

Court No. - 35**Case :-** INCOME TAX APPEAL No. - 140 of 2007**Appellant :-** Commissioner Of Income Tax, Agra**Respondent :-** M/S Chhata Sugar Company Ltd.**Counsel for Appellant :-** C.S.C., Krishna Agarwal**Counsel for Respondent :-** R.B. Khare, Rajendra Kumar Srivastava**Hon'ble Bharati Sapru, J.****Hon'ble Dinesh Kumar Singh, J.**

1. The present Income Tax Appeal under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') has been filed by the Revenue against the order dated 31.10.2006 passed by Income Tax Appellate Tribunal, Agra in ITA No.388/Agr. 2003 on an appeal filed by the revenue against the order of CIT (Appeals)-I, Agra dated 16.06.2003 in respect of the Assessment year 1997-1998.

2. Following two questions of law have been framed by the Revenue for answering by this court:-

“(i) Whether on facts and in the circumstances of the case, the ITAT is legally correct in holding that in the assessee's case excise duty payable at Rs.2,59,82,452/- could not be added in the value of closing stock?”

“(ii) Whether the Tribunal is legally correct in not appreciating that the excise duty incurred means excise duty payable and it becomes payable on completion of manufacture although the goods may be in the bonded warehouse and is, therefore, liable to be included in the value of closing stock?”

3. The respondent, M/s Chhata Sugar Company is a limited company engaged in the manufacture and sale of sugar. The respondent filed return of income for the assessment year 1997-1998 on 28.11.1997 showing loss of Rs.30,18,43,756/-. The retrun

was processed under Section 143(1) of the Act on 13.03.1999. During the assessment proceedings, the respondent filed a revised return of declaring loss of Rs.7,17,01,310. The assessment was finally completed under Section 143(3) of the Act vide order dated 24.02.2000 at a total loss of Rs.7,15,13,989/-.

4. The Assessing Officer after examining the return *inter alia* noticed that while valuing the closing stock of sugar and molasses, the respondent had not included the Central Excise Duty, Cess Duty etc., and, therefore, the value of the closing stock was shown at lower figure in the trading account. The Assessing Officer, therefore, issued a notice under Section 154 of the Act on 08.03.2002 to the respondent. The respondent filed his response to the show cause notice on 15.03.2002. After considering the reply of the respondent, facts of the case and legal position, the proceedings under Section 154 of the Act were filed by the Assessing Officer. Thereafter, the Assessing Officer for initiation of the proceedings under Section 147 of the Act issued notice to the assessee under Section 148 of the Act on 19.03.2002. The Assessing Officer finalised the assessment under Section 148/143(3) of the Act at loss of Rs.4,35,67,823/- making *inter alia* addition of Rs.2,59,82,452 being the amount of excise duty not included in the value of closing stock of the finished goods.

5. Aggrieved by the said assessment order, the assessee filed appeal contesting the addition of Rs.2,59,82,452/- only before the CIT(Appeals)-I, Agra and had also challenged the reopening of assessment order under Section 147 of the Act and notice under Section 148 of the Act. The CIT(Appeals)-I, Agra vide order dated 16.06.2003 held that the excise duty was a part of cost of finished goods and was, therefore, includible in the value of closing stock. The CIT(Appeals)-I, Agra further held that Section 145-A of the

Act which was inserted w.e.f. 01.04.1999 was of clarifactory in nature and it would be applicable for the earlier assessment years as well. However, in further discussion CIT(Appeals)-I, Agra directed the Assessing Officer to determine whether the excise duty had been paid/incurred or not and recompute the value of closing stock accordingly.

6. The Revenue preferred an appeal against the aforesaid order of CIT (Appeals)-I, Agra on the ground that the CIT (Appeals)-I, Agra had erred in directing the Assessing Officer to recompute whole income by allowing the incurred excise duty under Section 43-B of the Act in the finished goods which were added by the Assessing Officer in the valuation of the stock, ignoring the fact that the assessee had not credited any liability for the same and the assessing officer had not made any addition out of “outgoings” but it was a result of assessing at the correct valuation of the closing stock of the finished goods. However, the Tribunal vide impugned order dated 31.10.2006 in a cursory manner held that the excise duty was payable on goods lying in the bounded warehouse and, therefore, the assessee did not incur any cost on account of excise duty payable which can be added towards closing stock. The Tribunal also held that the assessee's case was squarely covered by the decision of Madras High Court in the case of **CIT vs. English Electric Co. of India Ltd.: (2000)243 ITR 512 (Madras)**.

7. Heard Sri Krishna Agarwal, learned counsel for the Revenue but no one has appeared on behalf of the respondent-assessee despite case having been called twice.

8. This appeal is of the year 2007. Therefore, we have decided to answer the questions and decide the appeal.

9. Learned counsel for the assessee, Sri Krishna Agarwal submits

that the assessee was following mercantile system of accounting. The excise duty becomes payable as soon as excisable goods are manufactured or produced. The excise duty is payable on these goods whether or not the goods are sold. The sale or ownership of the goods is not a relevant factor for the liability of payment of excise duty. The taxable event is manufacture of excisable goods which is very clear from the provisions of Section 3 of the Central Excise Act, 1944. In support of the aforesaid submission, learned counsel has placed reliance on the judgment of Supreme Court in the case of **Commissioner of Central Excise, Mumbai versus Fiat India Pvt. Ltd.: 2012 (283) ELT 161 (SC)**. Para 23 of the aforesaid judgment is extracted hereinbelow:-

“23. Section 3 of the Act is the charging provision. The taxable event for attracting excise duty is the manufacture of excisable goods. The charge of incidence of duty stands attracted as soon as taxable event takes place and the facility of postponement of collection of duty under the Act or Rules framed thereunder can in no way effect the incidence of duty. Further, the sale or ownership of the end products is also not relevant for the purposes of taxable event under the central excise. Since excise is a duty on manufacture, duty is payable whether or not goods are sold. Duty is payable even when goods are used within the factory or goods are captively consumed within factory for further manufacture. Excise duty is payable even in case of free supply or given as replacement. Therefore, sale is not a necessary condition for charging excise duty.”

10. Learned counsel for the Revenue further submits that the assessing officer is duty bound under the provisions of the Act while exercising his statutory powers to arrive at the correct taxable income. Under Section 145 of the Act, the assessing officer needs to make computation in such manner as to deduce the correct profits and gains of an assessee for the assessment year. Learned counsel has placed reliance on the judgment of Supreme Court in support of the aforesaid submission in the case

of **Commissioner of Income Tax vs. British Paints India Ltd. (1991) 54 Taxman 499 (SC)**. Paras 16 to 21 of the aforesaid judgment are extracted hereinbelow:-

“16. The Income Tax Act does not contain any specific provision for the valuation of stock. Income, profits and gains must, however, be computed in the manner provided by the Act. It is the duty of the officer to determine the profits and gains of a commercial adventure according to the correct principle of accounting. In doing so, he might, dependent on the nature of the business and its special character, allow certain adjustments, but his primary purpose and duty is to deduce the correct income, profits and gains, and this he cannot do without taking into account the value of the stock-in-trade at the beginning and at the end of the year and by ascertaining the difference between them: See P.M. Mohammed Meerakhan v. CIT [(1969) 2 SCC 25 : (1969) 73 ITR 735] .

17. The object of stock valuation is the correct determination of the profit and loss resulting from a year's trading. It is the true result of the trading activity of that year that must be disclosed by the books.

“... the profits are the profits realised in the course of the year. What seems an exception is recognised where a trader purchased and still holds goods or stocks which have fallen in value. No loss has been realised. Loss may not occur. Nevertheless, at the close of the year he is permitted to treat these goods or stocks as of their market value.” [Whimster & Co. v. IRC, (1926) 12 Tax Cases 813, 827] [(1926) 12 Tax Cases 813, 823] .”

As stated by Patanjali Sastri, C.J., in Chainrup Sampatram v. CIT [(1953) 24 ITR 481, 485-86 : 1954 SCR 219 : AIR 1953 SC 509] : (ITR p. 485)

“... It is wrong to assume that the valuation of the closing stock at market rate has, for its object, the bringing into charge any appreciation in the value of such stock. The true purpose of crediting the value of unsold stock is to balance the cost of those goods entered on the other side of the account at the time of their purchase, so that the cancelling out of the entries relating to the same stock from both sides of the account would leave only the transactions on which there have been actual sales in the course of the year showing the profit or loss actually realised on the year's trading”

In the words of Singleton L.J. in Patrick (Inspector of Taxes) v. Broadstone Mills Ltd [(1954) 25 ITR 377, 395 (CA)] : (ITR p.

395)

“... (1) One cannot arrive at the profits of the year without taking into account the value of the stock one has at the beginning of, and at the end of, the accounting year. (2) The figures for stock are just as important as any other figures. Values may have to be estimated when market price is taken, but any departure from accuracy is reflected in the trading account. (3) Stock should be taken either at cost price or at market price, whichever is the lower”

18. Lord Herschell in *Russell v. Town and County Bank* [(1888) 13 AC 418, 424 : 4 TLR 500] observes: (AC p. 424)

“The profit of a trade or business was the surplus by which the receipts exceeded the expenditure necessary for the purpose of earning those receipts”

19. What is the profit of a trade or business is a question of fact and it must be ascertained, as all facts must be ascertained, with reference to the relevant evidence, and not on doctrines or theories: *“no assumption need be made unless the facts cannot be ascertained, and then only to the extent to which they cannot be ascertained. There is no room for theories as to flow of costs”* [*Minister of National Revenue v. Anaconda American Brass Ltd.*, 1956 AC 85 : 1956 ITR 84, 99].

20. Section 145 of the Income Tax Act, 1961 confers sufficient power upon the officer — nay it imposes a duty upon him — to make such computation in such manner as he determines for deducing the correct profits and gains. This means that where accounts are prepared without disclosing the real cost of the stock-in-trade, albeit on sound expert advice in the interest of efficient administration of the company, it is the duty of the Income Tax Officer to determine the taxable income by making such computation as he thinks fit.

21. Any system of accounting which excludes, for the valuation of the stock-in-trade, all costs other than the cost of raw material for the goods in process and finished products, is likely to result in a distorted picture of the true state of the business for the purpose of computing the chargeable income. Such a system may produce a comparatively lower valuation of the opening stock and the closing stock, thus showing a comparatively low difference between the two. In a period of rising turnover and rising prices, the system adopted by the assessee, as found by the Tribunal, is apt to diminish the assessment of the taxable profit of a year. The profit of one year is likely to be shifted to another year which is an incorrect method of computing profits and gains for the

purpose of assessment. Each year being a self-contained unit, and the taxes of a particular year being payable with reference to the income of that year, as computed in terms of the Act, the method adopted by the assessee has been found to be such that income cannot properly be deduced therefrom. It is, therefore, not only the right but the duty of the Assessing Officer to act in exercise of his statutory power, as he has done in the instant case, for determining what, in his opinion, is the correct taxable income.”

11. He further submits that the issue in the present case is covered by the judgment of this Court in the case of **Krishi Discs (P.) Ltd. Versus Commissioner of Income-tax, Bareilly: (2013) 32 Taxmann.com 136 (Allahabad)**. In the afoesaid judgment, it has been held that the excise duty has to be included in the value of the closing stock of the relevant assessment year.

12. We have considered the submissions of learned counsel for the Revenue.

13. The assessee was adopting the mercantile system of accounting. The true value of closing stock would include the amount of any tax duty, cess or having fully paid, payable or incurred by the assessee to bring the goods to the place of its location and condition as on the date of valuation which is evident from the provisions of Section 145A of the Act. It is also to be noted that the provisions of Section 145A of the Act were introduced by the Finance Act No.2 of 1988 w.e.f. 01.04.1999 which are infact clarifactory in nature and, therefore, it would be applicable even for Assessment Years prior to Assessment Year 1999-2000. Thus, provisions of Section 145-A would be applicable for the Assessment Year in question.

14. Excise duty becomes payable, the moment excisable goods are manufactured as the taxable event under Section 3 of the Cental Excise Act is manufacturing or production of the excisable goods. It would be immaterial whether the assessee has paid the excise duty or not for the purposes of arriving at the correct

valuation of the closing stock. Even if the excise duty has not been paid and the assessee has postponed its payment, the valuation of the goods will not get affected. Accounting system of the assessee would be of no consequence to arrive at the true and correct valuation of the closing stock.

15. We, therefore, answer the questions in affirmative in favour of the Revenue and set aside the order passed by the ITAT.

16. The appeal is, thus, **allowed**.

Order Date:-16.07.2018

prateek