

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO. 146 OF 2015

The Commissioner of Income Tax-6 .. Appellant

v/s.

M/s. Diamond Dye Chem Ltd. .. Respondent

Mr. A.R. Malhotra i/b Mr. N.A. Kazi for the appellant
Mr. Hiro Rai a/w Mr. Subhash Shetty and Mr. Dharam Gandhi for the respondent

**CORAM : S.V. GANGAPURWALA &
A.M. BADAR, J.J.**

DATED : 7th JULY, 2017

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 un-utilized Cenvat credit to closing stock.
3. Mr. Malhotra, the learned Counsel for the appellant submits that the un-utilized 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 un-utilized 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 raw-materials 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 raw-material. 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.

6. Considering the above, the amount of the un-utilized 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.

(A.M. BADAR, J.)

(S.V. GANGAPURWALA, J.)