

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

**BEFORE SHRI B. R. R. KUMAR, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR US, JUDICIAL MEMBER**

I.T.A. No. 3930/DEL/2018 (A.Y 2013-14)

(THROUGH VIDEO CONFERENCING)

Crystal Corp Protection Ltd. B-95, Wazirpur, Industrial Area, Delhi- PIN: 110052 PAN No. AABCJ3574E (APPELLANT)	Vs	ACIT Circle-5(2) New Delhi (RESPONDENT)
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Appellant by	Sh. S. S. Nagar, CA
Respondent by	Sh. Lalit Kishore, Sr. DR

Date of Hearing	25.05.2022
Date of Pronouncement	08.07.2022

ORDER

PER YOGESH KUMAR US, JM

This appeal is filed by the assessee against the order dated 19/03/2018 passed by the CIT(A)-2, New Delhi for Assessment Year 2013-14.

2. The grounds of appeal are as under:-

1. *Because, the Learned CIT (Appeals) has erred in Law as well as on Facts while confirming the disallowance of Rs. 84,47,051/- of provision for Inventory obsolescence*
2. *Because, the Learned CIT (Appeals) has erred in Law as well as on Facts while Rejecting additional Claim of the appellant by treating Excise Duty refund as Capital Receipt submitted during the course of assessment proceedings.*

3. *Because, to allow the additional Claim of the appellant by treating Excise Duty refund as Capital Receipt submitted during the course of assessment proceedings is within the power of Tribunal in view of decision of Apex Court in "**National Thermal Power Co. Ltd. vs Commissioner Of Income Tax**"*

4. *Because, the following observations of the learned CIT (Appeals) in the order are perverse, arbitrary, baseless and misleading ("Relevant to Grounds of **Appeal No-1 " provision for Inventory Obsolescence"**):-*
 - (a) *"The appellant has created the provision for the write-off of obsolete material without any documentary evidence like certification of the expert etc." (Refer Para 11.3 of page 15)*

 - (b) *" I find that in the present case before me, the appellant has not given any details as to which method was followed by it for identification of unusable stock"*

5. *Because, appellant have proper basis/method for identification of obsolete material which is also supported by report of quality control test conducted at laboratory by the expert. ("**Relevant to Grounds of Appeal No-1 " provision for Inventory Obsolescence"**).*

3. **Ground No. 1, 4 & 5.** The Ld. Counsel for the assessee submitted that, the Ld.CIT(A) erred in confirming the disallowance of Rs. 84,47,051/- on account of provision inventory obsolescence. Further, submitted that, the assessee Company has also written off the obsolete inventory on actual basis to create the provision for inventory obsolescence. The assessee Company writes off the inventory mainly due the reason of perceivably product, exportation of products leakage of pesticides and insecticides etc. As per the ICAI, the inventories are required to be valued at lower cost or not realizable value. Since the goods are already been expired which is not saleable, the value of the export goods was taken as 'NIL'. Therefore, submitted that, the same should

be treated as written off from the books of account. The Ld. Counsel for the assessee has also relied on the judgment of Hon'ble Supreme Court in CIT Vs. Woodward Governor India Pvt. Ltd. 312 ITR 254 (SC).

4. The Ld. Counsel for the assessee further submitted that, even the statutory auditors have certified the quantum of the assessee's provision for inventory obsolescence to conclude that the assessee has adopted scientific method for valuation. The Ld. AR has also relied on the judgment of Hon'ble Apex Court in the case of Rotork Control India Pvt. Ltd. Vs. CIT (180 Taxman 422) and other judgments.

5. We have heard the parties and perused the material on record. The assessee has written off the obsolete inventory on expiry of the product. The copy of the statement showing the details of inventory obsolescence during the year under consideration are produced with paper book at Page No. 207 to 219. The Ld.CIT(A) confirmed the disallowance on the ground that "the assessee company has created provision for writing off obsolete material without any documentary evidence, no ground whatsoever has been given to prove that the said material has become obsolete as per the provisions of the Income Tax Act. Further opined that only those expenses are allowed which can be ascertained and are determinative".

6. The accounting standard 2 on valuation of inventory issued by the ICAI which clarified that, inventories are required to be valued at lower cost or net realizable value. As per the statement showing details of inventory obsolescence for the assessment year under consideration, the goods have been already expired and is not marketable or saleable condition.

7. The Hon'ble High Court in the case of CIT Vs. Woodward Governor India Pvt. Ltd. 312 ITR 254 (SC) held that the amount to provide and loss account debited to profit and loss account in accordance with applicable accounting standard issued by ICAI should be allowed for the purpose of the Act. Further,

the Jurisdictional High Court in the case of *HOTLINE TELE TUBE & COMPONENTS LTD.* 175 Taxman 286 held that the provisions for diminution in value of stock was allowable as deduction. The similar view has also been taken by the Jurisdictional High Court in *CIT Vs. Huges Communication India Ltd.* 215 Taxman 136. In view of the above discussions, we are of the opinion that provision for inventory obsolescence of Rs. 84,47,051/- for the year under consideration is allowable deduction. Accordingly, we allow the Grounds of Appeal No. 1, 4 & 5 of the assessee.

8. The Ground No. 2 & 3, are on rejecting amounting to Rs.9,85,02,263/- the claim of the assessee by treating the excise duty subsidy as capital receipt. The Ld. AR submitted that, the assessee has set up manufacturing unit in the state of Jammu, Kashmir) (now, Jammu, Kashmir & Laddakh). The said unit due to their presence in the notified area have availed the benefit in the form of excises duty subsidy of Rs. 9,85,02,263/- Therefore, the Ld. A.O and the CIT (A) should have allowed the claim of the assessee by treating the excise duty, subsidy as capital receipt. The similar issue has been arose for consideration in the case of *Modern Papers* in ITA No. 3931/Del/2018, wherein by relying on the decision of the Co-ordinate Bench in the case of *Crystal Coal Protection Pvt. Ltd. Vs. DCIT* dated 19/12/2019 (ITA No. 1539/Del/2016), allowed the claim of the assessee therein by treating the excise duties subsidy as capital receipt. The relevant portions are hereunder:-

“8. In this matter, there is no dispute on the amount of Excise Duty refund. Fact of assessee's unit being located in the notified area entitling the assessee to the benefits of Excise Duty Refund in accordance with Excise Notification Nos. 56 & 57/2002 issued by the Central Excise Department under the Industrial Policy of the Government of India, Ministry of Commerce and Industries, is also not in dispute at either of the stages before of authorities below or

before us. The only dispute centers round the admissibility or otherwise of assessee's subsequent claim for treatment of Excise Duty Refund as capital in nature without filing any revised return. This issue is found squarely covered in favour of the assessee by the order of Co-ordinate Bench of This Tribunal in the case of [M/s. Crystal Crop Protection \(P\) Ltd. vs. DCIT](#) (supra), as rightly argued by the ld. Counsel for the assessee, where the identical claims of assessee for treating the Excise Duty Refund as capital receipt and deduction of Education cess stand allowed in the similar set of facts. Observations and findings reached by Coordinate Bench read as under :

8. Heard the arguments of both the parties and perused the material available on record.

9. In the case of Jute Corporation of India Ltd. Vs CIT vide order dated 04.09.1990, 1991 AIR 241 held that the Hon'ble Apex Court while adjudicating on the issue of additional ground held that the declaration of law is clear that the power of the Appellate Assistant Commissioner is coterminus with that of the Income Tax Officer. If that be so, there appears to be no reason as to why the appellate authority cannot modify the assessment order on an additional ground even if not raised before the Income Tax Officer. No exception could be taken to this view as the Act does not place any restriction or limitation on the exercise of appellate power. Even otherwise an Appellate Authority while hearing appeal against the order of a subordinate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitation if any prescribed by the statutory provisions. In the absence of any statutory provisions to the contrary the Appellate Authority is vested with all the plenary powers which the subordinate authority may have in the matter.

10. *The Hon'ble Apex Court has also held that if the Appellate Assistant Commissioner is satisfied he would be acting within his jurisdiction in considering the question so raised in all its aspects. Of course, while permitting the assessee to raise an additional ground, the Appellate Assistant Commissioner should exercise his discretion in accordance with law and reason. He must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The satisfaction of the Appellate Assistant Commissioner depends upon the facts and circumstances of each case and no rigid principles or any hard and fast rules can be laid down for this purpose.*

11. *The similar proposition has reiterated by the Hon'ble Apex Court while dealing with the similar issue in the case National Thermal Power Co. Ltd. Vs CIT 229 ITR 383. The Apex Court reiterated that*

"6. In the case of [Jute Corporation of India Ltd. v. C.I.T.](#) this Court, while dealing with the powers of the Appellate Assistant Commissioner observed that an appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. There is no good reason to justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the Income-tax Officer. This Court further observed that there may be several factors justifying the raising of a new plea in an appeal and each case has to be considered on its own facts. The Appellate Assistant Commissioner must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The Appellate Assistant Commissioner should exercise his discretion in permitting or not permitting the assessee to raise

an additional ground in accordance with law and reason. The same observations would apply to appeals before the Tribunal also."

12. While dealing with the case of NTPC, the Hon'ble Apex Court enunciated that it would not be proper if the Tribunal is confined only to issues arising out of the appeal before the Commissioner of Income-tax (Appeals) and it amounts to taking too narrow a view of the powers of the Appellate Tribunal. Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee. Thus, we find that the Courts have always upheld the powers of the Tribunal or rather directed the Tribunals to assess the correct tax liability of the assessee. In case the assessee has wrongly or owing to lack of knowledge pays tax on an item of amount which is not taxable in accordance with the provisions of the Income Tax Act, the assessee would have every right to pray for right taxation of his taxable income.

13. Thus, it can be said that the claim of the assessee has to be considered based on the fact that whether the amounts in question or taxable or not, notwithstanding the fact that the assessee has suo-moto offered the amounts to taxation already. For determination of the issue whether the Assessing Officer or the Tribunal empowered to consider the plea of the assessee, the provisions of the Act are examined.

14. Year-1989 -- The provision sub-section (3) was substituted by the following provision by the Direct Tax Laws (Amendment) Act, 1987 with effect from 1st April 1989, which read as follows "(3) On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee

may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him on the basis of such assessment."

15. On perusal of the above provision, it is noted the Legislature specifically excluded the A.O.'s power to determine sum 'refundable' to the assessee on completion of assessment under sub-section (3) of [Section 143](#) of the Act. The intention of the Legislature in introducing amended [Section 143\(3\)](#) was explained by the CBDT in Circular No. 549 dated 31.10.1989 wherein the Board stated that under the amended provisions, the Assessing Officer in an assessment order passed under [section 143\(3\)](#) cannot assess income at a figure lower than the returned income, nor can loss be assessed at a figure higher than the returned, and therefore no tax paid with reference to the returned income can now be refunded to the assessee on completion of regular assessment.

16. Year 1998 -- The above provision was later on substituted by the [Finance \(No.2\) Act](#) of 1998 and the power to determine 'sum refundable' to the assessee by the Assessing Officers in the proceedings u/s 143(3) was re- instated by the Legislature. The relevant provision, as it stands now reads as under:

"(3) On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment."

17. The CBDT Circular No. 772 dtd. 23.12.1998-- explaining the above substituted provision of [Section 143\(3\)](#) explicitly stated that under the erstwhile provisions, there was no provision to issue refund and the Assessing Officer was only empowered to determine the sum payable by the assessee, but under the amended provisions the A.O. is empowered to provide for determination of sum payable by the assessee as well as the refund of any amount due to him.

18. On harmonious reading of these provisions & after giving due consideration of the legislative history of [Section 143\(3\)](#) and the judgment of the Hon'ble Calcutta High Court in the case of CIT Vs Britannia Industries Ltd in ITA No. 03/2013 vide order dated 13.07.2017 held that even if it (accepting the fresh claim of the assessee) results in an assessment below the returned income and consequently refund arises, it is valid as per law.

19. The Hon'ble High Court has also held that there is no conflict between the Gurjargravures Private Ltd. and Goetze (India) Ltd. In the former a claim for exemption was for the first time put up before the Appellate Assistant Commissioner who rejected the claim as not made before the I.T.O. This rejection was set aside by the Tribunal with direction upon the Appellate Assistant Commissioner to entertain the question of relief under [section 84](#), claimed by the assessee in that case. The Supreme Court held that it was not competent for the Tribunal to have done so. The distinction between the two authorities eliminating any conflict is that in Gurjargravures Private Ltd. the competence of the Tribunal to direct the Appellate Assistant Commissioner to entertain a claim not made before the I.T.O was found to be lacking. In Goetze (India) Ltd. the Supreme Court held that the assessing Authority's power was limited but not that of the Tribunal in the context of dealing with a claim of the assessee therein not put forward before the Assessing Officer. In Gurjargravures Private Ltd. (supra) the Tribunal itself did not consider to allow the claim for relief.

20. Further, the CBDT Circular No. 14(XL-35 dated 11.04.1955) wherein it is held as under:

"3. Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a tax payer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the ITA No.679/Kol/2016 Smt. Sharmila Kumar, AY- 2011-12 department for it would inspire confidence in him that he may be sure of getting a square deal from the department. Although, therefore, the responsibility for claiming refunds and reliefs rests with assesseees on whom it is imposed by law, officers should"

21. Further, we also note that the relief sought cannot be refused merely because the assessee has omitted to claim the relief as held by the Hon'ble Supreme Court in Anchor Pressings P. ltd. Vs. CIT 161 ITR 159. Hence, keeping in view the entire facts on record, the judicial pronouncements of the Hon'ble Apex Court on the issue of allowability of the claim, we hereby hold that the assessee is eligible to raise the issue at appellate levels.

22. Having said so, the issue whether the Excise Duty subsidy and interest subsidy can be treated as capital receipt is examined. The similar subsidy has been allowed as capital receipt and also the issue of computation of profits u/s 115JB has been examined by the Co-ordinate Bench of Tribunal in ITA No. 3837/Del/2016 in the case of M/s DhanukaAgritech Ltd. wherein the appeal of the assessee is allowed. The same is squarely applicable to the facts of the instant case. Further, the matter stands squarely covered by the order of the Hon'ble Jammu & Kashmir High Court in the case of Shri Balaji Alloys

Vs CIT 333 ITR 335. The snippets of the order of the Hon'ble High Court and the decision of the Hon'ble Apex Court on the issue is as under:

"The assessee, pursuant to the New Industrial Policy announced for the State of J&K, received excise refund and interest subsidy, etc which it claimed to be a capital receipt. In the alternative, it was claimed that the same was eligible for deduction u/s 80-IB. The AO, CIT (A) and Tribunal rejected the claim and held the receipts to be revenue on the ground that the subsidy (i) was for established industry and not to set up a new one, (ii) it was available after commercial production, (iii) it was recurring in nature, (iv) it was not for purchasing capital assets and (v) it was for running the business profitably. On appeal by the assessee, the High Court (333 ITR 335) reversed the lower authorities and held as follows:

(i) The ratio of Sahney Steel 228 ITR 253 (SC), Ponni Sugars 306 ITR 392 (SC) and Mepco Industries 319 ITR 208 (SC) is that to determine whether incentives & subsidies are revenue or capital receipts, the purpose underlying the incentives is the determinative test. If the object of the subsidy scheme is to enable the assessee to run the business more profitably then the receipt is on revenue account. On the other hand, if the object of the subsidy scheme is to enable the assessee to set up a new unit or to expand the existing unit then the receipt of the subsidy was on capital account. It is the object for which the subsidy/assistance is given which determines the nature of the incentive subsidy. The form or the mechanism through which the subsidy is given is irrelevant;

ii) On facts, the object of the subsidy scheme was (a) to accelerate industrial development in J&K and (b) generate employment in J&K. Such incentives, designed to achieve a public purpose, cannot, by any stretch of reasoning, be construed as production or

operational incentives for the benefit of assesses alone. It cannot be construed as mere production and trade Incentives;

(iii) The fact that the incentives were available only after commencement of commercial production cannot be viewed in isolation. The other factors which weighed with the Tribunal are also not decisive to determine the character of the incentive subsidies in view of the stated objects of the subsidy scheme;

(iv) Question whether the subsidy receipts are eligible u/s 80- IB not decided."

23. On appeal by the department to the Supreme Court held dismissing the appeal:

"The issue raised in these appeals is covered against the Revenue by the decision of this Court in "Commissioner of Income Tax, Madras Vs. Ponni Sugars and Chemicals Ltd.", reported in (2008) 9 SCC 337, or in the alternate, in "Commissioner of Income Tax Vs. M/s Meghalaya Steels Ltd.", reported in (2016) 3 SCALE 192 (383 ITR 217 (SC)). Therefore, for the aforesaid reasons given above, the revenue's ground of appeal is dismissed."

24. The appeal of the assessee on the ground of Excise Duty subsidy and interest subsidy as capital receipt is hereby allowed.

25. Regarding the claim of education cess as an allowable expenditure, we find that the CBDT vide Circular No. 91/58/66 - ITJ(19) clarified as under:

"Interpretation of provisions of [Section 40\(a\)\(ii\)](#) of the I.T Act - clarification regarding.

[Section 40\(a\)\(ii\)](#) - Recently a case has come to the notice of the Board where the ITO has disallowed the 'cess' paid by the

assessee on the ground that there has been no material change in the provisions of Section 10(4) of the old Act and Section 40(a)(ii) of the new Act.

2. The view of the ITO is not correct. Clause 40(a)(ii) of the IT Bill, 1961 as introduced in the Parliament stood as under: "(a) any sum paid on account of any cess, rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits or gains."

When the matter came up before the Select Committee, it was decided to omit the word 'cess' from the clause. The effect of the omission of the word 'cess' is that only taxes paid are to be disallowed in the assessments for the years 1962-63 and onwards.

3. The Board desire that the changed position may please be brought to the notice of all the ITOs so that further litigation on this account may be avoided."

26. The similar issue of allowability of cess u/s 37 has been examined by the Co-ordinate Bench of ITAT in ITA No. 685/Cal./2014 wherein the amount of the cess paid has been held to be an allowable deduction.

27. Further, we find that the Hon'ble High Court of Judicature for Rajasthan at Jaipur in ITA No. 52/2018 in the case of Chambal Fertilizers and Chemicals Ltd. held that in view of the Circular of CBDT where the word 'cess' is deleted, the claim of the assessee for deduction is acceptable. In that case, the Hon'ble High Court held that there is difference between the cess and tax and cess cannot be equated with the cess. Hence, keeping in view the provisions of the Act, Circular of the CBDT and judicial pronouncements, we hereby hold that the assessee is eligible to claim the deduction of the 'cess' as per the provisions of Section 37 of the Income Tax Act."

9. We find nothing on record on behalf of the Department to take a different view. Therefore, to preserve the consistency in view, as approved by the Hon'ble Supreme Court in the case of [Radhasoami Satsang v.CIT \[1992\] 193 ITR 321](#), and respectfully following the view taken by coordinate Bench, we allow the claims of assessee.

9. The Ld. DR has neither disputed the above factual matrix canvassed by the Ld. Counsel for the assessee and nor brought any judicial pronouncements contrary to the above ratio. Therefore, by respectfully following the above said judicial pronouncement, we allow the Grounds of Appeal No. 2 & 3.

10. In result, the Appeal of the assessee is allowed.

Order pronounced in the Open Court on this 08th Day of July, 2022

**Sd/-
(B. R. R. KUMAR)
ACCOUNTANT MEMBER**

**Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Dated: 08/07/2022
R. Naheed *

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

