

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

**Before: Shri T.R. Senthil Kumar, Judicial Member
And Shri Narendra Prasad Sinha, Accountant Member**

**ITA Nos. 964 & 965/Ahd/2019
Asst. Years. 2009-10 & 2011-12**

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| The DCIT, Circle-2(1)(2), Ahmedabad (Appellant) | Vs | M/s. Morakhia Copper & Alloys Pvt. Ltd. 12, 2 nd Floor, B-Wing, Mardia Plaza, C.G. Road, Navrangpura, Ahmedabad, Gujarat PAN: AAACM3439J (Respondent) |
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**Revenue Represented: Shri Nitin Vishnu Kulkarni, Sr.DR
Assessee Represented: None**

Date of hearing : 14-08-2024
Date of pronouncement : 23-10-2024

आदेश/ORDER

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

These two appeals are filed by the Revenue as against separate appellate orders both dated 25.03.2019 passed by the Commissioner of Income Tax [Appeals] -10, Ahmedabad, arising out of the assessment orders passed under section 144 rws 147 and 143(3) rws 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Years 2009-10 and 2011-12. Since identical ground is raised in both the appeals the same are disposed of by this common order for the sake convenience.

2. Today is the 24th time of hearing of the above appeals, None appeared on behalf of the assessee in spite of service of notices which were also returned unserved as party 'Left' the above address.

3. Ld. Sr. DR appearing for the Revenue placed on record that assessee company is before National Company Law Tribunal, Ahmedabad in CP(IB) 463 of 2019 wherein the present assessee is the respondent in the above proceedings which was listed for hearing on 31-07-2024 and adjourned to 04-09-2024. However no order copies placed on record and details about the case status before NCLT. Further the assessee is also not co-operative to the hearings of the appeal before this Tribunal in spite of service of notice, hence the appeals are taken up for hearing.

4. Brief facts of the case is that the assessee is engaged in the manufacturing of Ferrous and Non-Ferrous Metal. For the Asst. Year 2009-10, assessee filed its Return of Income declaring total income of Rs.81,87,062/-. Regular assessment u/s. 143(3) was completed on 21-11-2011 determining the total income at Rs.86,79,810/- being the difference u/s. 145A of the Act. It is thereafter the assessment was reopened on the ground that the assessee had shown unutilized credit of Rs.1,73,48,704/- under the head "loans and advances" but the same was not included in the closing stock which has resulted in escapement of income.

4.1. In reply, the assessee vide its letter dated 13-07-2016 explained that the value of excise and other items which were not eligible for CENVAT credit were already included in the purchase and thus the closing stock was inclusive of such taxes. However portion of the taxes eligible for CENVAT Credit were routed through balance sheet and thus neither the same were included in the purchase nor the same were reflected in the closing stock. However the above explanation was not

accepted by the Ld. AO and added the unutilized credit of Rs.1,73,48,704/- as the income of the assessee.

5. Aggrieved against the reassessment order the assessee filed appeal before Ld. CIT[A] who deleted the addition following jurisdictional high court judgment in the case of Gujarat Gas Co. Ltd by observing as follows:

"5.2. I have considered the facts of the case, submissions placed by the Appellant and the Assessment order. The appellant has a practice to value its closing stock as per "exclusive method of Accounting According to the Appellant, the value of excise and other items which were not eligible for CENVAT credit were included in the purchases whereas the portion of taxes eligible for CENVAT credit were routed through balance sheet and thus neither the same were included in purchases nor, the same were reflected in closing stock. However, AO on perusal of balance sheet found that the Appellant has shown unutilized CENVAT credit amounting to Rs.2,47,75,412/- which was parked under the head "Loans & Advances" at the year end. AO further found that the similar balance stood at Rs. 74,26,708/- at the start of the year. Accordingly, the learned AO added the difference of the above i.e. Rs. 1,73,48,504/-u/s 145A of the Act after holding that such non-inclusion of CENVAT credit in the profit and loss account, results in understatement of income.

In the instant case, the dispute is regarding valuation of closing stock in view of the provisions of section 145A of the Act. The Assessing Officer observed that the Appellant has not included the element of CENVAT which was paid by the Appellant on his purchases of raw material. On the other hand the claim of the Appellant is that by inclusion of this CENVAT in the closing stock there will no effect in the profit as the corresponding amount will also be then included in their purchases in support of the above argument relied upon the view expressed by the Institute of Chartered Accountants of India in its guidelines, wherein it was explained that following of either inclusive method of accounting or exclusive method of accounting will not have any effect on the profit disclosed by the profit and loss account. Therefore, the total purchase was stated to have been reduced by the amount of CENVAT which in turn was utilised against the payment of taxes on sale of the finished goods. It was therefore submitted before the Assessing Officer that as the Appellant has debited the purchase of raw material excluding the CENVAT element, the closing stock was rightly valued by them at the purchase value less CENVAT credit. As per the Appellant, if the value of stock was increased in their case then simultaneously the value of purchase would also have increased. It was

therefore, contended that there would not be any impact on profit either by using "inclusive" or "exclusive method. The contention of the Appellant was however, not accepted by the Learned Assessing Officer

I find that the Appellant has provided a statement of MODVAT A/c vide Annexure-7 to Form 3CD referred at page no. 41 of paper book, the details of which has been certified by the Chartered Accountant. Perusal of the statement, I find that the Appellant has shown, opening balance of CENVAT at Rs. 74,26,708/- and the closing balance has been shown at Rs. 2,47,75,412/- Relying upon the figures, therein, the difference of the same amounting to Rs. 1,73,48,504/- has been subject matter of addition u/s 145A of the Act, by the AO. I further find that the Appellant has not included such CENVAT credit while recording its purchases of goods as well as while recognizing its Capital Asset

In my opinion, Section 145A requires revaluation of not only inventory but also requires revaluation of purchase and sales. On revaluation of purchase by including the amount of CENVAT in respect of which credit is available to the Appellant, the purchase of the Appellant will increase resulting in corresponding decrease in the profit of the Appellant. The Appellant's contention that value of closing stock is credited in the profit and loss account to set off the value of unconsumed items of purchase and therefore, both should have same basis cannot be controverted.

As held by decision of jurisdictional High Court in the case of Gujarat Gas Co. Ltd, that no addition shall be made u/s 145A of the Act in case amount is standing in the "Modvat Receivable Account" if the corresponding figure is not routed through purchases. Respectfully following the judgment of Jurisdictional High Court in the case of Gujarat Gas Co. Ltd, I find myself in agreement therewith that there will be no effect on the profit of loss arrived at either by following inclusive method of accounting or exclusive method of accounting for excise duty.

In view of the discussion made hereinabove, in my opinion, there will be no effect in the taxable profit of the assessee by including the amount of CENVAT paid on purchases in the value of closing stock of raw material, whether as raw material or as forming part of work-in progress or finished goods. Thus, the addition made by the AO, amounting to Rs. 1,73,48,504/- u/s 145A of the Act is hereby deleted. Hence, Ground No. 2 of the Appeal, is hereby allowed."

6. Aggrieved against the appellate order, the Grounds of Appeal raised by the Revenue in both the appeals are as under:

1. The Ld.CIT(A) has erred in law and on facts in deleting the addition of unutilized CENVAT Credit to the Closing stock and not considering the provisions of Section 145A of the IT Act ?

2. The appellant craves leave to amend alter any ground or add a new ground, which may be necessary.

7. The Ld. Sr. DR appearing for the Revenue placed Mumbai Bench Decision in the case of Hercules Pigment Industry Vs. ITO reported in (2013) 35 taxmann.com 650 dated 29-05-2013 to justify the addition made u/s. 145A of the Act.

8. We have given our thoughtful consideration and perused the materials available on record. We have heard the Ld. DR and also perused the materials available on record. It is seen from record, the assessee has shown opening balance of CENVAT at Rs.74,26,708/- and the closing balance at Rs.2,47,75,412/- . The Ld. A.O. added the difference of the same amounting to Rs.1,73,48,504/- u/s. 145A of the Act. It is further seen that the assessee has not included such CENVAT credit while recording its purchases of goods as well as while recognizing its capital assets. As per Section 145A which requires re-valuation of not only inventory but also requires re-valuation of purchase and sales. The Jurisdictional High Court Judgment in the case of ITO -Vs- Gujarat Gas Co. Ltd in TA No.90 of 2017 dated 07-02-2017 held as follows:

“3.03. Now, so far as question No. (B) i.e. with respect to addition made by the A.O. on account of unutilized modvat/cenvat credit of Rs.56,08,089/- is concerned, it is required to be noted that the learned tribunal has taken note that with respect to modvat receivable account, there is corresponding less debit to the purchase account and hence to that extent there is already Income offered for tax. If that be so, there was no question of further adding modvat/cenvat credit to the income of the assessee for the year under consideration. Under the circumstances, we see no reason to interfere with the impugned judgement and order passed by the learned tribunal so far as confirming the order passed by the learned CIT(A) deleting the addition made by the A.O. on account of unutilised modvat/cenvat credit of Rs.56,08,089/-. We are in complete agreement with the view taken by the learned tribunal.”

8.1. The Ld. CIT(A) has followed the Jurisdictional High Court Judgment, in the case of - Gujarat Gas Co. Ltd (cited supra), thus we have no hesitation in confirming the order passed by the Ld. CIT(A). Since there is Jurisdictional High Court Judgment is in favour of the assessee, the above Tribunal decision in the case of Hercules Pigment Industry relied by Sr. DR is not entertained. Thus the ground raised by the Revenue are devoid of merits.

9. In the result, both the appeals filed by the Revenue are hereby dismissed.

Order pronounced in the open court on 23-10-2024

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER
Ahmedabad : Dated 23/10/2024

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