

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'B', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. SANJAY GARG, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.5003/Del/2018
(Assessment Year : 2014-15)

ACIT Circle – 8(1) New Delhi PAN : AABCT 1466 B	Vs.	M/s Elentec Technologies Pvt. Ltd., B-8/14, 1 st Floor, Vasant Vihar, New Delhi -110 057
(APPELLANT)		(RESPONDENT)

Assessee by	Shri S. K. Chaturvedi, C.A.
Revenue by	Shri Jagdish Singh, Sr. D.R.

Date of hearing:	04.10.2021
Date of Pronouncement:	08.10.2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the Revenue is directed against the order dated 17.04.2018 of the Commissioner of Income Tax (Appeals)-03, Delhi relating to Assessment Year 2014-15.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company stated to be engaged in the business of manufacturing of mobile components and accessories and related activities. Assessee filed its return of income for A.Y. 2014-15 declaring loss of Rs.6,31,60,052/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 23.12.2016 and the total loss was determined at Rs.4,67,89,590/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 17.04.2018 allowed the appeal of the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal before us and has raised the following grounds of appeal:

- “1. *Ld CIT(A) erred on law and on the facts of the case in deleting the addition of Rs.1,63,70,462/- made by the AO on account of CENVAT Credit written off.*
2. *The appellant craves leave to modify, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”*

4. AO noted that assessee had incurred a loss of Rs.1,63,70,462/- on account of reversal of Cenvat Credit. Assessee was asked to explain about its allowability to which assessee *inter alia* submitted that it has stopped operation and accordingly the Cenvat Credit has been written off. It was further submitted that it included excise element on capital item amounting to Rs.1,02,646/-. AO did not accept the contentions of the assessee. He was of the view that there was no bar to give cash refund of Cenvat Credit when an assessee ceases to exist and manufacturing operation comes to an end. He was of the view

that assessee should have claimed such refund with Central Excise Department. He also held that assessee has failed to explain as to whether the credit was admissible to assessee. He accordingly added Rs.1,63,70,462/- as income of the assessee. Aggrieved by the order of AO, assessee carried the matter before the CIT(A). CIT(A) following the various decisions cited in the order directed the AO to delete the addition on account of reversal of Cenvat Credit. Aggrieved by the order of CIT(A), Revenue is now in appeal before us.

5. Before us, Learned DR supported the order of AO. Learned AR on the other hand reiterated the submissions made before lower authorities and supported the order of CIT(A).

6. We have heard the rival submissions and perused the materials on record. The issue in the present ground is with respect to the allowability of claim of deduction of Cenvat Credit. We find that CIT(A) while deciding the issue has given a finding that the company has sold off its entire fixed assets, written off/sold/disposed off its stores, finished goods and raw material in July, 2013 and has stopped its business activities and therefore assessee cannot be considered to be a going concern. He thereafter following the decisions of various Tribunal cited in the order has deleted the addition made by AO. Before us, no fallacy in the findings of CIT(A) has been pointed out by Revenue. In

such a situation, we find no reason to interfere with the order of CIT(A) and **thus the ground of Revenue is dismissed.**

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

Order pronounced in the open court on 08.10.2021

**Sd/-
(SANJAY GARG)
JUDICIAL MEMBER**

Date:- 08.10.2021

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR
ITAT NEW DELHI