

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH, JABALPUR**

**BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No.200/JAB/2018
Assessment Year:2007-08

A.C.I.T., Circle-2(1), Jabalpur.	Vs.	M/s Bhaskar Lubricant Pvt. Ltd., 581, South Civil Lines, Jabalpur. PAN:AACCB5446N
(Appellant)		(Respondent)

Appellant by	Shri Shiv Kumar, Jt. CIT (D.R.-2)
Respondent by	Shri Sachin Bajpai, Advocate
Date of hearing	23/11/2023
Date of pronouncement	29/11/2023

ORDER

PER YOGESH KUMAR U.S.:J.M.

Brief facts of the case are that the assessee filed return of income for assessment year 2007-08 declaring income at NIL (net loss of Rs.17,40,716/- of current year). The assessment was completed on a total income of NIL and was allowed to carry forward the unabsorbed depreciation of Rs.17,40,716/-. Notice u/s 154 of the Act was issued to the assessee with regard to valuation of closing stock at Rs.1,15,89,701/- without including the VAT of Rs.14,48,712/-. It is the case of the assessee before the Assessing Officer that a separate VAT account is prepared for which VAT input on purchase is debited and VAT on output is credited and only balance is reflected in the balance sheet and to substantiate the same VAT account was submitted by the assessee before the Assessing Officer. The Assessing Officer, without accepting the submissions of the assessee, made addition for under valuation of closing stock at Rs.14,48,712/- and

revised the unabsorbed depreciation of Rs.2,92,004/- vide order dated 27/01/2014 passed u/s 154 of the Act. Aggrieved by the order dated 27/01/2014 passed u/s 154 of the Act, the assessee preferred an appeal before the CIT(A). The learned CIT(A), vide order dated 09/07/2018, allowed the appeal filed by the assessee and deleted the addition of Rs.14,48,712/- made by the Assessing Officer.

2. As against the order of learned CIT(A), the Revenue preferred the present by raising the following grounds:

- "1. On the facts and in the circumstances of the case, the Id. CIT(A) was not justified in deleting the addition of Rs.14,48,712/- made by the Assessing Officer on account of under-valuation of closing stock by inclusion of VAT as per AS-2 vide order under sec. 154 of the IT Act.*
- 2. On the facts and in the circumstances of the case, the Id. CIT(A) erred in holding that duties and taxes which are reimbursed subsequently are not to be included as input VAT paid on purchases is eligible for set off without VAT liability, input VAT is not to be included in valuation of inventory as per AS2."*

3. Learned D.R., relying on the order passed u/s 154 of the Act, submitted that the learned CIT(A) has not justified in deleting the addition made by the Assessing Officer on account of under valuation of closing stock by inclusion of VAT as per AS-2, the CIT(A) erred in holding that duties and taxes, which are reimbursed subsequently, are not to be included as input VAT paid on purchases is eligible for set off, without VAT liability input VAT is not to be included in valuation of inventory as per AS-2.

4. Learned counsel for the assessee, relying on the order of learned CIT(A), submitted that the grounds of appeal of the Revenue are devoid of merit and there was no error apparent in the assessment order and the

Assessing Officer has erroneously made the addition u/s 154 of the Act, which has been rightly deleted by learned CIT(A).

5. We have heard both the parties and perused the materials on record. The learned Assessing Officer, on perusal of the records, found that the assessee had shown closing stock of Rs.1,15,89,701/- but no VAT was taken into consideration for finding the value of closing stock. As per the Assessing Officer, the same was resulted in under valuation of closing stock to the tune of Rs.14,48,712/-. Further the Assessing Officer found that the assessee had taken unsecured loan of Rs.59,72,643/- from Bhaskar Prakashan of Bhopal but in Form 3CD report regarding section 269SS and 269T was furnished nil. The order u/s 154 came to be passed on the ground that the assessee had undervalued the closing stock to the extent of Rs.14,48,712/- (12.5% of Rs.1,15,89,701/-) resulting in an over assessment of U.A.D. amounting to Rs.14,48,712/- and the reply of the assessee regarding unsecured loan from Bhaskar Prakashan, Bhopal has been accepted by the Assessing Officer.

6. The learned CIT(A), vide order impugned while deleting the said addition, held as under:

"7.1.3. DECISION:- I have carefully considered the submission put forth & the documents furnished on behalf of the appellant, perused the facts of the case and the observation of the AO in the impugned assessment order and other material brought on record. The AO has passed order u/s 154 in which it has been observed that the assessee had shown closing stock of Rs.1,15,89,701/- but no VAT was taken into consideration for finding the value of the closing stock (the assessee's account showed purchases and sales after reducing VAT). This resulted in an under valuation of closing stock to the tune of Rs.14,48,712/- (12.5% of 1,15,89,701/-) resulting in an over assessment of U.A.D. amounting to Rs.14,48,712/-. The AO therefore worked out the revised unabsorbed depreciation at Rs.2,92,004/-.

7.1.4 The appellant has submitted that addition of Rs.14,48,712/- was made by AO on account of VAT. Assessee is having the closing stock of Rs.1,15,89,701/-. AO has calculated VAT @ of 12.5% on Rs.1,15,89,701/- (i.e. 12.5% of 1,15,89,701/- = 14,48,712/-) which is not correct. Assessee is maintaining the VAT account separately and all the transaction are recorded in the VAT account and the balance of VAT account is reflected on the assets side of the balance sheet. Closing balance of VAT account as on 31.03.2007 was Rs.10,17,050/- which has been shown under the head loans and advances as TCS & VAT at Rs.12,08,886/- i.e. VAT of Rs.10,71,050/11 and TCS of Rs.1,91,836/- (Copy of audited financial statements and copy of ledger account is enclosed here with as per Annexure-1). It is submitted that the assessee is maintaining his books of accounts on the basis of exclusive or net method for the purpose of VAT. In this method the amount of VAT will neither included in the purchase nor sales due to which it will not be a part of the closing stock. Assessee is following this exclusive or net method consistently. In case if the amount of VAT is included in the value of closing stock then VAT amount will also be included in the amount of purchase, sales and opening stock.

7.1.5 I have examined the facts of the case and have considered the submission of the appellant. I find that the AO has not appreciated the entire facts in right earnest and proceeded to make addition without examining the method of accounting consistently followed by the appellant. It is noticed that the appellant is maintaining his books of accounts on the basis of exclusive or net method for the purpose of VAT. In this method the amount of VAT will neither included in the purchase nor sales due to which it will not be a part of the closing stock. Appellant is following this exclusive or net method consistently. In case if the amount of VAT is included in the value of closing stock then VAT amount will also be included in the amount of purchase, sales and opening stock. As per AS 2, duties and taxes forms part of closing stock. But duties and taxes which are reimbursed subsequently are not to be included as input VAT paid on purchases is eligible for set off with output VAT liability, input VAT is not to be included in valuation of inventory as per AS 2. In view of the above facts and circumstances of the case, I am of the opinion that the AO was not justified in making the addition of Rs.14,48,712/- and worked out the unabsorbed depreciation to Rs.2,92,004/-. Therefore, the addition made at Rs.14,48,712/- is directed to be deleted."

7. The assessee was maintaining its books of account on the basis of inclusive or net method for the purpose of VAT which neither included any purchase nor in the sale due to which same will not be part of the closing stock. The said method has been followed by the assessee consistently. The learned CIT(A) found that in case if the amount of VAT is included in the value of closing stock, then VAT amount will also be included in the amount of purchase, sale and opening stock. As per AS-2, duties and taxes form part of closing stock but duties and taxes, which are reimbursed subsequently, are not to be included as VAT paid on purchases is eligible for set off with output VAT liability, input VAT is not to be included in valuation of inventory as per AS-2, accordingly the learned CIT(A) deleted the addition made by the Assessing Officer u/s 154 of the Act. The said findings of fact by the CIT(A) and the conclusion thereon does not suffer any infirmity or error and we find no merit in the grounds of appeal of the Revenue, accordingly grounds of appeal of the Revenue are dismissed.

8. In the result, the appeal filed by the Revenue is dismissed.

(Order was pronounced in the open court on 29/11/2023)

Sd/.
(DR. B.R.R. KUMAR)
Accountant Member

Sd/.
(YOGESH KUMAR U.S.)
Judicial Member

Dated:29/11/2023
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R.,

Asstt. Registrar