आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

(***Convened through Virtual Court***)

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 2298/Ahd/2017

(**निर्धारण वर्ष /** Assessment Year : 2012-13)

M/s. Asta India Pvt. Ltd. 725/726, GIDC, Manjusar, Tal: Savli, Dist Vadodara 391775	**बनाम**/ Vs.	**DCIT** Circle - 1(1) (1), Vadodara
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAFCA1141A		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

अपीलार्थी ओर से /**Appellant by :**	Shri S. N. Soparkar, Sr. Advocate with Shri Parin Shah, A.R.
प्रत्यर्थी की ओर से / **Respondent by :**	Shri L. P. Jain, Sr. D.R.

सुनवाई की तारीख / **Date of Hearing**	18/08/2020
घोषणा की तारीख /**Date of Pronouncement**	21/08/2020

आदेश/O R D E R

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals)-1, Vadodara ('CIT(A)' in short), dated 31.01.2017 arising in the assessment order dated 11.03.2016 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2012-13.

2. The grounds of appeal raised by assessee read hereunder:

"1 Ld. CIT (A) erred in law and on facts confirming addition to closing stock by AO of Rs. 2, 93, 36, 409/- unutilized Cenvat credit u/s 145A of the Act.

2 Ld. CIT (A) erred in law and on facts holding that appellant ought to have prepared its accounts as per the inclusive method prescribed by section 145 A only not appreciating the fact that even if inclusive method is used there is no change in taxable income.

3 Ld. CIT (A) erred in law and on facts in not appreciating that ld. CIT (A) in previous year set aside the issue to AO to verily reconciliation of Cenvat credit & closing stock prepared in similar manner by the appellant.

4 Ld. CIT (A) erred in law and on facts not adjudicating alternate ground that if addition to closing stock is sustained then AO be directed to enhance opening stock of subsequent by equal amount.

5 Ld. CIT (A) erred in law and on facts confirming addition made by AO of Rs.4,22,743/- on account of short receipt shown as per Form 26AS.

6 Ld. CIT (A) erred in law and on facts confirming addition made by AO of Rs. 17, 21, 392/- towards reimbursement of traveling expense paid to foreign parties in absence of deducting tax at source.

7. Ld. CIT (A) erred in law and on facts confirming disallowance made by AO of Rs. 7,00,000/- towards training expenses paid to foreign parties not Deducting tax at source when activities did not involve application of any technical, managerial or consultancy skills or specialized knowledge."

3. Ground nos. 1 to 4 concern addition to closing stock of Rs.2,93,36,409/- towards unutilized CENVAT credit under s.145A of the Act.

3.1 When the matter was called for hearing, the learned senior counsel adverted to the assessment order and pointed out that the aforesaid amount of Rs.2,93,36,409/- represents unutilized CENVAT / VAT credit at the end of the relevant financial year and the AO has wrongly invoked provisions of Section 145A of the Act

to enhance the value of the closing stock by the aforesaid amount. It was submitted that the assessee company is consistently following 'exclusive method' of accounting in this regard and thus non-inclusion of excise duty and other duties etc. in the closing stock and correspondingly in purchase as well as sale would not eventually impact the resultant profits. It was pointed out that in the exclusive method of accounting adopted, the excise duty, VAT etc. are excluded both from purchase as well as from the sales and closing stock remaining at the end of financial year and therefore the financial results continue to reflect true and correct picture without any under-reporting of income. It was submitted that once the closing stock determined by exclusive method is distorted by increase in its value on account of excise duty component etc. the corresponding adjustments will have to be necessarily made in sales as well as in purchases and opening stock etc. to make it inclusive. Thus, such exercise has no impact on the ultimate financial results.

3.2 The learned senior counsel thereafter referred to para 4.3.1 of the order of the CIT(A) and submitted that the CIT(A) has decided the issue against the assessee on the ground that required reconciliation between the financial accounts as per inclusive method and exclusive method has not been furnished. It was strongly contended that in the identical fact situation, the CIT(A) in earlier AY 2010-11 had rightly directed the AO to verify 'details of deviation from the method of valuation prescribed under s.145A of the Act and its effect on the profit or loss of company and find out whether as a result of following inclusive method as per Section 145A of the Act, there is any impact on the net profit in its case for the year under consideration'. It was submitted that the CIT(A) in AY 2010-11 had directed that if there is no impact on the net profit of the company as a result of inclusive method, then AO is directed

to delete the additions made in that year. For this purpose, the learned senior counsel referred to an 'Order giving effect to the order of the CIT(A) concerning AY 2010-11 dated 12.03.2020' wherein the AO ultimately granted suitable relief to the assessee after due verification. In this backdrop, it was contended that there was no justification for the CIT(A) to completely dismiss the case of the assessee without any proper opportunity in the absence of any deviation in the method of accounting consistently followed year after year.

3.3 The learned senior counsel thereafter referred to the decision of the Tribunal in the case of *ACIT vs. M/s. Lubi Electronics ITA No. 2197/Ahd/2016 order dated 18.02.2019* for the proposition that in a tax neutral exercise, no addition towards unutilized MODVAT / CENVAT credit is warranted. The learned senior counsel also referred to the decision of the Hon'ble Gujarat High Court in the case of *Pr.CIT vs. Gujarat Gas Company Ltd.* referred to by the co-ordinate bench in Lubi Electronics (supra) to buttress the stand of the assessee for reversal of action of CIT(A).

4. The learned DR for the Revenue relied upon the orders of the lower authorities.

5. We have carefully considered the rival submissions on the issue. While it is the case of the Revenue that unutilized CENVAT credit of Rs.2,93,36,409/- represents part of the closing stock of the assessee in terms of Section 145A of the Act and consequently the closing stock is required to be increased to the extent of such duty, it is the case of the assessee on the other hand that additions made by resorting to Section 145A of the Act is not justified in the given set of facts of the case where the assessee is following exclusive

method of accounting year after year on a consistent basis. As pointed out on behalf of the assessee, similar addition towards unutilized CENVAT credit at the end of the year was also made in AY 2010-11 in the case of the assessee where the CIT(A) had remitted the issue back to the file of the AO for factual verification of the ultimate financial impact owing to exclusive method of accounting having regard to Section 145A of the Act.

5.1 The issue involved is essentially factual in nature and requires factual examination. Before we embark further for adjudication of dispute, it may be pertinent to reckon in broad sense that CENVAT credit is a credit or an entitlement in respect of Central Excise on inputs purchased in relation to the manufacture of final product. CENVAT credit is incidentally also available in respect of duty paid on capital goods as well such as machinery, plant, spare parts of machinery etc. It is akin to credit balance in bank account that can be adjusted towards the liability of excise duty payable on goods manufactured. The CENVAT credit so accumulated in respect of inputs or capital goods purchased can be availed for set off against the liability of Excise Duty arising to assessee in respect of output of service or manufacture of goods. The outstanding entitlement of CENVAT towards credit thus being fungible thus does not truly represent the actual duty liability in relation to closing stock reported by an assessee. The availability of CENVAT credit is dependent on the extent of utilization of credit against the liability arising to an assessee on goods manufactured and has no co-relation to the closing stock. The Excise Duty component on closing stock is thus required to ascertained independently as per quantum of stock. Hence, the CIT(A) has rightly approached the issue on determination of exact liability by either inclusive or exclusive method. However, We do not see any justification in the action of

the CIT(A) in dismissing the plea of the assessee altogether on the point. The CIT(A), in our view, ought to have given a reasonable opportunity to the assessee for substantiating its claim that method of accounting followed by the assessee does not impinge upon the provisions of Section 145A of the Act, in tandem with the action of the CIT(A) in AY 2010-11.

5.2 We therefore consider it expedient to set aside the direction of the CIT(A) on the issue and remit the issue to the file of the AO for suitable verification of facts afresh. The AO may satisfy itself that while the assessee follows exclusive method of accounting towards purchase costs, such method does not impact the ultimate profit in any manner. Needless to say, the addition towards Excise Duty, VAT etc. will not be permissible by resorting to section 145A of the Act where the action of the assessee is found to be tax neutral. With these remarks, the entire issue is set aside to the file of the AO for consideration afresh in terms of observations noted hereinabove and in accordance with law. It shall be open to the assessee to make all representations and submissions concerning the issue before AO afresh for determination of issue in accordance with law.

6. In the result, Ground Nos. 1 to 4 are allowed for statistical purposes.

7. Ground No.5 concerns addition of Rs.4,22,743/- on account of short receipts shown as per Form 26AS.

7.1 In the absence of any cogent explanation offered on behalf of the assessee either before the CIT(A) or before us towards impugned difference detected by Revenue from the annual statement in Form

26AS, we decline to interfere with the order of CIT(A) in this regard.

7.2 In the result, Ground No. 5 is dismissed.

8. Ground No.6 concerns disallowance of Rs.17,21,392/- towards reimbursement of travelling expenses paid to foreign parties without deduction tax at source.

8.1 We have heard the rival submissions on the issue. It is the case of the assessee that it is incorrect to say that no proof of reimbursement of expenses was furnished before the AO. We notice a letter dated 09.03.2016 addressed to the AO by the assessee in this regard wherein it is claimed that owing to voluminous transactions involved towards such reimbursements, the original vouchers, bills for foreign travelling expenses were produced for verification. Thus, a contradictory version is coming to the fore. Hence, we consider it expedient that the issue is remitted back to the file of the AO for enabling the assessee to establish that the aforesaid amount of Rs.17,21,392/- represents actual reimbursement of travelling expenses claimed to have been paid to foreign parties without any profit element embedded in it. The AO shall provide reasonable opportunity to the assessee to make suitable representations and submissions to establish its case. Needless to say that a payment in the nature of a mere reimbursement of actual expenses would not be covered by the obligations cast under s.195 of the Act in the absence of any chargeable income annexed to such payment and consequently Section 40(a)(i) would not be attracted in the light of decision of Hon'ble Gujarat High Court rendered in the case of *CIT vs. Gujarat Narmada Valley Fertilizers Co. Ltd. 361 ITR 192 (Guj).* Hence, no part of amount in the nature of actual reimbursement can

be disallowed owing to non-deduction of tax. With these remarks, the order of the CIT(A) is set aside on the issue and remitted back to the file of the AO for factual verification as observed above.

8.2 In the result, Ground No. 6 is allowed for statistical purposes.

9. Ground No.7 concerns disallowance of Rs.7,00,000/- on account of training expenses. The AO noticed that the training expenses is in the nature of fee for technical service and is covered by obligations of deduction of tax as stipulated under s.195 of the Act. No reasons could be assigned for non-compliance of Section 195 of the Act. In the absence of any satisfactory explanation for non-deduction of TDS on such remittance, the expenses incurred were disallowed with the aid of Section 40(a)(i) of the Act.

9.1 The assessee has failed to substantiate its action for non-deduction either before the CIT(A) or before the Tribunal with any reasonings. We thus decline to interfere with the action of the AO.

9.2 In the result, Ground No. 7 is dismissed.

10. In the result, appeal of the assessee is partly allowed.

This Order pronounced on 21/08/2020

Sd/-	Sd/-
(RAJPAL YADAV)	(PRADIP KUMAR KEDIA)
VICE PRESIDENT	ACCOUNTANT MEMBER

Ahmedabad: Dated 21/08/2020

True Copy

S. K. SINHA

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

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT

4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।