

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.123/MUM/2023
Assessment Year: 2020-21**

DCIT, Aayakar Bhavan, M. K. Road, Churchgate, Mumbai – 400020.	Vs.	Tosoh India Private Limited E/302, Lotus Corporate Park, Graham Firth Compound, Goregaon (East), Mumbai – 400 063. PAN: AAACL3709N
(Appellant)		(Respondent)

Present for:

Assessee by : Shri. Shalin S. Divatia, A.R.
Revenue by : Shri. P.D. Chougule (Addl. CIT), Sr. D.R.

Date of Hearing : 22 . 05 . 2024
Date of Pronouncement : 26 . 06 . 2024

ORDER

Per: Ratnesh Nandan Sahay, Accountant Member:

1. This appeal has been filed by the Revenue against the Order of the Ld. CIT (Appeals) passed u/s. 250 of the Income Tax Act [the 'Act' in short] vide DIN & Order No. ITBA/ NFAC/S/250/2023-24/1057865127(1) Dated 10/11/2023 for the Assessment Year 2020-21.
2. Following grounds of appeal have been raised by the revenue:
 1. *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.*

2,97,17,213/- made by the Ld. assessing officer on account of difference of opening stock and closing stock due to transfer the closing stock from stock to fixed assets (i.e. property, plant and equipment) without appreciating the fact that opening stock is a part of profit & loss A/c. and revenue expenditure".

2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition ignoring the fact that the assessee converted the stock into fixed assets which is a part of capital expenditure and the fixed assets are part of the balance sheet as property, plant and equipment (P,P&E), fixed asset are tangible items that companies own and use in their business operations for long-term financial benefits."*
3. Though, two grounds of appeal have been raised as above, it pertains to only one issue i.e. whether the addition of Rs.2,97,17,230/- made by the Ld. Assessing Officer was correctly deleted by the Ld. CIT(A) on the ground that on transfer of 'opening stock in trade' to 'Fixed assets' will not impact the Profit & Loss A/c except the claim of depreciation on that?
4. The facts of case, in brief, are that the assessee is a Private Limited Company, whose case was selected for scrutiny under CASS system on a reason to verify the value of opening stock as per current year's profit & loss A/c, (trading account) and value of closing stock as per preceding year's profit & loss A/c. The Ld. Assessing Officer, during the assessment proceedings, noticed that there was a difference of Rs.2,97,17,213/- in closing and opening stock. The closing stock shown by the assessee in the A.Y 2019-20 was at Rs.41,15,21,919/- and opening stock for the A.Y 2020-

21 was shown at Rs.38,18,04,706/-. When the assessee was asked to explain the reason for such difference, it was stated by the assessee as under:-

“your goodself has rightly observed that “the closing stock of A.Y.2019-20 is Rs.41,15,21,919/- and opening stock of A.Y. 2020-21 is Rs. 38,18,04,706/-. It has also been further observed in the same para that "As the opening stock is a part of P&L account and revenue expenditure.”

It is submitted that as the Opening Stock is a part of the revenue expenditure of the P&L Account and any reduction in the Opening Stock over the Closing Stock of the previous year, results in increase in profit. Thus higher the Opening Stock- higher the expenditure and lower the profit AND lower the Opening Stock - lower the expenditure and higher the profit.

In the instant case, closing stock of A.Y. 2019-20 was Rs.41,15,21,919/- and the Opening Stock of A.Y.2020-21 was Rs 38,18,04,706/-. Since the Opening Stock was lower by Rs.2,97,17,213/- as compared to the closing stock of the preceding year, the revenue expenditure for A.Y. 2020-21 was lower and the profit of the year higher by the said amount of Rs.2,97,17,213/-

This is because the expenditure incurred in respect of the Capital Asset has been reduced from the revenue expenditure by reducing the value of the Opening Stock. Hence we submit that the said addition of Rs2,97,17,213/- is not required to be made.”

5. Ld. Assessing Officer, however, did not accept the above contention and held that there is a difference in closing and opening stock. The closing stock

shown by the assessee in the A.Y 2019-20 was at Rs.41,15,21,919/- and opening stock for the A.Y 2020-21 was shown at Rs.38,18,04,706/-. Opening stock is a part of Profit & Loss A/c and Revenue Expenditure, whereas, the conversion of 'stock-in-trade' into 'fixed assets' is a part of capital expenditure and since capital expenses to acquire a business assets will last longer than a year, are not deductible as business expenses and, therefore, the Ld. Assessing Officer added this amount to the total income of the assessee for the assessment year under consideration. The Ld. Assessing Officer has noted in the assessment order that a show cause notice was issued to the assessee on 22/08/2022 to explain why the addition of Rs.2,97,17,213/- should not be made to the income of the assessee, but no reply or any submission was filed by the assessee in response to that and, thus, the same was added to the total income of the assessee.

6. Aggrieved by the order of the Ld. Assessing Officer, the assessee filed appeal before the Ld. CIT Appeal who decided the issue vide its Order No. ITBA/NFAC/S/250/2023-24/1057865127(1) Dated 10/11/2023 for Assessment Year 2020-21. The Ld. CIT (A), after giving due consideration of all facts and the accounting principles, held that there was no impact on the Profit & Loss A/c on transfer of opening 'stock-in-trade' to 'fixed assets' except the claim of depreciation thereon and, hence, no addition was required to be made by the Assessing Officer on this ground.

7. Aggrieved by the order of the Ld. CIT, the revenue has filed this appeal. The Ld. D.R. relied on the order of the Ld. AO. The assessee company, however, made submissions as under:-

- a. *“The appellant company, inter alia, imports and sells diagnostic kits (reagents) and the instruments (machines) used for determination of medical condition/diseases in human beings. The appellant's customers are Pathological Laboratories, Hospitals, etc.*
- b. *The Diagnostic Industry follows two models depending on the customer requirement.*
- c. *One model is that of outright sale of Diagnostic Machines to the customer who then may buy the Reagents for the tests, from any person of his choice.*
- d. *Another model (Reagent Purchase model) is the installation of the Suppliers machine at the premises of the customer with an agreement that the Reagents will be purchased only from the supplier company In this case the Diagnostic Machine remains the property of the Supplier who can take back the Diagnostic Machine at anytime.*
- e. *The appellant company has also followed both the models of business. The appellant company has installed machines at various places, under the Reagent Purchase Model, after entering into formal agreements with the customer regarding the Reagents to be purchased from the Appellant only, minimum guaranteed tests in a period, etc.*

Such Diagnostic Machines are installed at the customer's premises for a period of 2 to 5 years as per the agreement for the growth of the business of the assessee. These Diagnostic Machines are either taken back by the appellant company as per the agreement or the agreement may be renewed.

- f. Hence, the appellant company has classified such Diagnostic Machines installed at customer site under the Reagent Purchase Model (with the ownership remaining with the appellant company), as being part of Fixed Assets under the heading: Plant and Machinery and claims depreciation thereon u/s. 32 of the Income Tax Act, 1961.*
- g. The appellant company is not aware at the time of the purchase of the Diagnostic Instruments whether the same will be sold on an outright basis or will be installed at customer's premises under the Reagent Purchase Model, with an agreement for Reagent purchase and ownership being retained by the Company.*
- h. Therefore all purchases of Diagnostic Instruments are initially accounted as purchases and the value of any Diagnostic Instruments installed on Reagent Use Model is reduced from purchases and capitalized as Plant and Machinery. The same is not claimed as business expenditure but depreciation u/s.32 of the Act is claimed and which has been allowed. The unsold instruments are treated as part of closing stock.*

The value of any instrument forming part of the closing stock and installed, in the subsequent financial year, under the Reagent Purchase Model, is reduced from the Opening Stock and capitalized as Fixed Assets under the heading Plant and Machinery.

- i. During the Financial Year 2019-20 (A.Y. 2020-21), the appellant company installed Diagnostic Instruments of an aggregate value of Rs.2,97,17,213/- under the Reagent Purchase Model, from the opening stock of such instruments on 01.04.2019. That is to say that the said Diagnostic Instruments were originally purchased prior to F.Y. 2019-20 (A.Y. 2020-21) and being unsold as at 31st March 2019 were part of the Closing Stock as on 31st March 2019 which was the Opening Stock as on 1st April 2019 (relevant to A.Y. 2019-20).*
 - j. The appellant Company, therefore, reduced the value of such Diagnostic Instruments from Opening Stock and capitalized the same as Fixed Assets under the heading Plant and Machinery, during the A.Y. 2020-21.*
 - k. The effect of the above, was that the Opening Stock was reduced by Rs.2,97,17,213/- and the Fixed Assets increased by the same amount. The depreciation u/s. 32 of the Act has been claimed under the Income Tax Act, 1961 and the same has been allowed while framing the assessment.”*
8. The appellant also submitted a paper book containing the details of audited accounts and explained before us that the transfer of ‘stock-in-trade’ to ‘fixed assets’ will not make any impact on the Profit & Loss A/c.

9. We have considered the rival submissions and it is found that the Ld. CIT(A) in his impugned order has already explained that how this transfer of stock in trade to fixed assets is not going to impact the profit & loss A/c. and is not going to increase the income of the assessee. Finding no infirmity in the order of the Ld. CIT (A), we uphold the order of the Ld. CIT(A). The appeal of the revenue is, therefore, dismissed.

10. In the result, the appeal is dismissed.

Order pronounced in the open court on 26.06.2024.

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

**Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER**

Mumbai, Dated: 26.06.2024.
Snehal C. Ayare, Stenographer

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.