

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 224/Ahd/2024
Assessment Year 2017-18**

Deputy Commissioner of Income Tax Circle-4(1)(1), Ahmedabad (Appellant)	Vs	SPX Flow Technology (India) Pvt. Ltd. Survey No. 275, Opp. Murlidhar Brts, Odhav Industrial Estate, S.O. Ahmedabad City, Ahmedabad, Gujarat PAN: AAACS7234B (Respondent)
--	----	---

**Revenue Represented: Shri Alpesh Parmer, Sr.D.R.
Assessee Represented: Shri Chetan Agrawal, A.R.,**

Date of hearing : 28-08-2024
Date of pronouncement : 04-09-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Revenue as against appellate order dated 19.12.2023 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2017-18.

2. The solitary ground raised by the Revenue reads as under:

a) The Ld.CIT(A) has erred in law and on facts in deleting the addition of Rs.2,74,57,704/- on account of unutilized balance of Modvat/Cenvat credit u/s.145A of IT Act.

b) The appellant craves leave to add, alter and/or to amend all or any the ground before the final hearing of the appeal.

3. The brief facts of the case is that the assessee is a company engaged in the business of manufacturing and trading of centrifugal pumps, homozinisers, valves, engineering procurement and trading of industrial filters having at its plant at Jaipur. The assessee filed its Return of Income for the Asst. Year 2017-18 on 30/11/2017 declaring total income of Rs.7,30,01,200/-. The case was selected for scrutiny assessment and the Assessing Officer held that the assessee has not included a sum of Rs.2,74,57,704/- in the value of closing stock being the amount of unutilized balances of taxes and therefore added back to the income and assessed the total income as Rs.10,04,58,900/-.

4. Aggrieved against the same, the assessee filed an appeal before Ld. CIT(A), who deleted the addition following his predecessor's order dated 04/01/2019 relating to the Asst. Year 2014-15 in assessee's own case. The Ld. CIT(A) held that the assessee is following the 'exclusive method' of accounting consistently. According to this method of accounting, payment and receipt of CENVAT is a balance sheet item and it is not debited nor credited in the Profit and Loss Account, thereby Ld. CIT(A) deleted the very same addition in the earlier years. Thus allowed the assessee's appeal for the present Asst. Year 2017-18.

5. Aggrieved against the same, the Revenue is in appeal before us. Ld. Sr. D.R. appearing for the Revenue supported the order passed by the Assessing Officer and directed to uphold the addition.

6. Per contra Ld. Counsel Mr. Chetan Agarwal appearing for the assessee submitted that the finding arrived by Ld. CIT(A) does not require any interference. Further Ld. Counsel submitted that this very same issue is settled in favour of the assessee by the Jurisdictional High Court in the case of ACIT-Vs-Narmada Chematur Petrochemicals Ltd. reported in 327 ITR 369 (Guj.), therefore requested to dismiss the Revenue appeal.

7. We have given our thoughtful consideration and perused the materials available on record. The Ld. AO made addition of Rs.2,74,57,704/- by invoking the provisions of Section 145A of the Act with respect to the unutilized balance of MODVAT/CENVAT credit with the Excise Authorities. The assessee is been consistently following “exclusive method” of accounting in respect of MODVAT excise duty paid on purchase of raw materials and therefore CENVAT credit on input is debited to a separate account i.e. MODVAT Credit Receivable, which is utilized for the payment of excise duty on finished goods. Accordingly, inputs consumed and inventory of inputs raw materials/components would be valued on the basis of purchase price, which is net of MODVAT credit. The above method is tax neutral, which is consistently followed by the assessee and accepted by the Department in the earlier years.

7.1. The Hon'ble Jurisdictional High Court in the case of Narmada Chematur Petrochemicals Ltd. (cited supra) held as follows:

".....The question to be asked is whether the system of accounting followed by the assessee excludes, for the valuation of the stock-in-trade, any cost other than the cost of raw materials so as to result in a distorted picture of true state of business for the purpose of computing the chargeable income. The emphasis is on the phrase chargeable income. If the duty of central excise is not due and payable, it cannot be termed to be a cost in relation to the raw materials. Such duty also cannot be termed to be a cost qua the finished goods appearing in the closing stock because, admittedly, on the said day (presumption being that such goods are excisable goods), no excise duty is due and payable at the said stage and for the purposes of the Excise Act, the levy is not complete unless and until sections 3 and 4 of the Excise Act operate together. If for the purpose of the said statute, which is the only statute under which duty of central excise can be levied and collected, the charge is not fastened, in law, it cannot be stated that for the purpose of computing chargeable income such a charge gets fastened qua the finished goods appearing as part of closing stock. To state so would result into an anomalous situation under the two statutes, the Excise Act and the Income-tax Act leading to contrary positions under both the statutes. The normal rule of interpretation should be to harmoniously read different statutes so as to ensure that there is no conflict in relation to the same transaction. This is subject to the exception that a specific provision appears in one of the statutes to indicate to the contrary. It is not possible to find any such specific provision either under the Excise Act or under the Income-tax Act. Hence, without there being any dispute as regards the general propositions laid down in the judgment of British Paints India Ltd. (supra), suffice it to state that in the facts of the instant case, even on application of the said general principles, the addition sought to be made by the revenue could not be sustained. [Para 27]

There is one more aspect of the matter. Such duty of central excise if added to enhance the value of closing stock would result in enhanced opening stock on the first day of the next accounting period, namely, 1-4-1997. So, next year's profits would get depressed accordingly. Over a period of time, the whole exercise results in evening out; in other words, revenue neutral. At the same time, while disturbing the value of the closing stock the assessing authority cannot change the method of accounting regularly employed. [Para 28]

The position, in law, is well-settled that making of an entry or absence of an entry cannot determine rights and liabilities of the parties. In other words, if the law does not lead to incurring of a liability, or does not lead to a corresponding right to insist on discharging such a liability, any accounting practice (even if suggested by the ICAI) cannot lay down anything to the contrary, [Para 29]

On behalf of the revenue reliance had also been placed on provisions of section 145A which has been inserted by the Finance (No. 2) Act, 1998 with effect from 1-4-1999. The assessment year being 1997-98 the said provision could not be invoked. What is more material is that the same relates to inclusion in the value of inventory the amount of any tax, duty, etc., paid or liability incurred for the same under any law in force, meaning thereby such tax, duty, etc., should have been actually paid or should be actually due and payable under the law applicable to such tax, duty, etc., in force. Otherwise even section 145A will also not carry case of the revenue any further. [Para 30]"

7.2. Respectfully following the above judgment of Jurisdictional High Court, we do not find any merits in the grounds raised by the Revenue.

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

Order pronounced in the open court on 04-09-2024

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 04/09/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद