IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH, NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 3430/DEL/2018 [A.Y. 2008-09]

M/s Amrit Banaspati Company Limited A- 95, Sector 65 Noida Uttar Pradesh	Vs.	The Dy. C.I.T Central Circle Ghaziabad

PAN: AABCA 6485 H

ITA No. 4921/DEL/2018 [A.Y. 2008-09]

The Dy. C.I.T Central Circle Ghaziabad	Vs.	M/s Amrit Banaspati Company Limited A- 95, Sector 65 Noida Noida PAN: AABCA 6485 H
(Applicant)		(Respondent)

Assessee By : Shri Rohit Jain, Adv
Ms. Soumya Jain, CA

Department By : Ms. Sugam Thomas Josh, CIT- DR

Date of Hearing : 05.09.2023
Date of Pronouncement : 15.09.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above captioned cross appeals by the assessee and the Revenue are preferred against the order of the ld. CIT(A), Meerut dated 05.04.2018 pertaining to Assessment Year 2008-09. Both these appeals were heard together and are disposed of by this common order for the sake of convenience and brevity.

ITA No. 3430/DEL/2018 [Assessee's Appeal.

2. The first grievance relates to the addition of Rs. 5,19,848/– on account of undervaluation of stock.

3. During the year under consideration, the assessee has disclosed closing stock of salt at Rs. 23,66,343/– and closing stock of rice at Rs.1,58,36,461/–. The Assessing Officer was of the opinion that since freight expenses have separately been debited to the profit and loss account, but not included in the valuation of closing stock, the assessee has undervalued its closing stock. Taking freight charges into

consideration, the Assessing Officer computed the undervaluation of closing stock for salt at Rs. 1,44,177/- and for rice Rs. 3,75,671/-, making addition of Rs.5, 19, 848/-.

4. The ld. CIT(A) confirmed the addition following its order for A.Y 2007-08.

5. Before us, the ld. counsel for the assessee vehemently stated that the assessee has been consistently following the system of valuing the stock of traded goods at cost or market price, whichever is lower by following FIFO method.

6. It is the say of the ld. counsel that the method of valuation of closing stock is regularly and consistently followed by the assessee and accepted by the department. Therefore, there is no reason for making the impugned addition.

7. The ld. DR strongly supported the findings of the Assessing Officer /CITA.

8. We have carefully perused the orders of the authorities below. At the very outset, we have to state that any adjustment in the closing stock requires simultaneous adjustment in the subsequent opening stock. Thus, the entire exercise becomes tax neutral. Having said that, we find that the assessee has been consistently following the same method of valuation of closing stock, which has been accepted by the revenue in the earlier assessment years.

9. Therefore, We do not find any reason for deviating from the same. The assessee has never included freight charges while valuing its closing stock. Therefore, we do not find any reason for doing the same during the year under consideration. The findings of the ld. CIT(A) are set aside and the Assessing Officer is directed to delete the addition of Rs. 5,19,848/-. Thus, ground is allowed.

10. Second grievance of the assessee relates to the addition on account of subsidy.

11. The peculiar facts in this issue are that during the A.Y 1999-2000, the assessee has received capital subsidy of Rs.50 lakhs sanctioned by the Director of Industries, Government of Punjab in the year 1995

under Industrial Policy issued by the Government of Punjab. Since the said subsidy was received with a view to promote growth of industry in the State of Punjab and for generation of employment, the subsidy, being on capital account, was directly credited by the assessee to the capital reserve in the books of accounts for the year ending on 31.3.1999 and the same was accepted by the revenue.

12. During the year under consideration, the Assessing Officer took a completely different view, holding that the aforesaid capital subsidy ought to have been reduced to from the actual cost of fixed asset in terms of Explanation 10 to section 43(1) of the Act, and with this belief, the Assessing Officer computed the excess depreciation by reducing the actual cost by capital subsidy in the F.Y 1998–99 and adjusted in the WDV of each A.Y till the A.Y under consideration, which action of the Assessing Officer was confirmed by the ld. CIT(A).

13. We have carefully perused the orders of the authorities below. It is strange to find that the Assessing Officer has taken such a view for the year under consideration. Though the Assessing Officer has revisited the WDV of the A.Y after 1999–2000, till the A.Y under

consideration, yet, he chose not to take any action for any A.Y. earlier to the present A.Y.

14. Be that as it may, there is no dispute that subsidy was sanctioned for promoting of growth in industry in the State of Punjab under the policy in new unit which has come into commercial production on 01.10.1992, shall be eligible to claim incentive computed on the basis of 'Fixed Capital Incentive' made by such a unit in land, building and plant and machinery. The quantum of incentive so receivable was dependent on the value of fixed capital investment made in the specified area(s) of the state.

15. This policy was introduced for promoting growth of industry in the State **and s**ince the assessee satisfied all the conditions for being eligible, it received subsidy of Rs.50 lakhs during the financial year 1998-99. The said incentive was taken to the 'capital reserve account' and was claimed as non-taxable in the return of income for assessment year 1999-00, treating the same as capital receipt. The same was accepted by the Assessing Officer.

16. However, during the year, the Assessing Officer has taken a position that since it has been given a part of capital investment, cost of assets needs to be reduced as per Explanation 10 to section 43(1) of the Act. We are of the considered view that the said section is not applicable on the facts of the case in hand in as much as the subsidy has not been granted for meeting cost of any asset but for larger public interest of industrial development of the State of Punjab.

17. An identical issue was considered by the Hon'ble Supreme Court in the case of P.J. Chemicals Ltd. 210 ITR 830. In that case, the assessee had received a capital subsidy, which was claimed as capital receipt, not exigible to Income-tax. The Assessing Officer held that such subsidy is liable to be reduced form the cost of assets, in terms of the provisions of section 43(1) of the Act. The matter travelled upto the Hon'ble Supreme Court and the Hon'ble Supreme Court, inter alia, held as under:

> ***"The question in the present context is not whether if a portion of the cost is met directly or indirectly by any other person or authority, it should be deducted or not. Quite obviously, the plain meaning of the section is that it shall be. But the real question is as to the character and nature of a subsidy whether it was really intended to subsidise the cost of the capital or was intended as***

an incentive to encourage entrepreneurs to move to backward areas and establish industries, the specified percentage of the fixed capital cost which is the basis for determining the subsidy being only a measure adopted under the scheme to quantify the financial aid. The contention is that it is not a payment, directly or indirectly, to meet any portion of the "actual cost" but intended as an incentive to entrepreneurs, its quantification determined at a percentage of the fixed capital cost.

The Government subsidy, it is not unreasonable to say, is an incentive not for the specific purpose of meeting a portion of the cost of the assets, though quantified as or geared to a percentage of such cost. If that be so, it does not partake of the character of a payment intended either directly or indirectly to meet the "actual cost". We should prefer the reasoning of the majority of the High Courts to the one found acceptable by the High Court of Punjab and Haryana." **(emphasis supplied)**.

18. In a similar case, the Hon'ble Gujarat High Court in the case of Ellora Time Pvt Ltd. Tax Appeal No. 1011 of 2010 (Guj.), held as under:

"the assessee was, inter alia, engaged in the business of generation of power through windmills. During the relevant assessment year, i.e., 2004-05, the assessee installed windmills and received subsidy of Rs.10,10,59,625, from the State Government in relation to the same. The subsidy was quantified with respect to Sales Tax payable by the assessee. The assessee's contention was that subsidy was not linked

to any capital asset and accordingly, the same should not be reduced from the cost of asset for the purpose of granting depreciation. The assessing officer, however, held that the amount of subsidy is liable to be reduced from the cost of the machinery for the purposes of computing depreciation thereon. The CIT(A) reversed the decision of the assessing officer and observed that the assessee received sales-tax incentives for establishing windmill, which is an alternative source of energy. Such subsidy was an incentive for encouraging development of non-traditional source of energy and not for simply meeting the cost of acquisition of windmills. While holding as above, the CIT(A) relied upon the decision of the apex Court in the case of P.J. Chemicals Ltd. (supra).

The Tribunal dismissed the appeal filed by the Revenue and observed that the assessee's case was not hit by the insertion of explanation 10 to sec.43(1) and the same is covered by the decision of Supreme Court in P.J. Chemicals reported in 210 ITR 830.

On further appeal preferred by the Revenue, the High Court affirmed the decision of the Tribunal and dismissed the appeal filed by the Revenue."

19. It would not be out of place to mention that even if the action of the Assessing Officer has to be accepted, then the same should have been taken in A.Y 1999-2000. However, we find that no action has been taken from A.Y 1999-2000 to A.Y 2006-07. Therefore, there being no change in the facts, it would be incorrect to take a different

stand after a gap of 10 years. Considering the facts of the case in totality, we do not find any merit in the action of the Assessing Officer/ld. CIT(A). We, accordingly, direct the Assessing Officer to delete the impugned addition.

20. Appeal of the assessee is allowed.

ITA No. 4921/DEL/2018 [Revenue's appeal

21. Grievance of the Revenue read as under:

I. Because the Ld. CIT(A) has erred in law and facts for deleting the addition of Rs. 1.38.65.250/- made on account or " disallowance of depreciation on "Edible Oil Brand" despite that the demerger process is not according with the provisions of section 2(19AA) of the Income Tax Act. 1961.

II Because the Ld. CIT(A) has erred in law and facts for deleting the addition of Rs. 1.38.65.250/- made on account of disallowance of depreciation on "Edible Oil Brand" despite that the written down value of the block asset of the resulting assessment company shall be the written down value of the transferred asset of demerged company.

III Because the Ld. CIT(A) has erred in law and facts for deleting the addition of Rs. 1.38.65.250/- made on account of disallowance of depreciation on "Edible Oil Brand" despite that as per provisions of Explanation of Section 43(1) of the Income tax Act. 1961. the actual cost of acquisition of the Edible Oil Brand is NIL as such no depreciation is available to the assessee company on the same.

IV Because the Ld. CIT(A) has erred in law and facts for deleting the addition of Rs. 1.38.65.250/- made on account of disallowance of depreciation on "Edible Oil Brand" despite that the entire scheme of the demerger arrangement should have been taxed neutral but in this case. the assessee company has claimed huge depreciation and reduce its tax liability and other expenses. M/s Amrit Corp. Limited has because of the business loss not paid taxes in the entire amount of capital gain

V. Because the Ld. CIT(A) has erred in facts for deleting the addition of Rs. 1.38.65.250/- made on account of disallowance of depreciation on "Edible Oil Brand" despite that on the demerger proceedings. the assessee company M/s ABCL as well as M/s ACL has reduced its tax liability and given arrangement a 'coularble device' as shown capital gain.

VI Because the Ld. CIT(A) has erred in law and facts for deleting the addition of Rs. 57.85.000/- made on account of disallowance of Royalty paid on brand "Gagan" despite that the demerger process is not according with the provisions of section

2(19AA) of the Income Tax Act. 1961.

VII Because the Ld. CIT(A) has erred in law and facts for deleting the addition of Rs. 57.85.000/- made on account of disallowance of Royalty paid on brand "Gagan" despite that as per provisions of Explanation of Section 43(1) of the Income tax Act. 1961. the actual cost of acquisition of the Edible Oil Brand is NIL as such no depreciation is available to the assessee company on the same.

VIII Because of the Ld. CIT(A) has erred in law and facts for deleting the addition of Rs. 25.00.000/- made on account of Gross profit rate without appreciating the facts that the assessee company has failed to furnish quantitative details as well as physical stock register during the assessment proceedings."

22. Grievances raised vide Ground Nos. 1 to 5 are identical to the issues raised in ITA No. 4589/DEL/2018 for A.Y 2007-08. For our detailed discussion therein, Ground Nos. 1 to 5 are allowed.

23. Issue raised vide Ground No. 6 and 7 are identical to the issues raised in ITA No. 4589/DEL/2018 for A.Y 2007-08. For our detailed discussion therein, Ground Nos. 6 & 7 are dismissed.

24. Issue raised vide Ground No. 8 are identical to the issue raised in ITA No. 4589/DEL/2018 for A.Y 2007-08. For our detailed discussion therein, Ground Nos. 8 is dismissed

25. In the result the appeal of the assessee in ITA No. 3430/DEL/2018 is allowed whereas the appeal of the Revenue in ITA No. 4921/DEL/2018 is partly allowed.

The order is pronounced in the open court on 15.09.2023.

Sd/-	**Sd/-**
[ANUBHAV SHARMA**]**	**[N.K. BILLAIYA]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 15th SEPTEMBER, 2023.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
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Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
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