

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

HEARING THROUGH: VIRTUAL 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. 611/Chd/2022  
निर्धारण वर्ष / Assessment Year : 2018-19

The Asst. CIT Circle-1(1), Chandigarh	बनाम	M/s SML Isuzu Ltd. SCO 204-205, Sector-34-A, 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, CIT, DR  
सुनवाई की तारीख/ Date of Hearing : 12/08/2024  
उद्घोषणा की तारीख/ Date of Pronouncement : 30/08/2024

**आदेश/Order**

**PER PARESH M. JOSHI, J.M. :**

This is an appeal filed by the Revenue for the A.Y. 2018-19. The corresponding previous year is from 01/04/2017 to 31/03/2018. The appeal is filed under section 253 of the Income Tax Act, 1961 **by the Revenue**. Revenue is aggrieved by the order No. ITBA/NFAC/S/250/2022-23/1043626943(1) dt. 28/06/2022 of Ld. CIT(A) under section 250 of the Act, which is hereinafter referred to as the "**impugned order**".

**Factual Matrix**

2. The assessee is a public limited company engaged in the business of manufacture of commercial vehicles. For the year under consideration, the assessee filed its return of income on 30.11.2018 declaring a **loss of Rs.28,31,65,107**.

3. The return of income filed by the assessee was processed under section **143(1)** of the Income Tax Act, 1961 ('the Act') wherein an adjustment of Rs.2,42,59,980 was made to the income of the assessee and the **loss was assessed at Rs.25,89,05,126**.

4. **Thereafter, scrutiny assessment proceedings in the case of the assessee was completed vide order dated 24.09.2021 passed under section 143(3) r.w.s 144B,**

**assessing the total loss at Rs.20,23,45,760, after considering the loss determined in the intimation issued under section 143(1) of the Act as the starting point of computation and making addition on account of alleged under-valuation of closing work-in-progress ('WIP').** It is the factual position that during the year under consideration closing stock of work in progress was Rs. 44,79,95,000/- which was required to be loaded with Excise Duty applicable @ 12.625% amounting to Rs. 5,65,59,368/-. Which was added by Ld. AO order dt. 24/03/2021 [Section 145 (a)(ii)]

5. Challenging the **aforesaid addition(s)** made in the assessment order, the assessee filed an appeal before the CIT(A), which was decided in favour of the assessee vide order dated 28.06.2022 as and by way of "impugned order".

6. Aggrieved, the department is in appeal before the Hon'ble Bench.

7. In Form No. 36 which is form of appeal to this Tribunal the Revenue has raised the following grounds :

*(i) Whether the Ld. CIT(A) has erred on facts and in law by allowing the appeal of the assessee without appreciating the facts of the case.*

*(ii) Whether the Ld. CIT(A) has erred on facts and in law by deleting the addition amounting to Rs. 5,65,59,368/- on account of under valuation of closing work in progress by the assessee by not including the excise duty payable in the value of CWIP.*

*(iii) Whether the Ld. CIT(A), in the facts and circumstances of the case has erred in setting aside the issue of allowance / disallowance u/s 43B to the assessing officer and acted in violation of powers of the Ld. CIT(A) as amended through the amendment brought in clause (a) sub-section 1 of section 251 of the I.T. Act, 1961 through Finance Act, 2001 w.e.f 01.06.2001.*

*(iv) Whether the Ld. CIT(A), in the facts and circumstances of the case has erred in observing that amount of Rs. 2,42,59,981/- disallowed by the Assessing Officer in the order under section 143(3) on the basis of observations of the accountant in his report in Form 3CD, has been deposited before due date of filing of ITR u/s 139(1) of the I.T. Act, 1961 merely on the basis of a bald certificate issued by a C.A.*

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

8. The assessee company in response to above grounds of appeal has contended in "**synopsis**" as under"

**Re: Ground of appeal (i) & (ii) above:- alleged under valuation of closing work in progress**

- 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 profit and loss account.
- The assessing officer, however, simply following the orders for earlier years, made an addition of Rs.5,65,59,368 (being 12.625% of **work-in-progress of Rs.44,79,95,000**) on the ground that the assessee had failed to include excise duty for the purpose of valuation of '**closing work-in-progress**', which was in violation of provisions of section 145 A of the Act.

