

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
AHMEDABAD “A” BENCH, AHMEDABAD**

**[Coram: Pramod Kumar VP and Madhumita Roy JM]**

ITA No.: 324/Ahd/2012  
Assessment year: 1999-2000

**Kisan Discretionary Family Trust** .....Appellant  
*Nirma House, Ashram Road*  
*Ahmedabad 380 009 [PAN: AAATK2653D]*

*Vs*

**Assistant Commissioner of Income Tax** .....Respondent  
**Circle 10, Ahmedabad**

**Appearances by**

**S N Soparkar and Himanshu Shah** *for the appellant*  
**Aparna Agarwal** *for the respondent*

Date of concluding the hearing : May 8, 2019  
Date of pronouncement : July 15, 2019

**O R D E R**

**Per Pramod Kumar, VP:**

1. By way of this appeal, the assessee appellant has challenged correctness of learned CIT(A)'s order dated 6<sup>th</sup> January 2012, in the matter of assessment under section 143(3) r.w.s. 254 of the Income Tax Act, 1961, for the assessment year 1999-2000.
2. Grievance of the assessee, in substance, is that “the learned CIT(A) has grossly erred in confirming the addition of Rs 18,84,09,605 on account of MODVAT credit in purchases”.
3. This is second round of proceedings. When the matter travelled before a coordinate bench of this Tribunal in the first round, the matter was remitted to the file of the Assessing Officer with the observations as follows:

**11. The Revenue in its appeal by way of ground No.1 has challenged the order of the ld. CIT(Appeals) directing the Assessing Officer to delete addition of Rs.18,84,09,605/- on account of understatement of profit by the assessee and ignoring the certificate furnished by the C.A. of the assessee during the course of assessment proceedings regarding the accounting of excise duty MODVAT.**

12. The brief facts of the case are that the Assessing Officer enquired about the method of accounting followed in respect of MODVAT credit. The assessee replied that Kisan Industries have accounted for purchases inclusive of excise duty MODVAT during accounting year ending on 31/03/1999 and, accordingly, excise duty was included in closing stock. The Assessing Officer referred to the statement of closing stock given by the assessee as on 31/03/1999 and the statement of closing stock as on 31/03/1998 and observed that as per the stock statement, the closing stock on 31/03/1999 includes excise duty MODVAT and as on 31/03/1998 is net of excise duty MODVAT. The Assessing Officer, further, referred to certificates supplied by the C.A. of the assessee where the treatment given to MODVAT credit was explained. The Assessing Officer observed that during Financial Year 1997-98, the assessee has accounted for purchase net of excise duty MODVAT, sale net of excise and closing stock net of excise. In the Financial Year 1998-99, the assessee accounted for purchase inclusive of excise duty MODVAT and closing stock inclusive of excise duty MODVAT. Thus, there is change in the method of accounting of valuation of purchases in the Financial Year 1998-99 in violation of provisions of section 145A of the Income Tax Act, 1961. The Assessing Officer, further observed that the assessee did not include MODVAT credit in purchases in Financial Year 1997-98 and also in earlier Financial Years. In Financial Year 1998-99, the assessee has included MODVAT credit of Rs.18,84,09,605/- in purchases. In Financial Year 1998-99, there is change in method of accounting for purchases followed by the assessee from earlier years. The assessee has accounted for sales net of excise in the current year and also in earlier years. Thus, there is violation of section 145-A of the Income Tax Act, 1961 in respect of valuation of purchases. The change in accounting method of the assessee by way of including MODVAT credit in purchase resulted in understatement of profit by Rs.18,84,09,605/-. He, therefore, made addition of this amount to the income of the assessee.

13. In appeal, the Id. CIT(Appeals) called for a remand report vide order dated 28/03/2002, where the re-conciliation of Profit & Loss account showing the figures inclusive of MODVAT filed by assessee's Chartered Accountant vide his letter dated 27/08/2002 which was filed before her. The Id. CIT(Appeals), therefore, decided that since this information was not before the Assessing Officer, during the course of assessment proceedings, the same was forwarded to him for verification from his records to see whether the figures submitted now can be reconciled with the figures given during the course of assessment proceedings. The Assessing Officer, vide his remand report along with the letter dated 07/10/2002 observed that the assessee in Assessment Year 1998-99 did not include any MODVAT in the consumption of raw-materials, whereas in the Assessment Year 1999-2000, the assessee has included MODVAT credit of Rs.18.84 crores in the consumption of raw-materials. The Assessing Officer also submitted that purchase should be inclusive of MODVAT and sales should also

be inclusive of excise duty and MODVAT debited in Profit & Loss account and the closing stock should also be valued including the MODVAT. The Assessing Officer, thus, suggested that the assessee has suppressed this income by Rs.18.84 crores. The Id. CIT(Appeals), after considering the remand report of the Assessing Officer and also the submissions of the assessee observed that from the detailed description given by the assessee in the submissions and calculations made to arrive at the revised Profit & Loss account, it is found by him that there is no understatement of income on account of MODVAT credit of Rs.18.84 crores. The treatment given to MODVAT credit of Rs.18.84 crores is such that no part of the income of the assessee has been reduced and there is also no violation of section 145A of the Income Tax Act, 1961. The Id. CIT(Appeals), further observed that the reliance of the assessee on Mumbai High Court's decision in the case of CIT vs. Indo Nippon Chemicals Co.Ltd. 245 ITR 384 (Mum.) which was upheld by the Hon'ble Supreme Court in the case of CIT vs. Indo Nippon Chemicals Co.Ltd. 261 ITR 275, is fully justified. Accordingly, he deleted the addition of Rs.18.84 crores made by the Assessing Officer on account of understatement of profit by way of including MODVAT credit in valuation of purchases.

14. The Ld. Departmental Representative supported the order of the Assessing Officer, whereas Ld. Authorised Representative of the assessee supported the order of the Id. CIT(Appeals).

15. We have heard the rival submissions and perused the orders of the lower authorities and the materials available on record. In the instant case, the Assessing Officer observed that the assessee has debited purchases by including amount of MODVAT credit of Rs.18.84 crores available on the same. According to the Assessing Officer, assessee has changed its method of valuation of purchase in respect of MODAVAT credit available in so far as in earlier years assessee accounted for purchases exclusive of amount of MODVAT, whereas during the year under consideration, the assessee has included MODVAT of Rs.18.84 crores in the purchase. On the above facts, the Assessing Officer concluded that the assessee has suppressed profit by Rs.18.84 crores and, therefore, added the same to the income of the assessee. On appeal, the Id. CIT(Appeals) deleted the above addition by observing that no suppression of profit took place in the instant case on the basis of accounting treatment given by the assessee to the excise MODVAT in the accounts. We find that the Assessing Officer observed in the order of the assessment that the assessee has included excise duty in the valuation of its closing stock. Though the Assessing Officer has noted that sales were accounted for by the assessee, net of excise duty but has made no addition on this count. In our considered opinion, if the assessee shows the gross sales inclusive of excise duty, then corresponding amount of excise expenses will have to be debited in Profit & Loss account resulting in the same

profit which is reflected by credit of net sales in the Profit & Loss account. We find that the real dispute in the instant case, is in respect of valuation of purchases. We find that there are two recognized system of accounting for purchase vis-à-vis MODVAT credit. One is known as “exclusive method” in which purchases are reduced from the amount in respect of which MODVAT credit is available and, therefore, the lesser purchase being debited in Profit & Loss account amount of MODVAT is automatically included in the profit. The other system which is also known as “inclusive method” under which purchases are debited in the Profit & Loss account at the gross amount and the amount of MODVAT credit available is separately reflected on the income side of Profit & Loss account. Both the systems give same profit. In the instant case, as per Assessing Officer the assessee has included MODVAT of Rs.18.84 crores in the consumption of raw-material reflected in the audited account at Rs.14114,69,747. The assessee has filed a chart showing computation of purchase as per “exclusive method” at Rs.14016,23,940/- and as per “inclusive method” at Rs.16626,08,532/- which is placed at page No.70 of the paper-book. Thus, it is observed that the figure of purchase in the assessment order does not agree with any of the figures furnished by the assessee in the paper-book. The Ld. Authorised Representative of the assessee could not explain the above discrepancy nor filed before us copy of audited Profit & Loss account to show that the figure mentioned in the assessment order is not correct. The Id. CIT(Appeals) has also not give any finding whether the purchases shown by the assessee in the audited accounts were on “inclusive basis” or on “exclusive basis” and if the purchases were shown on “inclusive basis” then the claim of MODVAT credit available was shown as income separately in the Profit & Loss account or not. Thus, in above situation, in our considered opinion, it shall be in the interest of justice to adjudicate the issue after proper verification of figures of purchases of the assessee. We, therefore, have no option but to set aside the orders of the lower authorities on this issue and remit the matter back to the file of the Assessing Officer for adjudication afresh in light of the discussions made hereinabove after proper verification of figures of purchases shown in audited accounts after allowing reasonable opportunity of hearing to the assessee. Thus, this ground of appeal of the Revenue is allowed for statistical purposes.

4. When the matter travelled back to the Assessing Officer, he required the assessee to submit the plea, alongwith supporting evidences, for his examination. It was submitted by the assessee that the assessee has actually included the excise in purchases as well as inventory, but it is not included in the sales as it effect gets nullified by corresponding debit of the equal amount. It was also explained that excise duty has been actually paid before the due date of filing return, and it is incorrect to say that Section 145A gets violated or there is understatement of profits. It was submitted that what has apparently been overlooked is that purchases are accounted inclusive of excise duty and the closing stock is also valued with excise element included. The assessee also furnished a copy each of the certificate of the chartered account, copy of reconciliation of expenses and a copy of CA certificate regarding Modvat treatment. All this did not impress the Assessing Officer. He noted that the assessee

did not include Modvat credit for purchases in the financial years 1997-98 and in earlier financial years. It was only in the financial year relevant to this previous year that the assessee has included modvat of Rs 18,84,09,605 in purchases. There was thus a change in the accounting method for purchases. The Assessing Officer also noted that on a perusal of reconciliation filed by the assessee, it was clear that in the assessment year 1998-99 the assessee did not show any modvat in the consumption of raw materials but in the present year the assessee has shown modvat of Rs 18.84 crores in consumption. It was also observed that “the purchases ought to have been inclusive of modvat and sales should also have been inclusive of excise duty and modvat debited in the profit and loss account, and the closing stock ought to have been valued including the modvat” and that “the change in accounting method of the assessee by way of including modvat credit in purchases has resulted in understatement of profit by Rs 18,84,09,605”. The Assessing Officer thus concluded that “the amount of Rs 18,84,09,605, being understatement of profit, is added to the total income of the assessee”. Aggrieved, assessee once again carried the matter in appeal before the CIT(A) but without any success. Learned CIT(A), confirming the stand of the Assessing Officer, observed as follows:

*“3.14 I have tried to examine the issues raised by the Hon'ble Tribunal while setting aside the case but the appellant has failed to reconcile the figures doubted by the Hon'ble Tribunal. The appellant had shown the consumption of raw material of all the three units for Rs. 1,40,16,23,940/- as per Schedule-G of the audited profit and loss account. It was worked out by adding the purchases of raw material in the opening stock of raw material and by reducing the closing stock of raw material. The working of Rs. 1,40,16,23,940/- was calculated like Rs. 10,17,68,472/- as opening stock of raw material plus Rs. 1,41,14,69,747/- as purchases of raw material minus Rs. 11,16,14,279/- as closing stock of raw material. It is an admitted fact that the purchases of raw material for F.Y. 1998-99 (relevant to A.Y. 1999-2000) were accounted for inclusive of excise duty Modvat as is evident from para-3.8 above. However, the appellant has given different figures of purchases of raw material in its submission dated 05.07.2012 without any supporting evidence. The figures were for Rs. 1,41,14,69,747/- as per para-7, Rs. 1,39,89,29,726/- as per para-8 and Rs.1,67,24,54,339/- as per para-9 of its letter dated 05.07.2011. The Ld. Counsel could not explain as to 'from where the figures of purchases of raw material of Rs.1,67,24,54,339/- and Rs. 1,39,890,29,726/- came whereas the purchases of raw material have been shown for Rs.1,41,14,69,747/- in Schedule-G of the audited profit and loss account. No any supporting documents were filed for the purchases of raw material for Rs.1,67,24,54,339/-. I have therefore, no alternative except to consider the purchases of raw material for Rs.1,41,14,69,747/- shown in Schedule-G of the audited profit and loss account. These purchases of raw material for Rs.1,41,14,69,747/- are inclusive of excise duty modvat as admitted by the appellant vide its submission dated 24.03.2011 and dated 05.07.2011. From the above discussion, it has become clear that the opening stock of raw material of Rs.10,17,68,472/- was exclusive of excise duty modvat, the sales were declared net of excise duty, the purchases of raw material for Rs. 1,41,14,69,747/- were, inclusive of excise duty modvat and the closing stock of raw material for Rs. 11,16,14,279/- was also inclusive of excise duty modvat. On examination of the case, it was noticed that*

*the appellant had neither followed the "inclusive method" nor the "exclusive method" as discussed by the Hon'ble Tribunal but followed the method which suited it. Since, the appellant had accounted for the purchases inclusive of the excise duty modvat, the system which is known as "inclusive method", is to be applied under which purchases are debited in the Profit & Loss account at the gross amount and the amount of Modvat credit available is separately reflected on the income side of Profit & Loss Account The appellant had not reflected the amount of Modvat credit available for Rs.18,84,09,605/- separately on the income side of Profit & Loss Account and therefore, the same is required to be added to the income of the assessee. Even if the "exclusive method" as explained by the Hon'ble Tribunal is applied, then also the result will be same. The amount of Rs. 18,84,09,605/- will be reduced from the purchases of Rs. 1,41,14,69,747/- and thereby the resultant figures for consumption of raw material will be for Rs. 1.21.32,14,335/-- as against Rs.1,40,16,23,940/- shown in Schedule-G to the audited profit and loss account.*

*3.15 The case could not be examined by taking the sales of Rs.2,63,49,46,228/- as inclusive of excise duty of Rs. 41,32,50,631/- because the details of payments u/s 43B of the Act were not furnished by the appellant though specifically called for vide order sheet entry dated 24.03.2011. While applying the method of gross sales of Rs.2,63,49,46,228/-, the Ld. Counsel had debited the excise duty of Rs. 41,32,50,631/- without filing any documentary evidence of payment of excise duty of Rs.41,32,50,631/-. It was noticed from the computation of income that excise duty of Rs. 2,15,00,000/-- was unpaid in the Detergent Division of the assessee at the time of filing of the return of income. The copies of challans for payment of balance excise duty of Rs. 39,17,50,631/- were not furnished. It is not verifiable as to how much excise duty was actually paid and how much of the excise duty was adjusted against the Modvat claim. In absence of such details, the benefit of Rs. 41,32,50,631/- cannot be given in debiting the same to the profit and loss account. Considering the facts of the case, I am of the view that while debiting the balance excise duty of Rs. 39,17,50,631/- to the profit and loss account, atleast the Modvat credit of Rs.17,58,69,586/- was to be credited to the profit and loss account. Thus, the profit and loss account furnished by taking the sales of Rs. 2,63,49,46,228/- as inclusive of excise duty of Rs. 41,32,50,631/- cannot be acceptable and rejected.*

*3.16 The Ld. Counsel has relied upon the decision of the Hon'ble Supreme Court in the case of CIT vs. Indo Nippon Chemicals Ltd. 261 ITR 275 (SC). However, the facts of the appellant's case are entirely different. In the cases considered by the Hon'ble Supreme Court, the assesseees were manufacturing units which were liable to pay excise duty. Under the Modvat scheme, they used to get credit for the excise duty already paid on the raw materials purchased by them and utilised in manufacturing of excisable goods. The proportionate part of the Modvat credit was being set off against their excise duty liability. The Assessing Officer took the view that the Modvat credit that was available to the assesseees should be treated as an income or an advantage in the nature of income, and, therefore, added back the said amount to the income of these assesseees. The Ld. Counsel could not able to explain as to how the facts of the cases, decided by the Hon'ble Supreme Court in the case of CIT vs. Indo Nippon Chemicals Ltd. 261 ITR 275 (SC), were resembling that of the appellant's case. The*

appellant therefore, cannot derive any support from the aforesaid decision of the Hon'ble Supreme Court.

3.17 In view of the detailed discussion made in para-3.6 to para-3.16 above, I am of the opinion that the appellant had accounted- for the purchases of raw material inclusive of the excise duty modvat and therefore, the amount, of Modvat credit available for Rs. 18,84,09,605/- was to be separately credited to the profit and loss account. This was not done by the appellant. The Assessing Officer was thus justified in holding that the appellant had understated the profit to the extent of Rs.18,84,09,605/-. The addition so made by the Assessing Officer is hereby confirmed. The second ground of appeal is accordingly dismissed.”

5. The assessee is not satisfied and is, once again, in further appeal before us.
6. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of applicable legal position.
7. We have noted that, while allowing the appeal filed by the Assessing Officer in the first round of proceedings, this Tribunal had remitted the matter to the file of the Assessing Officer **for fresh adjudication, inter alia, “after proper verification of figures of purchases shown in audited accounts”**. So far as this direction of the Tribunal is concerned, on a perusal of material on record, we find that the assessee has reasonably reconciled the figures as follows:

“(i) Purchase of Raw-materials:-

|                                  |                      |
|----------------------------------|----------------------|
| Purchase                         | 1,39,89,29,726       |
| Add: Excise Modvat               |                      |
| On purchases                     | <u>18,84,09,605</u>  |
|                                  | 158,73,39,331        |
| Less: Excise duty on Consumption | 17,58,69,586         |
| of raw material                  |                      |
|                                  | <u>141,14,69,745</u> |

The amount of Rs.141,14,69,745/- was tallied with Schedule-G of the profit & loss account which is at page-21 of Paper book. This categorically shows that amount of excise modvat on purchase Rs.18,84,09,605 is included in the aforesaid amount.

(ii) The consumption of raw material is Rs.140,16,23,940 which is as per schedule-G of profit and loss account The same is given at paper book page -21 which works out as under:

|                                      |                      |
|--------------------------------------|----------------------|
| Opening stock                        | 10,17,68,472         |
| Purchase of raw materials            |                      |
| Inclusive of modvat                  | <u>167,24,54,339</u> |
|                                      | 177,42,22,811        |
| Less: Closing stock of Raw materials | <u>11,16,14,279</u>  |

|                                    |                     |
|------------------------------------|---------------------|
| <i>inclusive of modvat</i>         | 166,26,08,532       |
| <i>Less: Modvat credit availed</i> | <u>17,58,69,586</u> |
|                                    | 148,67,38,946       |
| <i>Less: Inter unit transfer</i>   | <u>8,51,15,006</u>  |
|                                    | 140,16,23,940       |

(iii) The purchase of raw-material is Rs.158,73,39,333. The effect of inter unit transfer is reduced to Rs.8,51,15,006 as per the following calculation:

|                                  |                      |
|----------------------------------|----------------------|
| <i>Purchase of raw material</i>  | 167,24,54,339        |
| <i>Less: Inter Unit transfer</i> | <u>8,51,15,006</u>   |
|                                  | <u>158,73,39,333</u> |

(iv) Moreover, the profit & loss account is also furnished under both methods i.e. gross of excise and net of excise which is at page-64 & 66 of paper book. Under both methods profit before tax is identical Rs.659,065,779/-. Thus, this shows that under both methods, profit is same.”

8. When the above position was pointed out to the learned Departmental Representative, she did not have much to say beyond placing her reliance on the observations of the CIT(A). These observations, in turn, refer to the claim that the assessee did not account for MODVAT credit correctly by following one of the methods, i.e. exclusive method or inclusive method. That observation ceases to be valid once the figures stand reconciled as above. We have also noted that no specific defects are pointed out in the reconciliation so furnished by the assessee, during the course of the proceedings before the CIT(A) as also before us, and that, as demonstrated by the assessee at pages 64 and 66 of the paper book, irrespective of which method is followed, i.e. inclusive method or exclusive method, the profit as per the profit and loss account is the same. As for the observations of the Tribunal, in the first round of proceedings, to the effect that “The assessee has filed a chart showing computation of purchase as per “exclusive method” at Rs.14016,23,940/- and as per “inclusive method” at Rs.16626,08,532/- which is placed at page No.70 of the paper-book. Thus, it is observed that the figure of purchase in the assessment order does not agree with any of the figures furnished by the assessee in the paper-book.”, we may only refer to the following observations from the letter dated 5<sup>th</sup> July 2011, a copy of which is also placed before is at pages 65-67”

"1. We enclose herewith copy of Tax Audit Report alongwith relevant enclosures thereof for the previous year ending on 31-3-1999. (Annexure: 'G')

2. The closing stock as on 31-3-1998 corresponding to Asst Year: 1998-99 Rs.10,17,68,472 was valued net of excise duty.

3. The closing stock as on 31-3-1998 Rs.10,17,68,472 was taken as opening stock as on 1-4-1998.

4. The purchases for F.Y. 1998-99 were accounted inclusive of excise duty Modvat.

5. The closing stock as on 31-3-1999 was valued at inclusive of excise duty Modvat.  
6. Hon'ble I.T.A.T. passed appellate order dt 24-7-2009. Vide discussion at para 15 of the appellate order, Hon'ble Tribunal directed to reconcile various figures. The reconciliation of various figures are as under.

7. Schedule G of the annual accounts provides consumption of raw material which is reproduced as under:

Consumption of raw materials:

|                                      |                      |
|--------------------------------------|----------------------|
| Opening stock of raw materials       | 10,17,68,472         |
| Add: Purchase of raw materials       | 141,14,69,747        |
| Less: Closing stock of raw materials | <u>11,16,14,279</u>  |
|                                      | <u>140,16,23,940</u> |

8. The figure of purchase of raw materials 141,14,69,747 is consisting of followings:

|  |                      |
|--|----------------------|
| Purchases  | 139,89,29,726        |
| Add: Excise Modvat on purchases                  | <u>18,84,09,605</u>  |
|  | 158,73,39,331        |
| Less: Excise duty on Consumption of raw Material | <u>17,58,69,586</u>  |
|  | <u>141,14,69,745</u> |

Page 70 of Paper Book filed before Hon'ble Tribunal is enclosed herewith. (Annexure: W)

9. The purchase as per the inclusive, method mentioned for Rs.140,16,23,940/- is the consumption of raw materials as per Schedule G as mentioned hereinabove at para 7. Moreover, figure of Rs.166,26,08,532 is included in Paper Book Page 70. The consumption as per page 70 is reproduced hereunder:

|  |                      |
|--|----------------------|
| Opening stock  | 10,17,68,472         |
| Purchase of raw materials                                | <u>167,24,54,339</u> |
| Inclusive of modvat                                      | 177,42,22,811        |
| Less: Closing stock of Raw materials inclusive Of modvat | <u>11,16,14,279</u>  |
|  | 166,26,08,532        |
| Less: Modvat credit availed                              | <u>17,58,69,586</u>  |
|  | 148,67,38,946        |
| Less: Inter unit transfer                                | <u>8,51,15,006</u>   |
|  | <u>140,16,23,940</u> |

This shows that figure of Rs.166,26,08,532/- is the amount before reduction of Modvat credit availed.

