

CTR ENCYCLOPAEDIA ON INDIAN TAX LAWS

COMMISSIONER OF INCOME TAX vs. DIAMOND DYE CHEM LTD.

HIGH COURT OF BOMBAY

S. V. GANGAPURWALA & A. M. BADAR, JJ.

INCOME TAX APPEAL NO. 146 OF 2015

7th July, 2017

(2017) 99 CCH 0138 MumHC

(2017) 396 ITR 0536 (Bom)

Legislation Referred to

Section 145A

Case pertains to

Asst. Year 2008-09

Decision in favour of:

Assessee

Closing stock—Unutilized Cenvat credit—Addition—Revenue challenged deletion of addition by tribunal on account of unutilized Cenvat credit to closing stock—Held, it was not disputed that assessee was liable to excise duty— Assessee got credit in excise duty already paid on raw materials purchased by it and utilized in manufacturing of excisable goods—Assessee was adopting exclusive method i.e. valuing raw materials on purchase price minus Modvat credit—Merely because Modvat credit was irreversible credit offered to manufacturers upon purchase of duty paid raw materials, that would not amount to income which was liable to be taxed under the Act—It was also held that whichever method of accounting was adopted, net result would be same—Amount of unutilized Cenvat credit could not have been directly added to closing stock—Tribunal had not committed any error—Revenue's appeal dismissed.

Held :

Court have considered the submissions. It is not disputed that the assessee was liable to excise duty. The assessee got credit in the excise duty already paid on the raw materials purchased by it and utilized in the manufacturing of excisable goods. The assessee was adopting the exclusive method i.e. valuing the rawmaterials on the purchase price minus () the Modvat credit. The same would be permissible. The Apex Court in the case of Indo Nippon Chemicals Co. Ltd. (supra) while affirming the order of High Court, has observed that the income was not generated to the extent of Modvat credit or unconsumed rawmaterial. Merely because the Modvat credit was irreversible credit offered to manufacturers upon purchase of duty paid raw materials, that would not amount to income which was liable to be taxed under the Act. It is also held that whichever method of accounting is adopted, the net result would be the same.

(Para 5)

Conclusion :

Amount of unutilized Cenvat credit could not have been directly added to closing stock.

In favour of :

Assessee

Cases referred:

[Commissioner of Income Tax Vs. Indo Nippon Chemicals Co. Ltd. reported in 261 ITR 275](#)

Counsel appeared:

A.R. Malhotra i/b N.A. Kazi for the Petitioner.: Hiro Rai a/w Subhash Shetty and Dharam Gandhi for the Respondent

{ JUDGMENT } PC.

1. The present appeal pertains to Assessment Year 2008-09.
2. The present appeal is filed on account of deleting the addition of Rs.1,14,11,300/on account of unutilized Cenvat credit to closing stock.
3. Mr. Malhotra, the learned Counsel for the appellant submits that the unutilized Cenvat credit pertain to purchase and sale of goods and inventory and not to any capital goods and services as per the provisions of Section 145A of the Income Tax Act. The Tribunal erred in deleting the said addition. The Assessing Officer had considered the reply of the assessee and thereafter had added the amount of Rs.1,14,11,300/to the closing stock. The same was rightly done by the Assessing Officer. The Tribunal, relying on the order passed by this Court in an earlier assessment year, has passed the order without actually considering the factual matrix involved in the present case. The Assessing Officer had considered the deficiencies in the order of the earlier assessment year and thereafter has passed the order. The assessee had unutilized the said Cenvat credit meaning thereby that excess amount was paid, the same was rightly added to the closing stock.
4. The learned Counsel for the respondent submits that the respondent follows exclusive method of accounting, in which the amount of Cenvat credit is not added to the sales and purchases but are shown separately. Whether exclusive method of accounting is adopted or inclusive method of accounting is adopted, the net result would be the same and there is no difference in profit. The learned Counsel for the respondent relied upon the judgment in the case of the Commissioner of Income Tax Vs. Indo Nippon Chemicals Co. Ltd. reported in 261 ITR 275.
5. We have considered the submissions. It is not disputed that the assessee was liable to excise duty. The assessee got credit in the excise duty already paid on the raw materials purchased by it and utilized in the manufacturing of excisable goods. The assessee was adopting the exclusive method i.e. valuing the rawmaterials on the purchase price minus () the Modvat credit. The same would be permissible. The Apex Court in the case of Indo Nippon Chemicals Co. Ltd. (supra) while affirming the order of High Court, has observed that the income was not generated to the extent of Modvat credit or unconsumed rawmaterial. Merely because the Modvat credit was irreversible credit offered to manufacturers upon purchase of duty paid

rawmaterials, that would not amount to income which was liable to be taxed under the Act. It is also held that whichever method of accounting is adopted, the net result would be the same.

6. Considering the above, the amount of the unutilized Cenvat credit could not have been directly added to the closing stock. The Tribunal has not committed any error.

7. The Appeal as such is dismissed. No costs.

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