9. In this regard, it is respectfully submitted that the **notional addition** for excise duty made by the assessing officer is completely erroneous inasmuch as in terms of section 145 A 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**

10. In the facts of the present case, no duty was leviable on closing WIP in the first instance inasmuch 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 [refer Mc. Dowell & Company Ltd. vs. CTO: 154 ITR 148 (SC); CIT vs. Groz Beckert Asia Ltd: 296 ITR 401 (P&H)].

#### 11. **Issue squarely covered**

- 11. It is further respectfully submitted that the aforesaid issue of ad-hoc inclusion of excise duty in the value of closing WIP now stands covered in favour of the assessee vide order dated 14.05.2018 passed in assessee's own case for assessment year(s) 2005-06 to 2007-08,2010-11 to 2012-13 wherein similar addition made was deleted by this Hon'ble Tribunal holding as under (refer **pgs. 135-142 of PB**):

**"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 event 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 taxman.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. " (emphasis supplied)*

- 12. Following the aforesaid order, this Hon'ble Tribunal, vide order dated 20.03.2019 was pleased to delete similar addition made in the appeals for assessment years 2014-15 and 2015-16 (refer **pgs. 143-145 of PB**).

12. In view of the aforesaid, the addition made by the assessing officer, simply following the orders for earlier years, has rightly been deleted by the CIT(A).

**13. Re: Grounds of Appeal (iii) & (iv) : Disallowance of payment of bonus / Ex gratia made**

• 14. During the year under consideration, the assessee company claimed deduction of amount aggregating to Rs.2,42,59,981, **being payment of bonus / ex-gratia made after 31<sup>st</sup> March 2018 but before the due date of filing the return of income under section 139(1) of the Act i.e., 30.11.2018.**

• 15. The said payment, though claimed as deduction in the income tax return, was however, not reflected in the tax audit report since the same was made after the date of signing of the same.

• 16. In the draft intimation dated 10.05.2019, issued under section 143(l)(a) of the Act it was proposed to make an upward adjustment of Rs.2,42,59,981 to the income of the assessee for alleged mismatch in the amount of payment of bonus / ex-gratia reported in the income tax return vis-a-vis the tax audit report (refer **pg. 94-95 of PB**).

• 17. In response to the proposed adjustment, the assessee filed its response on 28.05.2019 duly explaining the reason for the mismatch (refer **pg. 97 of PB**).

• 18. However, in complete disregard of the explanation furnished by the assessee, the adjustment proposed in the draft intimation was confirmed in the final intimation dated 02.10.2019, issued under section 143(1) of the Act (refer **pg. 98-110 of PB**).

• 19. In this regard, it is respectfully submitted that the payment for bonus / ex-gratia made by the assessee was not reported in the TAR since the same was made after the date of signing of the TAR but before the date of furnishing the return of income for the year under consideration. The TAR, it is submitted, has been signed on **18.08.2018** whereas the payment of bonus / ex-gratia have been made on the following dates:

S.No.	Voucher Number	Date of Payment	Amount
<b>Bonus Payments</b>			
1.	100263437	30.10.2018	21,06,181
2.	100263439	30.10.2018	69,536
3.	100263440	30.10.2018	15,386
4.	2200002511		3,37,726
<b>Total Bonus Paid before 30.11.2018 (A)</b>			<b>25,28,829</b>

S.No.	Voucher Number	Date of Payment	Amount
<b>Ex-gratia Payment</b>			
5.	2200002374	31.10.2018	6,643,794
6.	2200002413	31.10.2018	7,238,378
7.	100263422	18.10.2018	7,488,494
8.	100263431	18.10.2018	179,815
9.	100263438	30.10.2018	269,661

10.	100263440	30.10.2018	15,191
11.	2200002486	30.10.2018	152,414
12.	2200002434	31.10.2018	22,500
13.	2200002435	01.11.2018	22,500
14.	220002688	17.11.2018	22,496
15.	2200002374	31.10.2018	19,634
<b>Total Ex-gratia Paid before 30.11.2018 (B)</b>			<b>2,17,37,151</b>
<b>Total statutory payment made before 20.11.2018 (A+B)</b>			<b>2,42,65,980</b>

• 20. **On a perusal of the aforesaid, it will be appreciated that the payment has been made after 18.08.2018, i.e., the date of signing the tax audit report and could hence not have been considered in the said report.**

• 21. Kind attention in this regard is invited to the provisions of section 43B of the Act which read as under:

**"Certain deductions to be only on actual payment.**

**43B.** Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of—

(c) any sum referred to in clause (ii) of sub-section (1) of section 36,

....

shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him :

**[Provided that nothing contained in this section [(except the provisions of clause (h)J] shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee alone with such return.**

(emphasis supplied)

• Section 36 of the Act reads as under:

**"Other deductions.**

36. (J) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28—

(ii) **any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission;**

....." (emphasis supplied)

14. Thus, on a combined reading of the aforesaid provisions of section 36 and section 43B, it will be appreciated that any payment of bonus made by an assessee **before the due date of filing the return of income** for that year shall be allowed as deduction in that year. In the facts of the present case as well, the payment for bonus / ex-gratia payment has, admittedly been made after the end of the year but before the due date of filing the income tax return under section 139(1) of the Act.

15. Kind attention in this regard is invited to the certificate dated 30.11.2018 issued by an independent Chartered Accountant duly certifying that the assessee company had made the payment of bonus / ex-gratia aggregating to Rs.2,42,59,981 before the due date of filing the return of income under section 139(1) of the Act (refer **pg. 122 of PB**).

16. In view of the aforesaid, the payment for bonus / ex-gratia made after the end of the year and after the date of signing the tax audit **report, but before the due date of filing the return of income was rightly claimed by the assessee and the action of the assessing officer in confirming the adjustment on this account has rightly been deleted by the CIT(A)**.

17. Even otherwise, it is a trite law that the opinion expressed by the auditor, is **not determinative/ binding as** the same only represents the auditor's view which may or may not be the correct position in law [refer *PCITvs. IL&FS Energy Development Company Ltd: 399ITR 483 (Del)*; *PCITvs. Escorts Ltd: 258 Taxman 402 (Del.)*].

18. In view of the aforesaid, the disallowance made under section 143(1) of the Act is not sustainable and the CIT(A) has rightly deleted the adjustment.

#### **Record of hearing**

19. The hearing took place before this Hon'ble Tribunal on 12/08/2024 when both the parties appeared before us and were heard on merits. The Ld. DR has placed heavy reliance on order of Ld. AO dt. 24/09/2021, which was set aside by the Ld. CIT(A) by passing impugned order.

It was submitted that Ld. AO has rightly added the amount of Rs. 5,65,59,368/--on account of under valuation of closing work in progress. The Ld. AO has rightly made additions under section 145A and so also under section 43B of the Act. It was finally prayed that impugned order be cancelled and that of Ld. AO be restored.

20. The Ld. AR has also contended that amount of Rs. 2,42,59,981/- which is payment on account of bonus /exgratia in para 6.4 is **held to be allowed** and on para 6.5 **it is partly allowed**. Hence there **is contradiction**. Further the Ld. CIT(A) has no power and it was open for Ld. CIT(A) to have called for what is popularly known as remand report from Ld. AO, which was in fact not called for hence impugned order is erroneous and ought to be set aside.

21. Per contra the Ld. AR has contended 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 profit & loss account.

(ii) The Ld. AO, however simply following the orders for earlier years, made an addition of Rs. 5,65,59,368/- (being 12.665% of work in progress of Rs. 44,79,95,000/- 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 provisions of section 145A of the Act.

(iii) He vehemently contends that the notional addition for excise duty made by the AO 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 includible for purpose of valuation of inventory and purchase and sales 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 factory / excise border of manufacture.

(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.

**Re: Ground of Appeal (iii) & (iv) :  
Disallowance of payment of bonus / exgratia made.**

(viii) It was emphatically contended that during the year under consideration, the assessee company **claimed** deduction of amount aggregating to Rs. 2,42,59,981/- being the amount of bonus/ex-gratia **made after 31/03/2018 but before date of filing ROI on 30/11/2018.**

(ix) That aforesaid was not reflected in Tax Audit Report(TAR) since payment was made after the date of signing of the same.

(x) Assessee in response to draft intimation dt. 10/05/2019, issued under section 143(1)(a) of the act proposed to make upward adjustment of Rs. 2,42,59,981/- to the income of the assessee for alleged mismatch in the amount of payment of bonus / exgratia reported in ITR vis a vis tax, a response was too filed by letter dt. 28/05/2019 explaining reason for mismatch however in complete disregard of the explanation furnished by the assessee company, the adjustment proposed in the draft intimation was confirmed in the final intimation dt. 02/10/2019 issued under section 143(1) of the

Act. Reliance was placed on Section 43B and 36 of the Act. It was finally contended that payments of bonus – exgratia are dt. 30/11/2018 and date of return of income is 30/11/2018 and **hence payment** actually made is on or before 30/11/2018 the date of return of income hence same should be allowed on combined and cumulative reading of section 43B/36 of Act. Amount is admittedly paid before end of year i.e; 31/03/2018 i.e on 30/11/2018 i.e date of filing of return of income and payment is same. That their claim is right and legitimate and action of Ld. AO in confirming the adjustment of this amount has rightly been deleted by CIT(A) in impugned order. Reliance on certificate of independent CA dt. 30/11/2018 was too made and **emphasized**.

### **Findings and Conclusion**

22. 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 squarely covered. The Ld. CIT(A) has rightly deleted the addition of Rs. 5,65,59,368/-. 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.

23. In so far as the issue of disallowance of Rs. 2,42,59,981/- being the amount of payment of bonus / ex-gratia made before due date of filing the return of income under section 139(1) of the Act i.e; 30/11/2018 we hold that requisite payment **perse appears** to have been made as is demonstrated before us(supra). We have also seen certificate issued by independent CA which is in paper book. We conquer with the contention of Ld. DR that **there are contradiction in the impugned order**. We hold that in para 6.4 of the impugned order appeal is allowed on this score whereas in para 6.5 appeal is partly allowed. **The Ld CIT(A) however has also observed that** while giving effect to this order the AO is directed **to verify** whether the assessee has made payment on account of bonus / exgratia of Rs. 2,42,59,981/- on or before 30/11/2018 and fulfilled the condition of section 43B of the Act. This according to us is **not remand**

but an act of limited verification as contended of AR of the assessee. **We conquer with the contention of Ld. AR** that limited verification to cross check is ordered which is **fair enough**. Further even section 43B/36 speaks of certain deduction shall apply only **on actual payment. Emphasis is on actual payment on or before of filing of return of income and evidence of such payment is furnished by the assessee**. We are therefore of the considered view that Ld. CIT has rightly asked the Ld. AO to cross check such evidence of payment and the date of such payment **a task primarily to be done by Ld. AO. On this issue, to seek remand report from Ld. AO or to contend that CIT(A) has no power of Remand is far fetched**. The Ld. CIT(A) in the impugned order is simply directing the Ld. AO to verify whether payment has been made on or before 30/11/2018 or not, so that it is verified factually that condition of 43B is **adhered to it or not by assessee**. The directions in sum and substance is on to "check evidence / proof of payment and the **relevant date of it**" therefore it can be said to be limited verification and not remand.

#### Order

24. In the result, the impugned order is sustained and appeal of the Revenue is partly allowed for statistical purposes. However we make it clear that Ld AO will do limited verification as clarified by us **basis order of Ld. CIT(A)**.

Order pronounced in the open Court on 30/08/2024.

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