

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT AND
SHRI T. S. KAPOOR, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 521/Ahd/2016
(निर्धारण वर्ष / Assessment Years : 2009-10)

D.C.I.T. Circle-1(2), Ahmedabad	बनाम/ Vs.	M/s. A One Chemicals 302, Shanti House, Nr. Madhusudan House, Opp. Navrangpura Telephone Exchange, C. G. Road, Ahmedabad, Pin - 380009
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADFA0198A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Vinod Tanwani, Sr.D.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri S. N. Divatia, A.R.

सुनवाई की तारीख / Date of Hearing	26/02/2020
घोषणा की तारीख /Date of Pronouncement	03/03/2020

आदेश/ORDER

PER T. S. KAPOOR - AM:

This is an appeal filed by the Revenue against the order of learned CIT(A)-10, Ahmedabad, dated 01/01/2016 relating to assessment year 2013-14.

2. The appeal was earlier dismissed for low tax effect vide Tribunal order dated 19.01.2018. However, on an application filed by the Revenue, the said order of Tribunal was recalled and appeal was listed for hearing on merits vide order dated 27.12.2019.

3. At the outset, the learned DR submitted that there were two additions; one on account of excise duty and one on account of non-deduction of TDS under s.40(a)(ia) of the Act, which the CIT(A) has deleted. The learned DR submitted that tax deduction by assessee was a statutory requirement, which he failed to do therefore, the AO had rightly made addition and similarly, the AO had made the addition on account of CENVAT credit in the valuation of closing stock as per the provisions of Section 145A of the Act.

4. The learned AR, on the other hand, stated that as regards the issue of excise duty, similar issue arose in AY 2008-09 and during set aside proceedings by the Hon'ble ITAT the AO had already allowed relief to the assessee vide order dated 01.11.2012 and similarly in AY 2012-13, the learned CIT(A) had himself allowed relief to the assessee and no appeal has been filed by the department. It was submitted that the assessee has been following consistent method of accountancy in respect of excise duty since FY 2005-06. It was further submitted that any adjustment made towards closing stock will have neutralizing effect as closing stock becomes opening stock in next year. Therefore, he relied on the submissions made before the learned CIT(A) and also relied on the order passed by the learned CIT(A).

5. As regards the other issue of non deduction of TDS from the payments made to two parties, the learned AR submitted that firstly, the assessee was not liable to deduct TDS as it was not hit by the provisions of Section 194J of the Act and without prejudice it was submitted before the learned AO and learned CIT(A) that the payees had included the payment paid by the assessee in their profit and loss account and have filed necessary certificates to this effect and which the learned CIT(A) has rightly considered in right perspective.

6. We have heard the rival parties and have gone through the material placed on record.

7. We find as regards the issue of tax deduction at source, it is undisputed that assessee had filed confirmations from the payees, a copy of which is placed at paper book page nos. 15 to 19. Detailed submissions were made before the learned CIT(A) and relying upon the submissions of the assessee, the learned CIT(A) had rightly deleted the addition by holding as under:

*“4.1 Next ground of appeal is against the additions of Rs.12,55,686/- made u/s.40(a)(ia) of the Act. The AO made the additions as TDS was not deducted upon this amount paid to M/s. Bharuch Enviro Infrastructure Ltd. and Enviro Technology Ltd. The appellant stated that the receipt of the said amount has been shown by the recipient company and filed certificate before the AO to that effect, but the AO rejected the contentions. The appellant contended that the amended provisions related to TDS have retrospective effect as per Hon’ble Delhi High Court judgment in the case of M/s. Ansal Landmark Township Pvt. Ltd. (377 ITR 635) and ACIT Vs. Anagram Capital Ltd. (ITA No. 4531/AHD/2011 dt. 6.11.2015) decided by the Hon’ble ITAT Ahmedabad. Looking to these judgments, the additions made by the AO are not found justified, hence **deleted**. This ground of appeal is **allowed**.”*

8. The learned CIT(A) has made a finding of fact that as per the amended provisions related to TDS which has been held to be retrospective by Hon’ble Delhi High Court in the case of *M/s. Ansal Landmark Township Pvt. Ltd. 377 ITR 635*, the assessee cannot be held to be assessee-in-default. Therefore, we do not find any infirmity in the order of the learned CIT(A) and in view of the above, grounds nos. 1 & 2 are dismissed.

9. As regards the ground nos. 3 & 4, we find that similar issue arose in AY 2008-09 and after set aside proceedings by Hon’ble ITAT, the AO had allowed relief to the assessee vide order dated 01.11.2012. Therefore, in view of the above, the findings of the learned CIT(A) are correct wherein he has held that assessee had been consistently and

regularly following the exclusive method of valuation of closing stock and it was revenue neutral. In view of the above, ground nos. 3 & 4 are dismissed.

10. In the result, the appeal of the Revenue is dismissed.

This Order pronounced in Open Court on 03/03/2020

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT
Ahmedabad: Dated 03/03/2020

Sd/-
(T. S. KAPOOR)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।