

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

**BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No.2886/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2011-12)

DCIT-1(1)(2) 579, Aayakar Bhawan, M.K. Road, Mumbai-400020.	<b>बनाम/</b> Vs.	M/s. Ganesh Benzoplast Ltd. 1 <sup>st</sup> Floor, Dina Building-53, M.K. Road, Mumbai- 400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACG1259J		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

Revenue by:	Shri Chaudhary Arun Kumar Singh
Assessee by:	Shri Haridas Bhat

सुनवाई की तारीख / Date of Hearing: 22/07/2019

घोषणा की तारीख /Date of Pronouncement: 31/07/2019

**आदेश / ORDER**

**PER AMARJIT SINGH, JM:**

The revenue has filed the present appeal against the order dated 23.01.2017 passed by the Commissioner of Income Tax (Appeals) -2, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2011-12.

2. The revenue has raised the following grounds: -

*"1. "Whether on the facts and circumstances and in law, whether the Id CIT(A) erred in relying on the decision of Hon'ble Supreme court in the case of CIT Vs Indo Nippon Chemicals 261 ITR 275 which is distinguishable on facts in as much as the decision was rendered in the context of Section 145 of the IT Act for Assessment Year 1989-90 and not*

*in the context of Section 145A of the I T Act which did not exist for AY 1989-90."*

*2. "Whether on the facts and circumstances and in law, whether the Id CIT(A) erred in deleted the addition of Rs.72,57,620/- ignoring the fact that the Assessing officer did not treat the unutilized mod vat credit of Rs72,57,620/- as income but had made an adjustment to the valuation of inventory u/s 145.4.*

*3. "Whether on the facts and circumstances and in law, whether the Id CIT(A) erred in deleting the addition of Rs.72,57,620/- on account of unutilized mod vat credit instead of directing the AO to value the opening and closing inventory along with purchase and sales to ascertain the excise duty embedded in these items and examine the impact of the unutilized mod vat credit on the valuation of inventory u/s 145A"*

**3.** The brief facts of the case are that the assessee filed its return of income on 27.09.2011 declaring income to the tune of Rs. Nil after claiming set-off brought forward loss against net profit of Rs.4,31,41,653/-. Thereafter the assessee filed the revised return of income on 30.03.2013 declaring total income to the tune of Rs. Nil after claiming set-off of brought loss against net profit of Rs.7,60,99,652/-. Thereafter, the case was selected for scrutiny. Notices u/s 143(2) and 142(1) of the Act were issued and served upon the assessee. The assessee company was engaged in the business of manufacturing of chemicals and was having liquid storage terminals. Company was a sick Industrial Company and registered with BIFR for rehabilitation as per SICA 1985 under reference number 42/2009. On verification, it was found that the assessee has shown the increased closing balance of MODVAT over its opening balance to the extent of Rs.75,57,620/- in the books of account. The said amount was required to be added to the closing stock in view of the provisions u/s 145A, therefore, a notice was given to the assessee and after the reply of the assessee, the closing MODVAT balance in sum of Rs.72,57,620/- was disallowed on

account of MODVAT credit and added to the income of the assessee. The total income of the assessee was assessed at loss to the tune of Rs.8,44,55,069/- Feeling aggrieved, the assessee filed an appeal before the CIT(A) who allowed the claim of the assessee, therefore, the revenue has filed the present appeal before us.

**4.** All the issues are in connection with the allowance of claim of the assessee on account of unutilized Modvat credit. The Ld. Representative of the revenue has argued that the AO nowhere declined the claim of the assessee but make the adjustment to the valuation u/s 145A of the Act but the CIT(A) has wrongly deleted the said addition, hence, finding of the CIT(A) is not justifiable, hence, is liable to be set aside. However, on the other hand, the Ld. Representative of the assessee has placed reliance upon the order of the CIT(A) in question. Before going further, we deemed it necessary to advert the finding of the CIT(A) on record: -

“5. Disallowance of on account of increase in Modvat credit:

The AO has added sum of Rs.72,57,620/- under mod vat credit as per para 6 of the assessment order by invoking provisions of section 145A of the Act. On the other hand, the AR of the appellant argues that this mod vat has never been debited to Profit & Loss A/c. It is only reflected in the balance sheet in the asset side. Therefore, cannot be treated as income at all. Further, he is also relying on the Hon'ble Supreme Court's decision in the case of CIT vs. Indo Nippon Chemicals 261 ITR 275 wherein it is held as under:-

"Modvat credit available to manufacturers upon purchase of duty paid raw material, though irreversible does not amount to chargeable income.

Respectfully following the Hon'ble Supreme Court's decision cited above, I direct the AO to delete the addition of Rs. 72,57,620/-. Accordingly, this ground the appeal is allowed.”

5. On appraisal of the above mentioned order, we noticed that the CIT(A) has decided the matter of controversy on the basis of the decision of Hon'ble Supreme Court in case of **CIT Vs. Indo Nippon Chemicals 261 ITR 275** in which it is specifically held that the Modvat Credit available to the manufacturer upon purchase of duty paid raw-material though irreversible does not amount to chargeable income. Accordingly, the said amount has not been treated as income. The facts are not distinguishable at this stage. No law contrary to the law relied by the CIT(A) has been produced before us. Taking into account of all the facts and circumstances, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage. Accordingly, all these issues are decided in favour of the assessee against the revenue.

6. In the result, the appeal filed by the **revenue is hereby ordered to be dismissed.**

Order pronounced in the open court on 31/07/2019

Sd/-

(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 31/07/2019  
Vijay/Sr.PS

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**