

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH MUMBAI
BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER
&
SHRI RAVISH SOOD, JUDICIAL MEMBER**

**ITA No.4329/Mum/2018
(Assessment Year: 2011-12)**

Raychem RPG Pvt.Ltd. RPG House, 463 Dr. Annie Besant Road, Worli,Mumbai-400 030	Vs.	Addl.CIT, Range-7(2) Aaykar Bhawan M.K.Road Mumbai-400 020
PAN/GIR No.AAACR8032L		
(Appellant)	..	Respondent)

Revenue by	Smt.Jyothilakshmi Nayak, Sr.AR (Addl, CIT)
Assessee by	Shri. Manish V. Shah & Ms. Niyanta Mehta, AR's
Date of Hearing	10/12/2019
Date of Pronouncement	13/12/2019

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

This appeal filed by the assessee is directed against, the order of the Ld. Commissioner of Income Tax (Appeals)-14, Mumbai, dated 09/04/2018 and it pertains to Assessment Year 2011-12.

2. The assessee has raised the following grounds of appeal:-

I. GROUND 1: ADDITION UNDER SECTION 145A OF THE ACT AMOUNTING TO RS.6589,009/-

1 . On the facts and circumstances of the case and in law, the C1T(A) erred in confirming the action of Additional Commissioner of Income Tax-8(1)(1) ("AO") in invoking section 145 A of the Act and upholding the addition made thereof.

2. The Appellate prays that the aforesaid addition be deleted as there is no effect in profits of the Appellant as per detailed working in clause 12(b) of tax audit report

II. GROUND II: DISALLOWANCES UNDER SECTION 36(1)(va) OF THE ACT AMOUNTING TO RS.538,071/-

1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming the action of the AO in not considering the claim made by the Appellant towards delayed payment of employee's contribution to provident fund under section 43B/36(1)(va) of the Act.

2.. The Appellant therefore prays that the AO be directed to allow the aforesaid expenses to the extent they were paid before the due date of filing the Return of income.

III. GROUND III

The appellant craves leave to add to, alter and/or amend the above grounds of appeal.

3. The brief facts of the case are that the assessee is engaged in the business of manufacturing and trading of telecommunication and power cable accessories etc. The assessee has filed its return of income for AY 2011-12 on 30/11/2011, declaring total income at Rs.1,76,28,267/-. Subsequently, the assessee has filed a revised return on 19/03/2013 and declared total income at Rs.2,10,24,867/- The case was selected for scrutiny and during the course of assessment proceedings, the AO noticed that the assessee has not included excise duty in the valuation of closing stock of raw material and working progress, however it has included the excise duty in valuation of closing stock of finished goods. The Ld. AO referring to the provision of section 145A of the I.T.Act, 1961, observed that the assessee should have included excise duty component of purchase price of raw material, while valuing closing stock of raw material, working progress and finished goods and accordingly, called upon the assessee to explain as to why, the valuation of closing stock shall not be rejected and revalued, as per the provision of section 145A of the I.T.Act 1961. In response, the assessee claimed that non inclusion of excise duty will have no effect in the profit and loss account. The AO, however, did not find merit in the submissions of the assessee and accordingly, by taking note of amount of excise duty paid on purchases, revalued closing stock and made

adjustment of Rs.65,89,009/- towards value of closing stock, as per the provision of section 145A of the I.T.Act, 1961.

4. The assessee carried the matter in appeal before the Ld.CIT(A), but could not succeed. The Ld.CIT(A) for the detailed reasons recorded in his appellate order, held that adjustment made by the Ld. AO for AY 2010-11 has not been challenged by the assessee, because the same resulted into reduction of total income, however when the adjustment made towards valuation of closing stock resulted in increasing taxable income, the assessee has chosen to challenge the same before the appellate authorities, without following consistency in its approach. Accordingly, he rejected the arguments of the assessee and confirmed additions made by the Ld. AO towards revaluation of closing stock. Similarly, the Ld.CIT(A) has rejected additional ground raised by the assessee, seeking reduction from total income towards suo-moto disallowances of employees contribution to PF, on the ground that the facts with regard to additional ground raised by the assessee were not before the Ld. AO during the assessment proceedings and further, it is not a legal claim, which can be entertained at appellate stage and accordingly, rejected additional ground taken by the assessee. He, further stated that although, the Hon'ble Supreme Court has considered the issue of belated payments of employees contribution to PF in light of provision of section 36(1)(va), rws 43B, but the Hon'ble Gujarat High court, in the case of CIT vs Gujarat State Road Transport Corporation 41 taxmann.com 100, after considering the decision of Hon'ble Supreme Court, in the case of CIT vs M/s.Alom Extrusions Ltd 319 ITR 306 held that the decision rendered by the Hon'ble Supreme Court is not applicable to the employees contribution to

PF. Accordingly, rejected the claim of the assessee. Aggrieved by the Ld.CIT(A) order, the assessee is in appeal before us.

5. The first issue that came up for our consideration from ground No.1 of assessee appeal is addition u/s 145A of the I.T.Act, 1961 amounting to Rs.65,89,009/- towards revaluation of closing stock, as per provision of section 145A of the I.T.Act, 1961. The Ld. AR for the assessee submitted that this issue is squarely covered in favour of the assessee by the decision of ITAT, Mumbai in assessee own case for AY 2007-08 in ITA No.4780/Mum/2013, where under identical set of facts, the issue has been restored to the file of the Ld. AO to reconsider the issue, in light of decision of Hon'ble Delhi High court in the case of ITO vs Mahavir Aluminium Ltd. (2008) 297 ITR 77 (Delhi). He, further submitted that although, the Ld. AO has accepted the fact that the ITAT has decided the issue in favour of the assessee, but he did not accept the findings of the ITAT without assigning any reasons. The Ld. AR, further submitted that in subsequent AY's, the Ld. AO himself has accepted valuation of closing stock without considering excise duty component and hence, there is no reason to deviate from the settled position for the year under consideration, unless any changes in facts.

6. The Ld. DR, on the other hand strongly, supporting order of the Ld.CIT(A) submitted that the assessee has conveniently ignored the method of valuation of closing stock, as per the provision of section 145A, when it has resulted in reduction of total income, but when it comes to enhancing the total income, it has challenged said valuation. The Ld. DR, further submitted that there should be a consistency on the issue, however the assess has taken a different

stand in different assessment years, even though facts for both assessment years are common. Therefore, the Ld.CIT(A) after considering relevant facts has rightly rejected the claim of the assessee and his order should be upheld.

7. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. We find that the co-ordinate bench of ITAT, Mumbai in assessee's own case for AY 2007-08 had considered an identical issue and by following Tribunal order for AY 2005-06 and 2006-07 has set aside the issue to the file of the Ld. AO to reconsider, in light of the decision of Hon'ble Delhi High Court, in the case of ITO vs Mahavir Aluminium Ltd. (supra). The relevant findings of the Tribunal are as under:-

6. We have considered the submissions of the parties and perused the material available on record. As could be seen, the issue before us is adjustment to be made to the value of purchase and sale of goods and inventory by including the amount of tax, duty, cess, etc., actually paid or incurred by the assessee. We have also noted, identical dispute in assessee's own case arose in earlier assessment years. In fact, as noted by us, learned Commissioner (Appeals) has followed his own order passed for assessment year 2006-07. As could be seen, the adjustment made under section 145A was challenged by the assessee before the Tribunal in assessment years 2005-06 and 2006-07. In both the aforesaid assessment years, the Tribunal has restored the matter back to the file of the Assessing Officer with a direction to decide afresh in the light of the decision of the Hon'ble Delhi High Court in Mahavir Aluminium Ltd. (supra) as well as other decisions of the Tribunal on the issue. Facts being materially same, consistent with the view expressed by the Tribunal in assessee's own case for assessment year 2005-06 and 2006-07, we restore the matter back to the file of the Assessing Officer for deciding afresh keeping in view the principle laid down by the Hon'ble Delhi High Court in Mahavir Aluminium Ltd. (supra) and other decisions relied upon by the learned Authorised Representative as referred to above. This ground is allowed for statistical purposes.

8. In this view of the matter and consistent with view taken by the coordinate bench, we are of the considered view that for this year also, the issue needs to go back to the file of the Ld. AO to decide the

issue in accordance with the findings of the Tribunal for assessment years and keeping in view the decision of Hon'ble Delhi High Court in the case of Mahavir Aluminium Ltd (supra). Hence, we set aside the issue to the file of the Ld. AO.

9. The next issue that came up for our consideration from ground 2 of assessee appeal is disallowances u/s 36(1) (va) of the I.T.Act, 1961 amounting to Rs.5,38,071/-, in respect of delayed payment of employees contribution to PF. The facts with regard to the impugned dispute are that the assessee has made suo-moto disallowances towards late payment of employee's contribution to PF in the statement of total income. However, it has filed an additional ground before the Ld.CIT(A), in light of certain judicial precedents, including the decision of Hon'ble Supreme Court in the case of CITvs M/s. Alom Extrusions Ltd 319 ITR 306 and argued that belated payment of employees contribution to PF is eligible for deduction u/s 36(1)(va) r.w.s 43B, if such payments have been paid on or before due date of filing return of income. The Ld.CIT(A) did not accept the arguments of the assessee for the simple reason that the claim made by the assessee by way of additional ground requires factual verification and hence, the same cannot be admitted at appellate stage.

10. The Ld. AR for the assessee submitted that this issue is squarely covered in favour of the assessee by the decision of Hon'ble Bombay High Court, in the case of G.K. Securities Services Pvt.Ltd. vs DCIT (2019) 261 taxmann.co 152(Bom), where it was held that where assessee filed a revision petition raising claim for deduction of employee contribution to PF, which was erroneously

not claimed in the return of income, in view of the fact that all payments towards employees contribution to PF had been made before the due date of filing return of income, the commissioner was not justified in refusing to entertained assessee's claim on merits. He, further submitted that even on merits, it is settled position now, because the issue has been considered by the Hon'ble Supreme Court in the case of CIT vs Alom Extrusions Ltd, where it has been held that even, if payment towards employees contribution to PF is made after due date specified under respective Act, but such payments have been made on or before due date of filing return of income, then the same is allowable u/s 36(1) (va) r.w.s. 43B of the Act.

11. The Ld. DR, on other hand, submitted that the assessee has made a claim for the time before the Ld. Ld.CIT(A), even though it has suo-moto disallowed belated payments towards employees contribution to PF in the statement of total income. The Ld.CIT(A) after considering relevant facts has rightly rejected the claim of the assessee and his order should be upheld.

12. We have heard both the parties, perused the material available on record and gone through order of the authorities below. It is a settled position of law that no taxes can be collected unless by the authority of law. Further, even if assessee makes wrong claim or not made a claim, but the Ld. AO is duty bound to compute true and correct taxable income of the assessee on the basis of materials available before him. In this case, the assessee has suo-moto disallowed delayed payment of employee contribution to PF, on the ground that the said payments are not allowable as per provision of

section 36(1) (va)/43B of the I.T.Act, 1961. However, at later point of time, the law has been evolved by the Hon'ble Supreme Court, in the case of CIT vs Alom Extrusions Ltd. (supra), where it has been held that the assessee is entitled for deductions towards delayed payment of employees contribution to PF, if such payments are made on or before the due date of furnishing return of income. Further, on the basis of changes in law by the decision of Hon'ble Supreme Court, the assessee has made a fresh claim before the Ld.CIT(A) for deductions towards employees contribution to PF, but the Ld.CIT(A) had rejected the claim of the assessee. We find that the Hon'ble Bombay High Court, in the case of G.K. Security Services Pvt. Limited Vs DCIT (supra) had considered an identical issue and held that where, the assessee filed a revision petition raising claim for deduction of employees contribution to PF, which was erroneously not claimed in return of income, in view of the fact that all payments towards employees contribution to PF had been made before the due date filing return of income, the commissioner was not justified in refusing to entertain assessee claim on merits. Therefore, we are of the considered view that the Ld.CIT(A) was erred in not entertaining the claim of the assessee.

13. Coming back to the issue on merits. The assessee has filed proof of payments of employees contribution to PF before the Ld.CIT(A), which is available paper book filed by the assessee. Further, the Ld.CIT(A) has extracted, the details of payments made to PF in its appellate order at para 7 on page 12 and 13, and as per the said chart, although the payments have been made after due dates specified under respective Act, but all payments have been made on or before due date of furnishing return of income.

Therefore, we are of the considered view that the issue is squarely covered by the decision of Hon'ble Supreme Court, in the case of CIT vs Alom Extursions Ltd.(supra). However, the details of payments of employees contribution to PF was not made available to the Ld.AO at the time of assessment proceedings, although, the same were furnished before the Ld.CIT(A). Therefore, we are of the considered view that the issue needs to go back to the file of the Ld. AO for limited purpose of verification of payment to ascertain, whether all payments have been made on or before due date of furnishing return of income or not. If the Ld. AO found that all payments have been made on or before due date of furnishing return of income, then the Ld. AO is directed to allow the claim of the assessee.

14. In the result, appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on this 13 /12/2019

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 13/12/2019
Thirumalesh Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.

ITA No.4329/Mum/2018
Raychem RPG Pvt.Ltd.

4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai