

आयकर अपील अाधिकरण, अहमदाबाद ढायापीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
" C " BENCH, AHMEDABAD**

**BEFORE SHRI RAJPAL TADAV, JUDICIAL MEMBER
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.135/AHD/2017

अाधरण वष/Asstt. Year: 2010-2011

Sew Eurodrive India Pvt. Ltd., Plot No.4, GIDC Por Raman Gamdi, Vadodara-391243. PAN: AABCS4703Q	Vs.	D.C.I.T., Circle-2(1)(1), Baroda.
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(Applicant)		(Respondent)
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Assessee by :	Shri Sanjay R. Shah, A.R
Revenue by :	Shri Dileep Kumar, Sr. D.R

सुनवाई का ताराख/Date of Hearing : 25/11/2019

घोषणा का ताराख /Date of Pronouncement: 20/01/2020

आदेश / O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals)-2, Vadodara dated 21/10/2016 (in short "Ld.CIT(A)") arising in the matter of assessment order passed under s. 143(3) r.w.s 92CA of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dt. 07/03/2014 relevant to the Assessment Year 2010-2011.

The assessee has raised the following grounds of appeal.

1. *The learned CIT(A) erred in law and facts in upholding the addition made by learned AO on account of reversal of excise duty of Rs, 11,47,325 on the ground that the same was not paid and therefore not allowable under section 43B of the Income-tax Act, 1961 ('the Act').*
2. *The learned CIT(A) as well as the learned AO erred in law by doubly taxing the amount of reversal of excise duty which was earlier offered to tax amounting to Rs. 11,47,325 under section 43B of the Act.*
 - 2.1 *The learned CIT(A) acted contra legem by upholding that the appellant has failed to prove the payment of excise duty when appellant has expressly stated that there is reversal of excise duty which was earlier offered to tax.*
3. *The learned CIT(A) erred in upholding disallowance of Rs. 23,123 in respect of miscellaneous expenses of the Appellant as part of prior year expenses.*

The Appellant craves leave to add to and/ or to alter, amend, rescind, modify the grounds herein above or produce further documents before or at the time of hearing of this appeal.

2. At the outset, the Ld. AR at the time hearing before us submitted that he has been instructed not to press ground no. 3 raised in the memo of appeal. Therefore we dismiss the same as not pressed.

The 1st issue raised by the assessee is that the Ld. CIT-A erred in confirming the action of the AO on account of addition of reversal of excise duty amounting to Rs. 11,47,325.00 under section 43B of the Income Tax Act.

3. The brief facts of the case are that the assessee is engaged in the business of manufacturing and trading of gear boxes, motors and inverters etc. The assessee also works as an agent of foreign company for distribution of gear motors/boxes and inverters etc.

4. The assessee in the year under consideration had shown in clause 21(i)A & 21(i)B of Annexure IV of audit report as unpaid liability on 1st

April, 2009 on account of excise duty amounting to Rs. 11,47,325.00 which was paid/adjusted during the year on various dates. Therefore the assessee accordingly claimed as expenses in its computation of income by applying the provision of section 43B of the Act.

4.1 However the AO was of the view that the provision of section 43B is applicable where the outstanding liabilities of the previous year have been paid during the year under consideration. However, the assessee did not furnish any documentary evidence in support of its claim made in the return of income. Therefore in the absence of any evidence from which it can be proved that the assessee has made the payment of existing liabilities in the year under consideration, it cannot take shelter of the provision of section 43B of the Income Tax Act.

4.2 The AO also noted that the assessee in the year under consideration had collected excise duty of Rs. 5 Lakhs on sale of finished goods which was not paid to the Government.

4.3 Thus the AO in view of the above disallowed the excise duty of Rs. 11,47,325.00 and added to the total income of the assessee.

5. Aggrieved assessee preferred an appeal before the Ld. CIT-A. The assessee before the Ld. CIT-A submits that the AO has wrongly interpreted the example given by it as a part of the case. The AO accordingly was of the view that excise duty was not paid to the Government and disallowed the claim made by it.

5.1 The assessee further submits that the provision for excise duty for the sum of Rs. 11,47,325.00 has been created on closing stock of finished goods in the previous year 2008-09 relevant to the assessment year 2009-10. Accordingly the provision for excise duty of Rs. 11,47,325.00 has been disallowed under section 43B in computation of income for the said assessment year whereas in the next year i.e. previous year 2009-10 relevant to the assessment year 2010-11 the same has been reversed and claimed deduction as the same has been offered to tax in the previous year 2008-09 relevant to assessment year 2009-10.

6. However the Ld. CIT-A observed that the assessee did not bring anything on record that the payment has been made against the provision of excise duty amounting to Rs. 11,47,325.00 made in the previous year 2008-09. Therefore the Ld. CIT-A accordingly confirmed the addition on account of reversal of excise duty made by the AO.

7. Being aggrieved by the order of the Ld. CIT-A, the assessee is in appeal before us. The Ld. AR for the assessee before us filed a paper book running from pages 1 to 134 and submitted that it has been following the practice for creating the provision in one year but reversing in the subsequent year. The Ld. AR further submitted that the amount of provision created for Rs. 11,47,325.00 has already suffered the tax in the immediate preceding AY. Therefore, the same cannot be taxed in the year under consideration.

8. On the other hand, the learned DR vehemently supported the order of the authorities below.

9. We have heard the rival contentions of both the parties and perused the materials available on record. The issue on hand relates to the disallowance made by the AO on account of reversal of excise duty claimed by the assessee in the computation of income as deduction. As per the AO the provision of excise duty would be allowed only when the payment has been made. The AO accordingly in the absence of payment in respect of the claim made by the assessee disallowed the reversal of excise duty amounting to Rs. 11,47,325.00. Subsequently the Ld. CIT-A also confirmed the disallowance.

9.1 Admittedly the assessee in the earlier accounting year 2008-09 has created the provision for Rs. 11,47,325.00 which was offered to tax. This fact can be verified from the computation of income for the previous year 2008-09 corresponding to the assessment year 2009-10 which is placed on page no. 45 of the paper book. Similarly, the assessee in the year under consideration reversed the provision created in the previous year 2008-09 by crediting the profit and loss account. Accordingly the assessee claimed the deduction in the computation of income for the impugned amount of excise duty. This fact can be verified from the computation of income for the year under consideration which is placed on page no. 55 of the paper book as reproduced below:

Deduction claimed on payment basis (u/s. 43B)/on reversal of provision in respect of following expenses disallowed in earlier years

<i>Bonus</i>	<i>352,938</i>
<i>Leave encashment</i>	<i>937,678</i>
<i>Excise duty</i>	<i>1,147,325</i>

From the above discussion, we note that the amount of the provision for the excise duty reversed in the year under consideration has already been suffered to tax in the immediate preceding assessment year as discussed above.

9.2 Furthermore, the assessee has been following this practice consistently and the same was allowed by the Ld. CIT (A) in the immediate preceding assessment year. This fact can be verified from the order of the Ld. CIT-A for the assessment year 2009-10 which is placed on page no. 131 of the paper book.

In view of the above, we hold that the assessee is entitled for the deduction of the impugned excise duty reversed in the year under consideration. Accordingly we set aside the finding of the Ld. CIT-A and direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is allowed.

10. In the result the appeal of the assessee is **partly allowed**.

Order pronounced in the Court on 20/01/2020 at Ahmedabad.

**-Sd-
(RAJPAL YADAV)
JUDICIAL MEMBER**

**-Sd-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated ^(True Copy) 20/01/2020
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