

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: HYBRID MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 602/Chd/2022
निर्धारण वर्ष / Assessment Year : 2016-17

The Asst. CIT Circle-1(1), Chandigarh	बनाम	M/s SML Isuzu Ltd. SCO 204-205, Sector -34A, Chandigarh
		स्थायी लेखा सं. / PAN NO: AACCS2991P
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Rohit Jain, Advocate and
Ms. Somya Jain, C.A
राजस्व की ओर से/ Revenue by : Smt. Kusum Bansal, CIT, DR
सुनवाई की तारीख/ Date of Hearing : 06/06/2024
उद्घोषणा की तारीख/ Date of Pronouncement : 12/06/2024

आदेश/Order

PER PARESH M. JOSHI, J.M. :

This is an appeal filed by the Revenue under section 253 of the Income Tax Act, 1961. They are aggrieved by the order NO. ITBA/NFAC/S/250/2022-23/1043425730(1) dt. 14/06/2022 of the **Ld. CIT(A)** passed under section 250 of the Income Tax Act, 1961 which is hereinafter referred to as the "**impugned order**".

2. At the outset the Registry has pointed out that the appeal filed by the Revenue is barred by 09 days for which the Revenue has filed condonation application for condoning the delay.

3. Delay of 09 days condoned by consent of both the parties. Appeal then taken up for final hearing.

Factual Matrix

4. The assessee is engaged in the business of manufacturing of commercial vehicles. The assessee **e-filed** its original return of income for A.Y. 2016-17 on 30.11.2016 declaring total income of Rs. 47,90,21,440/-.

5. The Ld. AO passed an order u/s 143(3) of the Income Tax Act, 1961 on 06/12/2018 assessing the total income at Rs. 52,92,65,850/- by **adding** an amount of Rs.

4,67,49,410/- on account of **under valuation of closing work in progress** and an amount of Rs. 34,95,000/- under section 35(2AB) of the Income Tax Act, 1961.

6. Challenging the aforesaid addition made by in the assessment order, the assessee filed an appeal before the CIT(A), which was decided in favour of the assessee vide the impugned order.

7. Aggrieved by the impugned order of CIT(A) Revenue is before us.

8. The Revenue in Form No. 36 has raised the following grounds of appeal:

1. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in allowing appeal of the assessee without appreciating the facts of the case.*

2. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 4,67,49,410/- made by the AO by invoking the provisions of section 145A of the Income Tax Act, 1961 by including excise duty in closing stock of work in progress.*

3. *It is prayed that the order of the Ld. CIT(A) be cancelled and that of the assessing officer may be restored.*

4. *The appellant craves leave to add or amend any grounds of appeal before the appeal is heard or is disposed off.*

Record of Hearing

9. The hearing took place on 06/06/2024 when the Ld. CIT DR placed reliance on order of Ld. AO dt. 06/12/2018. She submitted that the Ld. AO has rightly added the amount of Rs. 4,67,49,410/- on account of **under valuation of closing work in progress** and that order of Ld. CIT(A) is bad in law and ought to be set aside. The Ld. AO has rightly made addition in terms of Section 145A of the Income Tax Act-1961 **by including excise duty in closing stock of work in progress** she prayed that order of Ld. CIT(A) be cancelled and that of Ld. AO be restored.

10. Per contra the Ld. AR has stated as under:

i. The assessee has consistently been following **exclusive method of accounting** i.e; **not including** the amount of duty / taxes / modvat credit in the value of purchase, sales, **inventory** debited to the P&L Account.

ii. The Ld. AO, however, simply following the orders for earlier years, made an addition of Rs. 4,67,49,410/- (being 12.625% of work in progress of Rs. 37,02,32,354/-) on the ground that the assessee had failed to include excise duty for purpose of valuation of "closing work in progress" which was in violation of the provisions of section 145A of the Act.

iii. He vehemently contends that the notional addition for excise duty made by the Assessing Officer is completely erroneous in as much as in terms of section 145A of the Act, the amount of duty actually paid or incurred only is includable for the purpose of valuation of inventory and purchase and sale of goods.

iv. In the facts of the present case, no duty was leviable on closing work in progress as excise duty is payable only on "Manufactured goods" and that too only when such goods are moved out of the factory / excise border of the manufacturer.

v. It was then contended that the aforesaid issue of adhoc inclusion of excise duty in the value of closing work in progress stands covered in favour of assessee vide order dt. 14/05/2018 passed in **assessee's own case** for AY's 2005-06, 2007-08, 2010-11, 2012-13 **wherein similar addition** made was deleted by this Hon'ble Tribunal in para no. 30 in **ITA No. 79/Chd/2009 / ITA No. 112/Chd/2009** by observing as under:

" 30. We have considered the rival contentions. In the case in hand, the assessee has not paid any excise duty on the closing work in progress and hence there was no question of loading any excise duty on estimation basis. Even otherwise, if the value of the excise duty has to be included in the closing stock then the value of excise duty has also to be included in the opening stock and in that even there would be no difference in the result of the value of the opening stock and closing stock. Reliance in this respect is placed on the decision of the Delhi High Court in the case of 'Purolator India Ltd.(supra) and of the Allahabad High Court in the case of 'CIT Vs. Sangam Structural Ltd.' (2013) 35 taxmann.com 148 (All.).

In view of this, we do not find any justification in making the aforesaid addition. We, therefore, uphold the decision of the CIT(A) in deleting the addition on this issue.

In the result, the appeal of the Revenue is hereby dismissed."

vi. The Ld. AR has further placed reliance on order of Coordinate Bench in case of ACIT Vs. SML Isuzu Ltd. in ITA No. 1424 & 1425/Chd/2018 for A.Y. 2014-15 & 2015-16 dt. 20/03/2019 of this very Tribunal wherein too following **ITA No. 79/Chd/2009 / ITA No. 112/Chd/2009** similar addition were deleted.

vii. It was finally prayed that order of CIT(A) be sustained.

Findings & Conclusions

11. After examining rival contentions and in the premises as set out hereinabove respectfully following above order of our Coordinate Bench in (supra) in the Assessee own **cases** we dismiss the present appeal of Revenue as the issue is surely covered. The Ld. CIT(A) has rightly deleted the addition. We also hold that Section 145A contemplates valuation of inventory to be made at lower of actual cost or net realisable value and tax, duty, cess or fee (by whatsoever called) shall not be

includible in value of closing work in progress as no such amount of excise duty is paid as the stage of levy in law has not arisen. What is contemplated in law is actual payment and not proposed payment.

Order

12. In the result, the impugned order is sustained and appeal of the Revenue is dismissed.

Order pronounced in the open Court on 12/06/2024.

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-

परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

AG

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar