

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, AHMEDABAD  
(CONDUCTED THROUGH VIRTUAL COURT)**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &  
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No. 1661/Ahd/2016  
(Assessment Year: 2010-11)

Daniel Measurement Solutions Pvt. Ltd. 301/303, 3 <sup>rd</sup> Floor, Synergy Square, Krishna Industrial Estate, Gorwa, Vadodara-390016	Vs.	The DCIT Circle-1(1), Baroda
<b>PAN No. AACCD5920F</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	Shri M. K. Patel, AR
<b>Respondent by :</b>	Shri Vedanshu Tripathi, Sr. DR

<b>Date of Hearing</b>	03.12.2020
<b>Date of Pronouncement</b>	04.01.2021

ORDER

**PER Ms. MADHUMITA ROY - JM:**

The instant appeal filed by the assessee is directed against the order dated 15.03.2016 passed by the Commissioner of Income Tax (Appeals) –1, Vadodara arising out of the order dated 21.03.2014 passed by the DCIT, Circle-1(1), Baroda under Section 143(3) r.w.s. 144C(3) of the Income Tax Act, 1961 (hereinafter referred as to ‘the Act’) for Assessment Year 2010-11 challenging the addition of CENVAT Credit receivable.

2. The assessee company engaged in the business of Design & marketing of gas and liquid measurement and analytic products, systems, services and solutions for the production, transmission, distribution and process industries filed its return of income on 13.10.2010 declaring total income at Rs. 11,98,21,169/-. Rs. 62,58,45,124/- was shown as total turnover and the gross profit was of Rs. 23,39,79,711/- i.e. 37.39%.

3. During the course of assessment proceeding it came to the notice of the Ld. AO from the annexure to the tax audit report that the assessee company had unutilized Modvat credit of raw material amounting to Rs. 16,09,091/- as on 31.03.2010. According to the Ld. AO such unutilized Modvat Credit was required to be included in the closing stock of raw material and work in progress and, therefore, an explanation was called for on 11.03.2014 as to why unutilized Modvat Credit of raw material should not be added back to the closing stock according to the valuation method prescribed under Section 145A of the Act. The assessee submitted before the Ld. AO that it follows an exclusive method of accounting for recording duties, taxes, cess in the books of accounts. Irrespective of the method of accounting followed, the net profit remains the same meaning thereby that there would be no loss to the revenue with either of the two methods being followed as the contention made by the assessee before the authorities below. However, such contentions made by the assessee was not found acceptable by the Ld. AR and the unutilized Modvat Credit for the year under consideration to the tune of Rs. 16,09,091/- has been added to the total income of the assessee. In the appellate proceeding the deduction claimed to the tune of Rs. 72,21,235/-

in computing the profit and loss of the assessee has been rejected on the ground of no liability accrued under Section 43B of the Act for payment of excise duty as on 31.03.2010. The addition, therefore, was enhanced from Rs. 16,09,091/- to Rs. 72,21,235/- by the Ld. CIT(A). Hence, against the addition the instant appeal before us.

4. At the time of hearing of the instant appeal the Ld. Counsel appearing for the assessee submitted before us that the assessee is following the exclusive method of accounting for years together with due certification by the tax auditor for recording the inventory which is the subject matter to dispute in valuation. Irrespective of the method of accounting being followed the net profit chargeable to tax remains the same if the duty is paid on or before the due date of filing of return of income and there would be no loss of revenue with either of the two methods being followed. So far as the disallowance of Rs. 72,21,235/- made by the Ld. CIT(A) is concerned the Ld. AR submitted that the same represents excise duty component on raw materials. He further added the said amount was claimed under Section 43B of the Act in the working sheet prepared for compliance to Section 145A of the Act on the basis of the fact that the excise duty amount is paid on the sale of goods. However, the said deduction was not claimed in the return of income but only in Annexure 'A' to the Form 3CD as annexed at Page 11 of the Paper Book filed before us. As the appellant is following exclusive method of accounting, so far as the excise duty is concerned, the requirement of deemed deduction arises due to deemed exclusion of excise duty component on opening stock, purchase, sale and closing

stock in compliance to Section 145A of the Act as was the ultimate contention made by the Ld. A. R. In that view of the matter the addition of Rs. 72,21,235/- is not sustainable as argued by the Ld. Counsel appearing for the assessee. Further that the Ld. AR relied upon the judgment passed by the Co-ordinate Bench in ITA No. 599/Ahd/2015 for A.Y. 2008-09 and C.O. No. 78/Ahd/2015 for A.Y. 200-09 whereby and whereunder addition of unutilized CENVAT credit has been deleted; a copy whereof has been submitted before us. However, the Ld. DR relied upon the orders passed by the authorities below.

5. We have heard the respective parties and we have also perused the relevant materials available on record.

In the first appeal the Ld. CIT(A) while confirming the order passed by the Ld. AR observed as follows:-

*“4.3 I have considered the facts of the case, submissions of the appellant and the AO's observations. The contention of the appellant that the CENVAT credit receivable by it is contingent in nature is not correct as the right to receive the same has already accrued the appellant. Similarly, the appellant's contention that the appellant can follow either inclusive method or exclusive method is also not correct. Judicial pronouncements relied upon by the appellant are either for the Asst. Year 1998-99 and prior to that year, and are on the subject of inclusion of excise duty in the valuation of finished goods, where the finished goods have not been removed from the factory premises. Section 145A is applicable from AY 1999-2000 and after that, the assessee are compulsorily required to prepare their accounts as per the inclusive method only. The TTAT Mumbai Bench in its decision in the case of Hercules Pigment Industries 35 taxmann.com 650 (Mumbai-TRIB) has explained this issue as follows:*

*4. We believe that we have amply explained and adequately determined the two issues arising for our adjudication as referred to at para 3.3 supra. We, therefore, hold as under:*

- (a) *The assessee's accounts (Annexure 2-B), reflecting a profit of Rs.5,53,073/-, cannot, accordingly, be said to be in accordance with section 145A inasmuch as Rs. 10,39,886/-, reflected as a part of the cost of raw material as at the year-end is the balancing figure, and does not represent the excise component on the raw material, or even that on the dosing inventories of finished and semi-finished goods. The correct valuation of raw-material, i.e., inclusive of excise levied thereon, is undeniably Rs.28,96,023/-, and not Rs.35,96,132/-, as adopted. Only adopting all the figures at the correct values would lead to the correct profit in terms of S.145A, and the balance in the UCC a/c (for the time being) cannot be taken as a surrogate measure of the excise component in the inventories at that point of time. That is, the same, based as it is on excise rules, does not represent the unutilized credit available on goods held in stock. This is as it, in disregard of the accounting principles, allows full adjustment of the excise liability on the removal of goods, i.e., including the excise liability on the value addition, against excise paid on purchases, and, concomitantly, for such an adjustment even in respect of raw material not consumed but lying in stock. The UCC a/c, as being prepared, is thus not in consistence with the accounting principles. It is only the drawing of the operating statement in accordance with sec. 145 A, valuing all the ingredients of the trading account at inclusive of excise (input levies) that would lead to the removal of these anomalies, bringing forth the correct profit. No separate accounting for the 'profit' or 'loss' embedded in the unutilised CENVAT credit account, as warranted by mercantile book-keeping, would then be required as both the 'profit' and 'loss' get subsumed in the trading profit (loss) as reflected per the trading account prepared on inclusive basis; the UCC a/c becoming part of or in effect incorporated therein. In fact, booking the said 'profit' or 'loss', where accounts are maintained, as in the instant case, on exclusive basis, would adjust the outstanding in the UCC A/c, increasing or decreasing respectively the debit balance in the said account, so as to state it at its correct value, bringing the profit per the two statements, i.e., following the inclusive and exclusive methods, at par. The said profit, which gets automatically reflected under the gross method, and requires to be separately accounted for under the exclusive (net) method, is, however, accompanied by 3 corresponding liability, i.e., the excise duty on the value addition, for which no deduction would be eligible unless paid, being allowable only on payment basis, and in which event it would, in any case, stand to be deducted in the computation of the taxable profit. In the case of 'loss', i.e., a short recovery of excise, there is no case of 'refund' or 'credit', which lapses, so as to be borne by the assessee, so that the said loss would stand to be written off to the profit and loss account, where maintained on net basis. The liability against excess recovery of excise realised on sales is met against excise paid on fresh purchases under the excise rules. We have already clarified that it is immaterial or irrelevant whether this excise liability is met against subsequent purchases or through direct payment,*

*so that the same would continue to outstanding in the assessee's accounts until adjusted. The divergence between the excise rules and the tenets of accountancy insofar as accounting of excise is concerned has also been noted. The purport of the two is different. The difference or conflict, it may be appreciated, is on account of the excise department following 'cash basis', allowing full credit for the excise on purchases, whether consumed or not, while accountancy would admit of credit/adjustment only to the extent of raw material consumed. The modvat credit in respect of unconsumed raw material (Rs. 400/- in the example # 1/Ann. IA) has to be necessarily carried forward to the following period, irrespective of the nomenclature of the account under which it is so, and cannot be availed of merely on the basis that excise-stands paid thereon. In fact, the tax audit report u/s. 44AB requires reporting of the unutilized credit of modvat available. The two, i.e., the accounts and the excise records, proceed independently, though are reconcilable. A periodic reconciliation is, in any case, recommended. Perhaps, only a provision in the excise law for direct payment of excise on value-addition or, equivalently, maintaining the balance in the PLA (UCC a/c) at par with the excise component on the inventories (Rs. 400/- in our example/Ann. IA), would restore parity between the two. In sum, we reiterate the primacy of S.145A; the excise rules being inconsistent with the tenets of accountancy.*

*(b) In our dear view, thus, the proper manner in which the correct profit in terms of section 145A could be determined is by scrupulously following the mandate of the said section. All the constituents of the manufacturing account that are subject to levy/incidence of excise (or any other tax for that matter) are to be loaded therewith. That the provision is tax-neutral is no argument for not observing the same, as the same (tax neutrality) would have to be established in each case with reference to the accounts as being maintained. This is as in practical situations, a one-to-one correspondence between input/s and output/s, as manifest and apparent in the examples of different trading scenarios assumed by the assessee, and adopted by us (for the sake of simplicity), is difficult to establish in real life manufacturing cases, where a variety of inputs, if not also outputs, obtain. Secondly, the closing inventory, loaded with all input duties/levies, would only state the same at actual cost, even as advocated by AS-2 by ICAI. Again, this only would state the current asset, which it represents, at its proper value, i.e., in the balance sheet, and at which the same is to be carried forward to the following year. Even where accounted for separately, the same is to be carried forward as a cost which is recoverable. Only 3 correct statement of the current assets and liabilities, i.e., which are not on capital account, in the balance-sheet, would enable reflection of the correct operating results for the relevant accounting period. Toward this, only the booking of profit (against excess recovery of excise duty) would enable an agreement of the outstanding balance in the UCC a/c with the excise component in the closing inventories, so that the accounts -whether maintained on gross or net basis, reflect the current asset in respect of excise paid thereon at the same, correct*

value. Further, it is only this, reckoning the 'profit' on excess recovery as the difference between the profit per the two statements prepared on net and gross basis, that would state the UCC a/c at the correct value of the current asset represented by it, where the accounts are maintained on net basis, bringing the profit per the two methods at par. Thirdly, the provision becomes tax-neutral only when duty is paid on value addition, else not, in view of the non obstante provision of S.43B, which has to be given effect to (refer Ann. 1). That, however, in any case, cannot be a ground for not observing the method of accounting that yields correct profits or operating results. Further, even where the accounting treatment provides correct results, the provision of s. 436 would have to be given due effect. The same cannot be defeated by non-booking the statutory liability in respect of excise in accounts, even if payable in due course, understating simultaneously the corresponding asset, to contend non-difference in operating results. The tribunal, in *Raj -Petro Specialities (P.) Ltd. v. Asstt. CFT* [IT Appeal Nos. 7260 & 7261/(Mum)/2010 dated 15-3-2013] has clarified that ss. 43B and 145A, both non obstante provisions, are to be read in harmony and, further, explained that there was in fact no conflict or inconsistency between the two sections. In final analysis, the tax neutrality of the net method is subject to it being established, with the non obstante provision of s. 438, which in fact obtains irrespective of the method of accounting followed, assuming a crucial significance when the liability in respect of all the levies as accrued are booked or accounted for.

(c) Coming to the facts and figures of the case, the operating statement at gross values (Annexure 2-B) would need to be modified in the following manner, so as to bring it in conformity with section 145A:

increase the value of the opening stock of FG and RMS by the amount of excise duty, if any, suffered thereon;

state the dosing stock of FG and RMS, similarly, at values inclusive of excise duty thereon, and not by adding the debit amount outstanding in the UCC A/c; and

carry forward the closing stock, so valued, as the value of the opening stock for computing the profits u/s.145 r.w.s. 145A for the following year.

The difference in the profit so reflected, and that per the statement drawn by excluding excise (Ann. 2-A), restating the closing stock also, thus, at Rs.25.56 lakhs, or at a profit of Rs.5.53 lakhs, would yield the profit or loss, as the case may be, embedded in "the UCC A/c; its opening balance being nil. The assessee may pass an accounting entry in its accounts in its respect, which would have the effect of stating the said account at the correct amount of current asset or current liability, as the case may be, reflected by it.

(d) We may, before closing, clarify that the exercise of drawing the statement in terms of s. 145A could have the effect of either increasing, or decreasing the returned profit of Rs.8,92,850/-, i.e., depending on the excise component

*in the finished and semi-finished goods. The CENVAT credit account gets, thus, effectively incorporated in the profit and loss account, depressing the profit by the outstanding debit balance therein, while increasing it with the excise component in the closing stock. We decide accordingly,"*

4.3.1 Thus, it is held that the appellant was required in the current assessment year to prepare its accounts as per the inclusive method prescribed by section 145A only. In this regard, the other contention of the appellant is that even if the inclusive method is used, there will be no change in its taxable income. For this purpose, the appellant has filed several examples as well as computation as per Annexure-A to the Form 3CD, as reproduced above, to show that the profit would remain the same whether exclusive method is used or inclusive method is used. The examples given as per the Annexure A to Form 3CD is based upon the provision of Section 145A as well as the provision of section 43B of the Act. Now the provisions of section 43B are applicable to the statutory liability in the nature of tax, fee, CESS which has accrued to the assessee as on the end of the previous year, but, has remained unpaid. Under such circumstance, if the liability is paid to by the assessee before the due date of filing of return of income, the deduction for the same is allowed in the year in which the liability had accrued. If it is not paid before the due date of filing its return of income, then the deduction is allowed in the year in which such payment is made. Thus for applicability of the provisions of Section 43B, the liability of the nature mentioned in this section must have accrued to the assessee as of the end of the previous year. In the current case, the finished goods as at the end of the previous year were Nil. Thus, there was no liability which had accrued to the assessee for payment of excise duty of finished goods as on 31.03.2010. Under such circumstances, no such liability can be deducted while computing the profit of the appellant as per inclusive method as has been claimed by the appellant in Annexure A to Form 3CD as well as in the examples given in the written submissions. The other adjustments made in this computation are as per the method prescribed in the decision in the case of Hercules Pigment Industries (supra). Thus, while computing the profit and loss of the appellant, the deduction off 72,21,235/- claimed in the computation in the Annexure A is to be ignored. Besides, it is seen that the excise duty of Rs. 51,46,079/- has been collected by the appellant on sales which had been paid or adjusted against CENVAT credit. Thus, there was no liability on the appellant for payment of such excise duty also. The computation in Annexure-A has also taken into account the fact of opening balance of CENVAT credit. Thus the computation in this annexure is as per method prescribed in the case of Hercules Pigment Industries (supra) for computation of profit as per inclusive method, except, for the deduction claimed u/s 43B without there being any accrued liability for payment of excise duty as on 31.3.2010.

4.3.2. Thus the computation filed in Annexure-A is as per the method which should have been followed by the appellant for preparation of this P & L Account except for the deduction claimed of Rs.72,21,235/- as excise duty paid on or before filing of income tax return. Hence, the correct profit of the appellant as per this computation should have been Rs.11,95,61,485/-as against Rs.11,23,40,250/- shown by the appellant in its P & L Account. Thus, in the return of income the addition to be made was Rs. 72,21,235/- as against f 16,09,091/- made by the AO. Hence, the assessed

*income is enhanced by the amount of Rs. 56,12,144/-. Accordingly, the appeal is dismissed and enhanced as discussed by Rs. 56,12,144/-.”*

The case made out by the assessee as we find that the assessee is following the exclusive method of accounting consistently for years together where the purchase of capital goods as well as raw materials, stores and spares etc. and services availed/procured is recorded and charged off to Profit and Loss Account which are net of duties/taxes for which CENVAT credit is available to the assessee. CENVAT Credit receivable is being shown as an asset in the Balance Sheet and will be adjusted against excise duty liabilities as and when the same is utilized. Further that in the exclusive method of accounting, no deduction is being claimed in respect of the duties, taxes paid on purchase of material as the same was recorded as an asset in CENVAT Credit receivable account rather than being charged as an expense in the Profit and Loss Account. Whereas in the inclusive method of accounting deduction is claimed in respect of duties, taxes paid on purchase of material by treating the same as part of the purchase cost. The assessee also submitted that the method of accounting/treatment as aforesaid has been consistently followed by it over the years. We find that the assessee has also relied upon the guidance note on tax audit issued by the ICAI in support of his explanation as rendered before the authorities below. The assessee has also illustrated its contention of the revenue being neutral irrespective of the method of accounting being followed by placing the statement showing effect of both the method of accounting exclusive and inclusive as available at Page 13 of the Paper Book filed before us which we have already perused and in our considered opinion the same is acceptable.

6. We have further considered the judgment passed by the Co-ordinate Bench in ITA No. 599/Ahd/2015 for A.Y. 2008-09 and C.O. No. 78/Ahd/2015 for A.Y. 2008-09. While dealing with the issue and deciding the matter in favour of the assessee the Co-ordinate Bench as also been pleased to observe as follows:-

*“6. With the assistance of the Ld.AR for the assessee and Ld. DR for the Revenue, we note the assertions made on behalf of the assessee that assessee has consistently followed exclusive method of accounting with due certification by the lax auditor for recording the inventory which is subject matter of dispute in valuation. We also notice the plea of the assessee that adopting “inclusive method” of accounting will not alter the resultant profits and such change of accounting will be a revenue neutral exercise over a period of time. We also notice that similar issue raised against the assessee in its own case for AY 2009-10 was also reversed by the CIT(A). Having regard to these facts, we concur with the view taken by the CIT(A). It is not gain saying that unutilized CENVAT credit only represents the availability of excise credit at the disposal of the assessee at the end of the year eligible to be set off against future liability Therefore, apparently the unutilized CENVAT credit cannot be adopted for the purposes of valuation of inventories in sphere of S.145A of the Act. In these facts, we find no infirmity in the order of the CIT(A). We also find that the issue is also covered in favour of assessee by the judgment of the Hon'ble Gujarat High Court in the case of Pr.CIT vs. Gujarat Gas Co. Ltd. in Tax Appeal No.90 of 2017 dated 07/02/2017.*

*7. In view of the aforesaid discussion and in the light of judicial precedent, appeal of the Revenue is dismissed.”*

7. Thus, respectfully relying upon the same we find no merit in such addition made by the AO and further enhancement thereof by Ld. CIT(A) when the unutilized CENVAT credit only represents the availability of excise credit at the disposal of the assessee at the end of the year eligible to be set off against future liability and, therefore, the unutilized CENVAT credit cannot be adopted for the purposes of valuation of inventories in exercise of Section 145A of the Act where the effect is revenue neutral. We observe that inclusive method of accounting has not

altered the resultant profits and a revenue neutral exercise over a period of time. We, therefore, with the above observation delete the addition made by the authorities below.

8. In the result, assessee's appeal is allowed.

<b>This Order pronounced in Open Court on</b>	<b>04/01/2021</b>
---	-------------------

Sd/-  
(PRADIP KUAMR KEDIA)  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 04/01/2021

TANMAY, Sr. PS

TRUE COPY

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

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad