

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI  
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No.3592/Del/2014  
(Assessment Year: 2009-10)

DCIT, Circle-14(1), New Delhi	Vs.	Padmini VNA Mechantronics P Ltd, 5, Padmini Enclave, Hauz Khas, New Delhi PAN:AACCV1001F
<b>(Appellant)</b>		<b>(Respondent)</b>

Revenue by :	Sh. FR Meena, Sr. DR
Assessee by:	Sh. Raj Kumar, CA
Date of Hearing	04/04/2017
Date of pronouncement	19/04/2017

**ORDER**

**PER PRASHANT MAHARISHI, A. M.**

1. This appeal is preferred by the revenue against the order of the Id CIT(A)-XXIV, New Delhi dated 10.03.2014 for the Assessment Year 2009-10.
2. The revenue has raised the following grounds of appeal:-
  - "1. That on the facts and in the circumstances of the case and in law the Ld. CIT (A) erred in deleting the addition of Rs.4,30,148/- ignoring the provisions of Rule 8D r.w.s. 14A of the IT. Act and the fact that there was no separate infrastructure and personnel in respect of earning exempt income and taxable income.
  2. That on the facts and in the circumstances of the case and in law the Ld. CIT (A) erred in deleting the addition of Rs. 1,46,65,041/- made on account of valuation in stock without appreciating the fact that the assessee has treated the entire material as obsolete and value it at NIL as on 31.03.2009 and again used the same material in the immediately next year."
3. The brief facts of the case is that the assessee is a company carrying on business of manufacturer and supplier of various types of auto electric parts for vehicles who filed its return of income on 29.09.2009 showing total income of Rs. 115012110/-. The assessment u/s 143(3) was made on 30.12.2001 wherein, the assessment was framed at Rs. 131093573/-. The assessee preferred an appeal before the Id CIT(A) who deleted the disallowance made vide his order dated 10.03.2014. The revenue aggrieved with the order of the Id CIT(A), has preferred an appeal before us.

4. The first ground of appeal is against the deletion of disallowance of Rs. 430148/- u/s 14A of the Income Tax Act, 1961 applying the provisions of Rule 8D of the Income Tax Rules. During the year dividend of Rs. 3462184/- was received and the assessee did not disallow any sum u/s 14A and therefore, the assessee was asked to clarify. The assessee submitted that there is no nexus between the interest bearing funds and the investment made and therefore, expenditure cannot be artificially disallowed. It was further submitted that exemption from dividend and mutual fund suffers the tax at source. The Id Assessing Officer rejected the explanation of the assessee and held that assessee is keeping common consolidated accounts for earning its income earning as well as exempt activities, hence, the argument of the assessee that no exempt income was earned cannot be accepted. It is further held by him that as common infrastructure, common personnel are used therefore, the argument of the assessee is not correct. Thereafter, he invoked the provisions Rule 8D holding that he is not satisfied with the correctness the claim of the assessee that no expenditure has been incurred by him in relation to exempt income. Accordingly he disallowed 0.5% of average value of investment amounting to Rs. 86029618/- u/s 14A of the Act. the Id CIT(A) deleted the disallowance holding that in the past year i.e. AY 2008-09 on identical facts and circumstances no disallowance was made and further, there is no finding of the AO as too why he is not satisfied with the claim of the assessee that there exists no expenditure incurred for earning exempt income.
5. The Id DR vehemently supported the order of the Id Assessing Officer and stated that AO has recorded the satisfaction which is objective and only 0.5% of the average value of investment has been disallowed u/s 14A of the Act.
6. The Id AR submitted that the assessee has not incurred any expenditure as dividend income directly credited to the bank account, no disallowance was made in AY 2008-09 in similar circumstances and further, Id Assessing Officer did not record or pointed out any expenditure incurred by the assessee. He relied on the decision of Hon'ble Delhi High Court in case of CIT Vs. Hero Management Services Ltd 360 ITR 68, CIT Vs. Taikisha Engineering India Ltd 275 CTR Del 2016, decision of Punjab and Haryana High Court in

case of CIT Vs. Deepak Mittal 38 Taxmann. Com 83, CIT Vs. Om Prakash Khaitan 138 DTR Del 197.

7. We have carefully considered the rival contentions. It is undisputed fact that the assessee has earned a dividend income of Rs. 3462814/- on account of investment in mutual funds. The Id Assessing Officer has disallowed only other expenditure @0.5% of the average value of investment applying provisions of Rule 8D of the Income Tax Rules. The impugned Assessment Year in the appeal AY 2009-10, therefore the provisions of Rule 8D are applicable. The assessee has not made any disallowance on his own and submitted that it has not incurred any expenditure for the purposes of earning exempt income. The Id Assessing Officer for the purpose of recording a satisfaction he Id that as the assessee is maintaining composite account and therefore the common faculties and resources have been used, it cannot be said that the assessee has not incurred any expenditure for earning exempt income. This is what the satisfaction therefore he recorded that he is satisfied that explanation given by the assessee is not correct and then proceeded to apply the provisions of Rule 8D of the IT Rules. The provisions of section 14A(2) provides that AO must test the correctness of the claim of the assessee that it has not incurred any expenditure in relation to exempt income with regard to the accounts of the assessee and then only he can determine the amount of disallowance applying the prescribed Rule. The satisfaction of the assessee has to be based on conclusive finding or scrutiny of the accounts pointing out the fact that the expenditure as been incurred by the assessee if the claim is that the assessee has not incurred any expenditure and when assessee determines himself the disallowance then whether it is correct or not. in the present case the Id Assessing Officer has merely given the reason that the assessee has maintained composite books of accounts and further common faculties have been used for the purpose of earning exempt and taxable income. The manner of recording the satisfaction is absolutely vague for the reason that had assessee maintained separate books of account for taxable income as well as exempt income the issue of applicability of Rule 8D would not have at all have arisen. Furthermore, which common facilities have been used and what is expenditure incurred for those common facilities are not stated by the Id Assessing Officer. The satisfaction has to be

objective, specific and based on the facts as recorded in the books of accounts of the assessee and cannot be general in nature and vague.. In view of this we are not inclined to accept that Id Assessing Officer has recorded a 'satisfaction' as required under the provisions of provisions of section 14A(2). Decisions cited by Id AR also support the above finding with respect to recording of satisfaction by the AO. We also have perused the order of the Id CIT(A) who deleted the disallowance also for the reason that no similar disallowance was made in AY 2008-09. We do not agree with this finding of the Id CIT(A) for the reason that on perusal of the order of the AY 2008-09 which is at page No. 163 of paper book submitted by the assessee shows that no assessment was made in case of the assessee for AY 2008-09 u/s 143(3) of the Act. The assessee's return of income was accepted u/s 143(1) of the Act and further it was reopened u/s 147 and Id Assessing Officer made disallowance in that order only with respect to reasons for which the reopening was initiated. In view of this it is correct for Id CIT(A) to hold that as no disallowance has been made in AY 2008-09 no disallowance can be made in this year too. With respect to the finding of the Id CIT(A) regarding consistency to be followed relying upon the decision of Hon'ble Supreme Court in case of Radha Swami Satsang Vs. CIT 193 ITR 321 we are reminded of the decision of the Hon'ble Supreme Court in case of Distributors of (Baroda) Pvt Ltd. Vs. Union of India 22 Taxmann 49 (S.C) wherein it has been held that to perpetuate an error is heroism to rectify it is the compulsion of judicial conscience. However, as on the issue of improper satisfaction recorded by the Assessing Officer we direct the Id Assessing Officer to delete the disallowance of Rs. 430148/- u/s 14A of the Act. in the result ground No. 1 of the appeal of the revenue is dismissed.

8. Ground No. 2 of the appeal of the revenue is against the order of the Id CIT(A) in deleting the addition of Rs. 14665041/- on account of valuation of closing stock. During the year the assessee has valued the raw material of above sum in the closing stock at nil value stating that the raw material had become trustee and was not up to the mark. It was further stated that material was to fulfill export orders, which stop after September 2008, and such material was not usable. The same material was reused in subsequent years after rework. Hence, the valuation was correctly made. The Id Assessing

Officer rejected the contention of the assessee as obsolete item has been used in a very short time therefore, according to him it cannot be said that such material was correctly valued at nil. The Id CIT(A) deleted the disallowance.

9. The Id DR vehemently contested the order of the Id CIT(A) supporting the order of the Id Assessing Officer. he reiterated the contention as per para No. 5 of the order of the AO.
10. The Id AR vehemently supported the order of the Id CIT(A). he narrated the same facts as were submitted in para No. 5.1 before the Id CIT(A). in the nutshell his argument was that the issue is revenue neutral, the next year material was used and final goods are sold therefore the cost is not booked in the next year and consequently higher profits are shown. It was further contended that the valuation has been done according to the method of accounting regularly followed by the assessee. He also relied upon the same documents, which were relied before the Id CIT(A) and also took us through them in the paper book.
11. We have carefully considered the rival contentions. The Id CIT(A) has dealt with this issue in para No. 5 of his order considering the arguments of both the parties as under:-

*"5. The third ground of appeal is against addition of Rs. 1,46,65,041/- made for under - valuation of closing stock. On perusal of Schedule 7 of the Balance Sheet., the AO noticed that the raw material costing Rs.1 ,46,65, 041/- was valued in the closing stock inventory at NIL. The AO asked the appellant to justify the valuation of said inventory at NIL. The Appellant submitted that such items of the raw material had become rusty and was not upto the mark. It was also explained that the item manufactured there from was for export purposes and there was an overall recession in the auto world market of the customers, therefore, the export order was stopped after September 2008 and for this reason also those items could not have been used for manufacturing. Under these facts the management took a decision to written off the value of said stock as at NIL. The appellant also explained that in subsequent years, job work was done on the said material due to which it could be made re - useable and has been used in subsequent years for manufacturing when the recession period was over. The appellant also the details of such obsolete items and details and evidences of movement of these items in subsequent years. The AO after examining the explanation^ the appellant rejected the same. He noted that the assessee has been manufacturing auto electric parts OEM (original equipment manufacturers) which are*

supplied to reputed vehicle manufacturers and exporters outside India, therefore, the assessee cannot afford to use raw material of such nature which is of discarded nature as being non - useable because by use of such raw material, the finished products will become liable to be rejected. The AO, hence, formed a opinion that since these obsolete items have been used in a short period, therefore it cannot be said that these items were worthless as on 31.03.2009. The AO also held that these items were neither sold as a scrap nor were thrown away but were re - used. Under these circumstances, he held that the releasable value for these items as on 31.03.2009 cannot be considered as NIL. Hence, accordingly, he adopted the valuation of these items for the purposes of closing stock valuation at Rs. 1,46,65,041/-.

5.1 Before me, the Ld. AR submitted that there were such 7 items in the stock, the costing of which was of Rs. 1,46,65,041/- . These items were used as a raw material for manufacturing auto part which was exported only to one party in Spain namely Valeo Termico Motor. These items were found to be not in proper condition to be used for manufacturing as well as they got rusted also. The item exported by the assessee being manufactured from these raw materials was being used as a part of vehicles manufactured by said Spain company. Under no circumstances, any item containing imperfect inputs can be exported because the same will be rejected. Further, it has been explained that there was a slump in the automobile industry during that period. The said company also did not give any order after September 2008. There was no hope of getting a further order from the said company in near future. These raw material items could have been used only for manufacturing the automobile part for export to the same Spain company. Under these facts, a decision was taken to adopt its valuation as on 31.03.2009 at NIL, since, these items were not expected to be of any value and use in future. However, subsequently in June 2009, the assessee got export order from the same Spain Company. At that time, those raw materials were re - examined and after getting job work done thereon for Rs. 20,11,2007/- in A.Y. 2010 - 2011, the same could be re - used. It has been claimed that the job - work expense on these items has been duly accepted in A.Y. 2010 - 2011, although u/s. 143 (1) and the sales made after using these raw materials also stands accepted and assessed. It has been also submitted that in this case, when the said raw material has been re - used in subsequent years, at that time no cost has been taken into consideration of these items and the effect of the sale has been that the effect of Rs. 1,46,65,041/- automatically gets neutralized in subsequent years as and when the sales of these raw materials items have taken place. In view of this it has been claimed that there is absolutely no justification for not accepting the valuation of these items at NIL as on 31.03.2009. It has also been submitted that the excise duty reversal on this stock has been done by the appellant on account of putting valuation at NIL of these items and later on, as and when, these items have been used for manufacturing, the CENVAT credit has been taken. It has been submitted that this reversal as well as

subsequent grant of CENVAT credit has been duly accepted by the Excise Department after examination. In view of these contention it has been claimed that the addition needs to be deleted.

The submissions of the appellant on this issue are abstracted below for ready reference:-

“The AO noticed that raw material costing at Rs. 1,46,65,041/-, part of which was purchased during the year and part was coming as opening balances was taken at NIL value in the closing stock inventory as on 31.03.2009. These were the items of raw material used for manufacturing automobile parts for export to Spain to M/s. Valeo Termico Motor, as an input for manufacturing of vehicles by the Spain company. It is also undisputed and admitted that part of this stock was utilized in manufacturing in A.Y. 2010 -2011, part in A.Y. 2011 - 2012, the balance which was very nominal was used in A.Y. 2012 - 2013. The AO held that it is very strange that an item which became obsolete during a short period and valued at NIL was again found to be of the same value in subsequent years and since these items were not sold as scrap nor was thrown away, therefore, the AO rejected the closing valuation of these items at NIL and adopted the same at its cost value at Rs. 1,46,65,041/-. Consequently, he increased the valuation of closing stock by this amount, which resulted into increase in the assessable profits by Rs. 1,46,65,041/-. The findings of the AO are legally as well as factually erroneous for the following submissions.

A. The assessee valued the inventory of Rs. 1,46,65,041/- at NIL as on 31.03.2009. The reason thereof was clarified vide Para - 12 of letter did, 23.12.2011. There were several reasons for valuing the same at NIL. The first one being that all these items were made of iron & steel. The same got rusty and in that condition they were not found useable. The assessee was not very sure as to that these can be again put back to a condition for making them re-useable. These items were used as input for manufacturing automobile parts which were to be exported only to one party namely M/s. Valeo Termico Motor, Spain, for manufacturing the four wheeler vehicles by them. Strict quality measures need to be applied for manufacturing these items, therefore, even on finding a small defect / shortcoming, the usability of said items comes into doubt. It is for this reason that it was decided by the management to value these items at NIL. The second and contributory reason, for valuing at NIL was that there was a great recession in the automobile world and the export orders were not received. The assessee, did not receive any order from the said company after September 2008 till June 2009' and there was no hope of getting further order as on 31.03.2009. In that case, since, those items were useable only for manufacturing particular automobile part for the said company, therefore, under these facts it was thought that this item should

be taken at NIL value. Hence, there existed a reasonable cause for valuing the same at NIL. It is submitted that it is for the assessee to take these decisions under the facts and circumstances, which are known only to the assessee. Therefore, the view of the AO that it should not have been valued at NIL cannot be vouched.

B. That kindly refer to the policy and method of valuation of stock which is consistent and persistent since past and always stands accepted. This method is mentioned in Clause 12 (a) of tax audit report in Form - 3 CD. It is as under :-

"1) Raw material are valued at lower of cost (on first in and first out basis) and net realisable value."

The assessee since, evaluated the said raw material as of no use, therefore, its value was valued at NIL. This valuation was being done as per the method of valuation of stock as regularly adopted. The copy of Board resolution and engineers certificate to this effect is attached.

C. That the said material was got corrected by getting the necessary job -work of polishing etc. being re - done from July 2009 onwards after which it became reuseable. The said raw material, thereafter, was used for manufacturing of the same item partly in A.Y. 2010 - 2011, 2011 - 2012 and 2012 - 2013 after the assessee received the first export order from the said company in the month of June 2009. These facts as well as the fact that the said item had become un - useable as on 31.03.2009 stands clear from the following documents attached:-

- Evidence showing the receipt of export order after a long gap.
- Invoices for rectifying the defect and polishing of the said articles from 06.07.2009 onwards incurring job - work expenses of Rs. 20,11,200/- in A.Y. 2010-2011.
- Details of items of raw material alongwith details of opening quantity, purchases during the year and closing quantity.
- Details of these items being used in manufacturing, year wise, i.e. in A. Y. 2010- 11, 2011 -12& 2012- 13.
- Stock ledger a/c. of all individual items of this stock for A. Y. 2009 - 2010, 2010 - 2011, 2011 - 2012 & 2012 - 2013 showing its issue for manufacturing.
- Reversal of CENVAT credit on account of taking its valuation at NIL.
- Taking back the benefit of CENVAT credit on the items as and when the same were re - used for manufacturing. The clean audit report for F.Y. 2009 -

2010 & 2010 - 2011 of Excise Deptt. w.r.t. RG - 1 records.

- The letter sent by Central Excise Deptt. to AO dtd. 22.12.2011 confirming the grant of reversal of CENVAT credit for said items, which was asked for by the AO during Asstt. Proceedings.
- Ledger a/c. of M/s. Valeo Termico Motor, Spain, for A.Y. 2009- 10. -do—A.Y. 2010-2011.
- Board resolution.
- Engineers certificate.
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The above documents prove that the said stock became un - useable, therefore, it was rightly taken at NIL as on 31.03.2009 as per the decision taken by the management. Further, excise deptt. also verified this fact. Hence, the fact of items being in the nature of obsolete as on 31.03.2009 stands proved. During the Asstt. the AO himself directly verified the fact of reversal of CENVAT credit on account of writing off this stock. He was directly communicated by the Excise Deptt. duly confirming these facts.

- D. That further, all these items have been used into manufacturing in subsequent years after carrying out necessary rectifications as was needed. The evidence of the same has already been given in Para - C above.

Now, obviously, the value of these inputs in the subsequent year(s) is at NIL, while the items manufactured by the use of these raw material stands sold and has been declared in the sales. It is to be submitted that it is absolutely undisputed that these items have been used in manufacturing and thus, included in sales of the subsequent years. The result of this is that, the effect of valuation being taken at NIL as on 31.03.2009 stands neutralized and covered up appropriately in the years in which the sales have taken place after these items were used in production. Thus, it is not a case where the declaration of stock at NIL has been of any real effect in the income of the assessee.

- E. That the incurrence of job - work of Rs. 20,11,200/- being incurred in A.Y. 2010 - 2011 for rectifying these items stands declared and accepted, although u/s. 143 (1) and further the sales of the items manufactured by re -use of these raw material has also been assessed in subsequent years also proves the correctness and genuineness of the claim.
- F. That further, even otherwise also, in case, the closing stock valuation of one year increases, correspondingly the opening stock valuation of the next year will stand

increased by the same amount. This consequential change will automatically reduce the profits of next year by the same amount. The point to be made by this contention is that, there cannot be any reason for any assessee to value its stock at a lesser value, since, he is not going to be financially benefited by that treatment. In other words, the result of the findings of the AO is absolutely tax neutral.

G. That the Asstt. for A.Y. 2010 - 2011 stood completed u/s. 143 (1) by adopting the opening stock at the same value as was declared by the assessee as on 31.03.2009. This proves that since, the pending stock of A.Y. 2010 -2011 stands accepted, therefore, the closing stock of A.Y. 2009 - 2010 cannot be disturbed since these are corresponding figures which are taken as it is. H. Further, Asstt. of A.Y. 2011 - 2012 has already been completed u/s. 143 (3) on the basis of stock valuation as was done as on 31.03.2009. This also proves that the action of disturbing the stock valuation as on 31.03.2009 is not justified.

H. That very recently Hon'ble Delhi High Court in the case of CIT VS. Huges Communication India Ltd 215 TAXJvJ&N-jM (DEL), in Para - 7 of the judgment has elaborately discussed the issue of valuation of closing stock. IT has been held as under :-

"7. The findings recorded by the Tribunal are not challenged. In fact the learned standing counsel fairly stated that the assessee can value the stock at the lower of the cost or the net realisable value as it is a recognised and accepted method. He, however, submitted that the claim of the assessee was not supported by any details. But this submission is contrary to the finding of the Tribunal which has referred to the assessee's letter dated 27.12.2006 submitted before the assessing officer along with the necessary details in support of the valuation. These details have also been extracted by the Tribunal in para 11 of its order. We are, therefore, unable to accept the contention of the revenue that the claim of the assessee remains unsupported. It is also to be noted that on a question of valuation of the closing stock, any alleged difference or discrepancy tends to balance itself out over a period of years if the same method is consistently followed. This is because the closing stock of one year becomes the opening stock of the succeeding year and any addition made to the valuation of the closing stock to increase the profits for that year automatically gets neutralised when the same figure of closing stock is taken as the opening stock of the succeeding year. What is, therefore, more important to be seen is whether the same method of valuation of stock is followed consistently by the assessee so that there is no distortion of profit. There is also no finding to the effect that the true profits of the business cannot be determined having regard to the method of

valuation of stock employed by the assessee. It may be noted that in *India Motor Parts & Accessories (P.) Ltd. v. CIT* [1966] 60 ITR 531 (Mad.) the Madras High Court noted that the method of valuing the slow moving and obsolescent stock at a price below the cost was a recognised method in other countries and can be properly followed in India too." In the case of the assessee also there is no dispute that the method of valuation of stock is consistent. There is also no finding in the Asstt. Order that the true profits of the business cannot be determined having regard to the method of valuation of stock employed by the assessee. The ratio of this decision squarely applies to the facts of present case.

Further, some more relevant authorities on the issue under consideration are as under-

*CIT VS. Hotline Teletube & COomponents Ltd* 175 TAXMAN 286 (DELHI) Section 28(i), read with section 145, of the Income-tax Act, 1961 - Business loss/deductions - Allowable as - Whether provision made by assessee for diminution in value of stock available with it on account of stock having become obsolete and old could be allowed as business loss - Held, yes. *Kopran Drugs Ltd* VS. ACIT 35 DTR (MUMJ(TRIB) 380 Held that - Value of inventories was required to be shown at 'net realisable value' as on the close of the financial year same being less than actual cost and, therefore, claim for write off is allowable in the relevant year. J. Without prejudice, alternatively, in case, the above submissions do not find favour to your goodself for any reason whatsoever, then it is submitted that the AO should be directed to adopt the opening stock figure as on 01.04.2009 as increased by Rs. 1,46,65,0417- which will result into reduction of assessed income of A.Y. 2010-2011 by Rs. 1,46,65,041/-."

5.2. I have carefully examined this issue. There were seven items of raw material which were purchased by the assessee partly in earlier years and partly in A.Y. 2009 - 2010 for Rs. 1,46,65,0417-. The assessee valued the same at NIL in the closing stock inventory in 31.03.2009. Two main reasons have been assigned for valuing the same at NIL. The first one being that these items got rusted and were therefore, not considered to be useable. It was so since, these were the raw materials for manufacturing automobile parts. This automobile part was exclusively for export to Spain to M/s. Valeo Termico Motor, where it was used as an input for manufacturing automobile vehicles. Any material which is not absolutely upto the mark could not have been used for manufacturing the items for export since, it might have resulted in to rejection of goods or rejection of vehicle by the customers bringing a big financial loss and reputation loss as well as fear of losing the customers. The other reason being that there was a big recession in the automobile markets. There were no export orders from the said Spain Company after September 2008. There was also no expectation of getting orders in the near

future. The said raw material was not useable for any other manufacturing. Hence, it was considered that these items, now being not of required quality and since, may not be required for manufacturing on account of no orders; therefore, its valuation was considered at NIL as on 31.03.2009. The appellant again got order from the said Spain company in the month of June 2009. At that time, those items were re-examined and after getting the job - work polishing etc. done thereon for a cost of Rs. 20,11,2007- in A.Y. 2010 - 2011, the same were found useable for manufacturing the automobile part. These items were again used for manufacturing the automobile parts which were sold in due course. At the time of taking back these items for manufacturing, the input cost for these items has been taken at NIL i.e. no cost has been booked for the use of these items for manufacturing the relevant automobile part. The appellant has also supported his contentions by furnishing various documents like evidence showing the receipt of export order in the month of June 2009 after a long gap, the evidence of job - work expenses of Rs. 20,11,2007- in A.Y. 2010 - 2011 on those items, the details showing the issuance of said raw material for manufacturing in A.Y. / 2010-2011, 2011 - 2012 & 2012-2013, stock ledger a/c. of these individual items for A.Y. 2009 - 2010, 2010 - 2011, 2011 - 2012 & 2012 - 2013 showing use of these items for manufacturing in these years, evidence of reversal of CENVAT credit, the evidence showing the benefit of CENVAT credit being taken subsequently in the years of re-use of manufacturing, audit report by excise Deptt., the letter sent by the Excise Deptt. to AO dtd. 22.12.2011 confirming the reversal of CENVAT credit. The AO has doubted the genuineness of the claim for the reason that these items have been used in subsequent years. This factor has been considered adversely by him in the sense that if the items could had been used in subsequent period, there was no reason for valuing the same at NIL. However, under the facts, I am of the considered opinion that the findings of the AO in this regard cannot be sustained. In this case, the appellant has stated that the stock became obsolete or un useable on account of being rusty. The appellant also filed evidence for /e job - work done thereon for rectifying the stock on which huge expenses of Rs. 20,11,2007- in A.Y. 2010 - 2011. The appellant also filed the evidences for carrying out this job - work. It has been duly booked in the accounts and has been claimed and allowed. The appellant also filed evidences to prove that there were no orders from the Spain party for whose order the said raw material was to be used, after September 2008 and the fresh order could be obtained only in June 2009. The AO has not disputed this aspect also. The appellant in his books of accounts reversed the CENVAT credit and again sought back the said credit in the year when those items were put into manufacturing again. The AO directly sought the confirmation of CENVAT aspect from the Excise Deptt. which was duly confirmed. The appellant in his

books of accounts also passed proper accounting entries to give effect to the reversal of CENVAT credit and for taking back its benefit of claim in the year of putting these items for manufacturing. The ledger a/c of the Spain party also proves that there was no exports for a long time during the year under consideration which could commence only in subsequent year i.e. July 2009. These items have been used in manufacturing in subsequent years as is evident from the documents including stock register of these items. In those years, un - disputably the cost of input of these items have been taken at NIL. The result of taking NIL cost of these items in the year of using the same for manufacturing automatically set - off the effect of adopting valuation at NIL in A.Y. 2009 - 2010. The appellant declared opening stock of A.Y. 2010 - 2011 at the same value at which declared the closing stock as on 31.03.2009 also proves that the effect of valuing these items at NIL as on 31.03.2009 automatically stands neutralized i.e. it becomes tax neutral. It is a settled law that it is for the assessee to decide under the facts of his own case, the valuation of closing stock as on the last day of the year. In this case, the appellant has given cogent reasons for valuing the said stock at NIL. The appellant has also proved the correctness of those reasons by producing the relevant documents which all remains un - disputed by the AO. Under these facts, I hold that the appellant has been justified, in valuing the said stock at NIL as on 31.03.2009. The decision quoted by appellant in the case of CIT VS. Hughes Communication India Ltd (Supra) of Hon'ble Delhi High Court has held it the closing stock of one year becomes opening stock to succeeding year and any addition made to the valuation of closing stock to increase the profit for that year automatically gets neutralized when the same figure of closing stock is taken as the opening stock of succeeding year. What is therefore more important to be seen that whether the same method of valuation of stock is employed by the assessee". In the appellant case also, there is no dispute that the same method of valuation of stock is employed consistently. There is also no dispute that the closing stock as declared on 31.03.2009 has been taken as opening stock as on 01.4.2010. Hence, as per the ratio of said authority also, the valuation of closing stock at NIL should have been accepted. In view of above, I hold that the addition of Rs. 1,46,65,041/- in the valuation of closing stock as on 31.03.2009 is un - sustainable . As a result of above discussion the addition of Rs.1,46,65,041/- stands deleted. The appellant stands gets relief of Rs. 1,46,65,0417-. This ground of appeal stands accepted."

12. The Id DR could not point out any infirmity in the order of the Id CIT(A). It was also not controverted that in the next year the assessee has shown higher income because of the valuation and the tax rate in both the years are not same. The revenue also could not dispute with cogent evidence/ finding that

value of the material was not nil but higher than that. In view of this we confirm the finding of the Id CIT(A) in deleting the disallowance of Rs. 14665041/- on account of valuation of closing stock of inventory as at 31.03.2009. In the result ground No. 2 of the appeal of the revenue is dismissed.

13. In the result the appeal of the revenue is dismissed.

**Order pronounced in the open court on 19/04/2017.**

**-Sd/-**  
**(H.S.SIDHU)**  
**JUDICIAL MEMBER**

**-Sd/-**  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

Dated: 19/04/2017  
*A K Keot*

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi