

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA**

(Before Sri S.S. Godara, Judicial Member & Dr. A.L. Saini, Accountant Member)

ITA No. 355/Kol/2015
Assessment Year: 2005-06

M/s. Jainex Metaliks Ltd.....Appellant
11, Brabourne Road
3rd Floor
Kolkata - 700 001
[PAN : AAACJ 6568 R]

Vs.

Assistant Commissioner of Income Tax, Circle-3, Kolkata.....Respondent

Appearances by:

Shri Miraj D. Shah, A/R, appeared on behalf of the assessee.

Shri Robin Choudhury, Addl. CIT D/R, appearing on behalf of the Revenue.

Date of concluding the hearing : April 22nd, 2019

Date of pronouncing the order : April 26th 2019

ORDER

Per S.S. Godara, JM :-

This assessee's appeal for Assessment Year 2005-06 arises against the Commissioner of Income Tax (Appeals)- I, Kolkata's order dated 31/12/2014 passed in case No. 56/CIT(A)-I/C-3/2007-08, confirming the Assessing Officer's action addition of Rs.5,86,150/- on account of excise duty & cess u/145A and Section 68 addition of share application money amounting to Rs.4,50,000/- treated as unexplained cash credits; respectively in proceedings u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. The assessee's former substantive ground challenges the lower authorities action of adding Rs.5,86,150/- on account of excise duty not included in closing stock u/s 145A of the Act. The CIT(A)'s detailed discussion on this former issue reads as follows:-

4.1. In Appeal it has been submitted that the A.O. without considering the principle of accounting simply added back the difference of Rs.5,86,150/- to the income of the Appellant. It has further been submitted that-

"your appellant respectively submits the while the accounts of the appellant was recast, the auditor (who had given his notes under point No.12(b) in From No.3CD as "closing stock of finished goods exclusive of Excise duty and cess",) had prepared a supplementary audit report with calculation sheet as prepared u/s.145A of the Act and submitted it before the Ld. A.O. It appears from the said calculation that the excise duty and cess paid amounting to Rs.5,86,150/-, has been added to the closing stock of the finished Goods, simultaneously debited in the profit and loss Account. The said method which is consistent with the rule of accountancy, and gives the effect of tax neutrality. Therefore, there was no scope or intention to evade the tax on part of the appellant even excise duty and cess as was not added with the closing stock of finished goods. Further it appears from the remand report as was sought for by the C.I.T. (Appeal) that without appreciation of the Golden rule of the accountancy, the Learned A.O. reiterated the same as was taken while passing the Assessment Order. Therefore the addition made by the learned A.O. amounting to Rs.5,86,150/- is bad in the eye of law and liable to be deleted."

In respect of the above contention the Appellant submitted a copy of the supplementary Audit Report dated 12.12.08 along with the calculation sheet prepared u/s.145A. It was submitted that there was no malafide intention on part of the Appellant to evade the tax which was apparent from the calculation sheet prepared u/s.145A attach to the supplementary Audit Report. The matter had been remanded to the A.O. for his comments in view of the above submissions of the Appellant including the supplementary Tax Audit Report dated 12.01.08. In response to the same it has been submitted in the Remand Report dated 19.09.08 in which it was submitted that the Assessee had however its submission during the course of Assessment Proceedings which were from exhaustive and condoned recast of Gross Profit of the Assessee after considering sales, purchase, opening stock and closing stock further

excise duty, cess etc. were duly adjusted and manufacturing expenses were also considering. Further that after taking into account of the above it was observed that there was a difference of Rs.5,86,150/- so far as the Gross Profit of the Assessee was concerned therefore there was a difference in the Gross Profit calculated in accordance to provisions of section 145A of Rs.5,86,150/-.

4.2. The submissions of the Appellant as above and the Remand Report of the A.O. have been considered. The issue in this ground is the calculation of Closing and opening Stock and Gross Profit which according to the A.O. had not been done by the Appellant as per provisions of section 145A. It has been held by the A.O. that in accordance with the provisions of section 145A of the I.T. Act, in this regard it is the contention of the Appellant that this adjustment required u/s. 145A had been submitted by the Auditors that the adjustments could not be submitted along with the Tax Audit Report therefore, the same has been submitted subsequently. The Auditor has provided the same information on 12.01.2008 as under-

"(Refer point No.12(b) of Form No.3CD)

Effect on the profit & Loss of the company on account of application of method of valuation prescribed u/s.145A"

Profit as per profit & Loss Account		-25648403.86
<u>Add: Adjustment required u/s.145A</u>		
Excise Duty on closing stock of raw materials	2163800.00	
Sales Tax on finished goods & Scrap	6973329.61	
Modvat Credit utilized on consumption of Raw Materials	16818616.84	
Increase in closing stock of finished goods On inclusion of excise duty	<u>586150.00</u>	26541896.45
<u>Less: Adjustment required u/s.145A</u>		
Excise Duty on opening stock of raw materials	372470.00	
Excise Duty & CENVAT on purchase of raw materials	18609946.84	
sales tax paid	6973329.61	
Increase in excise duty on closing stock of Finished goods	<u>586150.00</u>	26541896.45
As a result of its inclusion in closing stock of Finished goods		
Profit after Adjustment		-25648403.86

However it is seen that the Appellant had its recast its Gross Profit u/s. 145A, & submitted the same in Assessment Proceedings which is reproduced as under-

Recasting of Gross Profit U/s.145A

Sales (excluding Excise Duty)	479352684.73	
Add: Excise Duty & cess	<u>19396010.40</u>	498748695.13
Add: Closing Stock of Finished Goods (At cost)	3591603.60	
Add: Excise Duty & cess on such stock	<u>586150.00</u>	<u>4177753.60</u>
		502926448.73
<u>Less: Opening Stock of Finished Goods</u>		
Stock of Finished Goods at cost	1429744.72	
Add: Excise Duty & cess on such stock	<u>109643.00</u>	
	1539387.72	
Raw Material Consumed (Exclusive of excise duty)	432761720.63	
Manufacturing Expenses	<u>64693070.52</u>	498994178.87
<hr/>		
<u>Gross Profit in consonance with the Provision of Section 145A</u>		<u>3932269.86</u> "

It is therefore seen that the Appellant has itself recomputed its Gross Profit and has revised it from Rs.33,46,119/- to Rs.39,32,269/-. Further that the explanatory note of the Auditor for computation of Gross Profit u/s.145A relied upon by the Appellant, was not submitted along with the original Tax Audit Report therefore the same cannot be relied upon on the other hand as mentioned above, the Appellant had itself recast its Gross Profit u/s.145A thereby increasing its Gross Profit to the extent of Rs.5,86,150/- and no explanation has been provided why the same was not correct. Accordingly the Appellants submission in this regard cannot be accepted and the addition made by the A.O. is **confirmed**.

3. We have heard rival submissions. There is no dispute that the Assessing Officer had made impugned addition after noticing the difference in gross profit of Rs.5,86,150/- on account of non inclusion of excise duty in closing stock. The assessee appears to have filed its auditor's explanatory note dated 12/12/2018 before the CIT(A) whilst seeking to reconcile the impugned difference. The same stands summarily rejected for the sole reason that this reconciliation ought to have been submitted with the original tax audit report during the course of assessment only. Neither of the lower

authorities has considered the assessee's details in its explanatory notice reconciling the impugned difference on factual aspects in other words so as to verify the consequential figures in either of the two conditions namely exclusion and inclusion of excise duty. We therefore deem it proper to restore the instant issue back to the file of the Assessing Officer for factual verification of assessee's reconciliation. The assessee is directed to produce all the relevant details within three effective opportunities of hearing since we are dealing with Assessment Year 2005-06. This former substantive ground is treated as accepted for statistical purposes in above terms.

4. Next comes the assessee's second substantive ground seeking to delete the addition of Rs.4,50,000/- on account of share application money received from S/Sh. L.N. Dash, Shri Surendra Kothari & Shri Raju Kumar Bhansali. Both the lower authorities appear to have taken a very strong note of cash deposits made immediately before the impugned share subscription in subscribers' accounts to conclude that it is the assessee's undisclosed income which has been ploughed back to the system through the said investors by using them as a dummy. We see no reason to express our agreement with the impugned addition. We find that the assessee has filed all details of its three subscribers i.e., addresses, PANs, income tax returns and bank statements etc. right from scrutiny onwards. It had in fact produced one of the investor Shri Raju Kumar Bhansali during the assessment proceedings as well. There is no evidence much less cogent one quoted at either of the lower authorities behest to dispute the same apart from making the addition on the foregoing conjectures and surmises. Learned Departmental Representative fails to dispute that the said cash deposits also stand accepted as genuine in the hands of the three subscriber parties. We conclude in these facts that the assessee has sufficiently discharged its burden of having proved the identity, genuineness and creditworthiness of its three investors. We therefore delete the impugned cash credit addition of Rs.4,50,000/- .

5. This assessee's appeal is partly allowed in above terms.

Kolkata, the 26th day of April, 2019.

Sd/-
[A.L. Saini]
 Accountant Member

Dated : 26.04.2019
 {SC SPS}

Sd/-
[S.S. Godara]
 Judicial Member

Copy of the order forwarded to:

1. M/s. Jainex Metaliks Ltd
11, Brabourne Road
3rd Floor
Kolkata – 700 001

2. Assistant Commissioner of Income Tax, Circle-3, Kolkata

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy
By order

Assistant Registrar
ITAT, Kolkata Benches