10. We also reconcile the figures at page 70 of Paper Book with the audited accounts in Schedule G as under:

As per Paper Book Page 70

|                            |                      |
|----------------------------|----------------------|
| Purchases of raw materials | 167,24,54,339        |
| Less : Inter Unit Transfer | <u>8,51,15,006</u>   |
|                            | <u>158,73,39,333</u> |

11. The figure of Rs.141,14,69,747 is purchase of raw material as per para 7 which is worked out as under:

|   |                      |
|---|----------------------|
| Purchase as per para 10                   | 158,73,39,333        |
| Less: Modvat credit availed as per para 9 | <u>17,58,69,586</u>  |
|   | <u>141,14,69,747</u> |

12. May we also inform that Modvat credit availed is 17,58,69,586 which reconcile with Excise duty on purchases Rs. 18,84,09,605 less Excise duty on raw materials stock Rs.1,25,40,019 which comes to Rs.17,58,69,586. Thus all the figures mentioned in the audited accounts are reconciled with the figures mentioned in the Paper Book."

9. We thus find that the figures stand reconciled, and the doubt expressed by the Tribunal while remitting the matter to the file of the Assessing Officer in the first round of proceedings, stands clarified. As for the figures in the immediately preceding year being net of modvat, nothing really turns on the same inasmuch as in the present year the method followed is inclusive method and all the related figures are correspondingly modified and reconciled. We have noted that the observations of the CIT(A), in the impugned order, that "the amount of MODVAT credit of Rs 18,84,09,605 was to be reduced from the purchases in the 'exclusive method' which was not done by the appellant (and) the result of both the methods is the same", what is overlooked is that the assessee is not following exclusive method and there is, therefore, no question of reducing MODVAT credit, and that, as for result of both the methods being the same, the MODVAT credit is to be reduced only when all the other figures, going into the profit and loss account, also being adopted on the exclusive method. Once that exercise is carried out, as we have noted earlier, the results are the same as in this case. As regards the issue raised about the disallowance under section 43B, neither that issue was raised in the first round of proceedings, nor, therefore, subject matter of directions by the Tribunal, and, in any event, the amount of Rs 2,15,00,000 being unpaid tax was disallowed in the income tax return itself. All the requisite details were duly filed anyway. As regards the applicability of Hon'ble Supreme Court in the case of CIT Vs Nippon Chemicals Limited (261 ITR 275), we find that as MODVAT credit is available to the assessee in respect of excise duty payable by the assessee, the said decision clearly applies on the facts of this case as well. The doubts expressed by the Tribunal, in the first round of proceedings and which were foundation of impugned remand proceedings, have clearly turned out to be incorrect. The necessary verifications and reconciliations, in the light of the observations made by the Tribunal in the first round of proceedings, have been carried out, and no infirmities are thus found in the relief originally granted by the CIT(A) in the first round of proceedings.

10. In view of the above discussions, as also bearing in mind entirety of the case, we approve the well reasoned conclusions arrived at by the CIT(A) in the first round of proceedings. We vacate the impugned order passed by the authorities below in the second round of proceedings, and restore the relief granted by the CIT(A) in the first round of proceedings.

11. In the result, the appeal is allowed in the terms indicated above. Pronounced in the open court today on the 15<sup>th</sup> day of July, 2019.

Sd/-

**Madhumita Roy**  
(Judicial Member)

Sd/-

**Pramod Kumar**  
(Vice President)

**Ahmedabad, dated the 15<sup>th</sup> day of July, 2019**

*Copies to:*

|     |                      |     |                       |
|-----|----------------------|-----|-----------------------|
| (1) | <i>The appellant</i> | (2) | <i>The respondent</i> |
| (3) | <i>CIT</i>           | (4) | <i>CIT(A)</i>         |
| (5) | <i>DR</i>            | (6) | <i>Guard File</i>     |

*By order*

*True Copy*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Ahmedabad benches, Ahmedabad*