been shown as a part of purchases on the debit side of the profit and loss account and on the credit side as increase in the closing stock there would have been no change in the profits earned by the assessee. We therefore find no reason to interfere in the finding of Ld. CIT(A) and uphold the same.

14. In the result ground no. 2 of Revenue is dismissed.

7. In parity with the issue decided in favour of the assessee in assessee's own case, for similar ground, we dismiss this appeal of the Revenue.

8. In the result, appeal filed by the revenue is dismissed.

Order pronounced in Open Court on	17- 01- 2019
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Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER True Copy
Ahmedabad: Dated 17/01/2019

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER