

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "H", MUMBAI**

**BEFORE SHRI MAHAVIR SINGH (VP) AND SHRI N.K. PRADHAN (AM)**

**ITA No. 659/MUM/2017  
Assessment Year: 2001-02**

The ACIT, Cir. 6(3)(2), R. No. 522, 5 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai - 20	<b>Vs.</b>	M/s Kansai Nerolac Paints Ltd., Nerolac House, G.K. Marg, Lower Parel, Mumbai - 400013 PAN: AAACG1376N
<b>(Appellant)</b>		<b>(Respondent)</b>

Revenue by : Shri. R. Bhoopati (DR)

Assessee by : Smt. Aarti Vissanji (AR)

Date of Hearing: 21/10/2020  
Date of Pronouncement: 15/01/2021

**ORDER**

**PER MAHAVIR SINGH, VICE-PRESIDENT**

This appeal by the revenue arising out of the order of Commissioner of Income Tax (Appeals)-12 (for short 'the CIT(A), Mumbai in Appeal No. CIT(A)-12/DCIT-6(3)(1)/206/2015-16 dated 18.11.2016. The order passed by DCIT-Range 6(3)(2), Mumbai under section 143(3) r.w.s. section 254 of the Income Tax Act, 1961 (hereinafter referred the 'Act') for relevant Assessment Year 2001-02 dated 30.03.2015.

2. The only issue in this appeal of revenue is against the order of CIT(A) deleting the addition made by Assessing Officer by invoking the provisions of section 145A of the Act on account of MODVAT credit, when the appeal against the main order under section 143(3) was pending before the CIT(A). For this revenue has raised the following ground:

*“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) grossly erred in deleting the addition of Rs. 3,86,76,373/- when the appeal against the main order u/s 143(3) r.w.s. 254 filed on 05.05.2015, that is before the date of filing of the impugned appeal was still pending with the Ld. CIT(A), wherein also assessee’s main ground of appeal is against the above addition u/s 145A on account of MODVAT credit.”*

3. At the outset, Ld. Counsel for the assessee Smt. Aarti Vissanji took us through the order of CIT(A)-12, Mumbai dated 22.03.2019. She stated that the Tribunal has already considered this issue in ITA No. 2519/Mum/2015 order dated 07.06.2013. Now, from the same CIT(A) order wherein the order of Tribunal has been extensively quoted and finally held in para-3.2 to 3.5 as under:

“3.2 I have considered all the relevant orders, appellant's submission and the case laws cited by the appellant, AO and the appellate authorities. It is seen that the Hon'ble ITAT, Mumbai in para No. 4 and 4.1 of order dated 07.06.2013 being ITA No. 2519/Mum/2015 in the appellant's own case for this assessment year, directed the AO as under:

"4. Ground No.VI of the original appeal relates to the addition of unutilized MODVAT credit of Rs.3,86,76,373j- made by the A.O. and partly sustained by the Ld.CIT(A) by directing the A.G. to reduce the unutilized MODVAT credit on the opening stock amounting to Rs.2,93,99,345/-.

4.1 Having heard both sides and perused the relevant material on record it is observed that the A. Y. under consideration is 2001-03 and Section 145A is applicable. Section USA was inserted by the Finance (No.2) Act, 1998 with effect from 1.4.1999. It provides that the valuation of purchase and sale of goods and inventory for the purposes of determining the income chargeable under tire head "profits and gains of business or profession" shall be in accordance with the method of accounting regularly employed by the assessee and further adjusted to include the amount of any tax, duty, cess etc. paid or incurred by the assessee to bring the goods to the place of its location as on the date of

valuation. According to the prescription of this section, which is applicable to the year under consideration, the amount of tax, duty, cess etc. is liable to be included in the value of purchases, sales, opening and closing stock. It is not appropriate to include the closing Modvat in the figure of closing stock without modifying the figures of purchases, sales and opening stock. The Hon'ble jurisdictional High Court in *Vs Mahalaxmi Glass Works Pvt. Ltd.* [(2009) 318 ITR 116(Bom)] and the Hon'ble Delhi High Court in *CIT Vs/ Mahavir Aluminium* [(2008) 297 ITR 77 (Del.)] have held to this extent. As the authorities below have not adjusted other figures with the amount of tax, duty, cess etc, we set aside the impugned order and restore the matter to the file of AO for deciding it afresh in accordance with the afore-noted judgements and the provisions of section 14SA. Accordingly, Ground No. VI is allowed for statistical purpose.”

3.3 Further, the predecessor CIT(A) vide its order dated 18.11.2016, which was instituted against the order u] s. 154 in this case for this AY, has covered the issue. The predecessor CIT(A) following the direction given by the Hon'ble ITAT allowed appellant's appeal and held as under:

Thus, it is seen that the purchases, sales and inventories both opening and closing should be adjusted to include any amount of tax, cess or fee actually paid or incurred to bring the goods to the place of its location and present condition. In relation to the MODVAT/CENVAT credit, they cannot be termed as an income but it is a bank relief in double charging of excise duty or other duties. Modvat is directly reduced from the purchase cost and the closing stock is also valued net of MODVAT cost because the materials have already suffered duty. The cost of raw materials and semi-finished goods are to be valued net of MODVAT credit. Here, in the appellant's case, as verified from the tax audit report, it" is seen that even after incorporating the required adjustments u/s.145A in purchases and sales the net effect comes to Nil. Thus there is merit in the method of valuation adopted by the appellant and it is proper and justified. Thus Grounds of Appeal No. 1 to 3 are allowed in the light of the direction of Hon'ble Mumbai ITAT.

3.4 During the course of the appellate proceedings, appellant submitted a copy of combined ITAT order in appellant's own case for AYs 2004-05, 2005-06 and 2006-07, where similar issue was involved. It is seen from the above order that the Hon'ble ITAT in ground No.6 of the order for AY 2004-05 has deleted the addition on account of Modvat Credit after following the decision of the Hon'ble Bombay High Court in the case of M/s. Diamond Dye Chem Ltd.(Supra). Being the fact identical, the Hon'ble ITAT allowed appellant's appeal for AY 2006-07 also.

3.5 Keeping in view the fact that the issue has already been adjudicated by my predecessor in her order dated 18.11.2016 as extracted above following the decisions of the Hon'ble ITAT in appellant's own case for AYs 2004-05 and 2006-07, I do not have any reason to interfere. As both the grounds raised in -this appeal have adjudicated already, the appeal is dismissed as in fructuous.

4. When this was put to ld. Sr. DR, he could not point out any infirmity in the order of CIT(A).

5. After hearing both the sides and going through the facts, we noted that the issue is covered in favour of assessee and against the revenue by Tribunal's decision in assessee's own case for the very Assessment Year as noted by CIT(A) above. Hence, we find no infirmity in the order of CIT(A) and we affirm the same.

6. In the result, appeal of the revenue is dismissed.

Order pronounced in open court on 15<sup>th</sup> January, 2021.

Sd/-  
(N.K. PRADHAN)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 15/01/2021

Sd/-  
(MAHAVIR SINGH)  
VICE PRESIDENT

SK

आदेश प्रतिलिपि □ प्रेषित/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,

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