IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL (IT) NO.1651 OF 2017

Pr. Commissioner of Income Tax-15 … Appellant
Vs.
Classic Marble Company Limited … Respondent

Mr. Suresh Kumar a/w. Ms Sumandevi Yadav and Ms Priyanka Tiwary for Appellant.
Mr. B. V. Jhaveri for Respondent.

CORAM : UJJAL BHUYAN,
MILIND N. JADHAV, JJ.

DATE : FEBRUARY 05, 2020

P.C. :

Heard Mr. Suresh Kumar, learned standing counsel Revenue for the appellant and Mr. Jhaveri, learned counsel for the respondent / assessee.

2. This appeal under Section 260-A of the Income Tax Act, 1961 has been preferred by the Revenue against the order dated 25.11.2016 passed by the Income Tax Appellate Tribunal, Bench 'C', Mumbai in I.T.A.No. 1320/Mum/2015 for the assessment year 2010-11.

3. The appeal has been preferred on the following questions stated to be substantial questions of law:

> "1. Whether on the facts and in the circumstances of the case, the Tribunal was right in not appreciating the guidelines of Institute of Chartered Accountants of India (ICAI) that adjustment made under Section 145-A of the Income Tax Act, 1961 in cases where exclusive method is followed will be revenue neutral?
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> 2. Whether on the facts and in the circumstances of the case, the Tribunal was right in upholding the adjustment made under Section 145-A of the Income Tax Act, 1961 on the ground that the assessee is consistently following the same method ignoring the fact that the same was not in accordance with the provisions of law?
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> 3. Whether on the facts and in the circumstances of the

> case, the Tribunal was right in confirming the decision of the Commissioner without appreciating the fact that in the working submitted as per formula laid down in the case of M/s. Hawkins Cooker Ltd., the assessee has reduced the excise duty on closing stock of finished goods twice to arrive at the adjustment under Section 145-A of the Income Tax Act, 1961?"

4. Respondent is an assessee under the Income Tax Act, 1961 (briefly 'the Act' hereinafter). It is a company engaged in the business of manufacturing and dealing in all types of marble and granite products. For the assessment year under consideration, respondent filed return of income declaring total income at nil. Case of the respondent was taken up for assessment scrutiny. In the scrutiny assessment, assessing officer observed that respondent had claimed reduction in profit due to adjustment under Section 145-A of the Act at Rs.3,80,91,536.00. Notice was issued to the respondent to explain as to why the said adjustment should not be disallowed. Respondent submitted reply. After considering the reply of the respondent, assessing officer vide the assessment order dated 13.03.2013 disallowed the claim of deduction made by the respondent. As a result, the aforesaid amount was added back to the total income of the respondent.

5. In appeal before the Commissioner of Income Tax (Appeals)-22, Mumbai, the first appellate authority, the aforesaid addition was deleted vide order dated 10.12.2014 on the grounds and reasons mentioned therein. As a matter of fact, the first appellate authority followed its own order in the case of the respondent for the assessment year 2009-10.

6. Aggrieved by the aforesaid, Revenue approached the Tribunal in appeal. Tribunal, after hearing the matter, took note of the finding returned by a Co-ordinate Bench in the case of the respondent for the assessment year 2009-10 and following the said decision dismissed the appeal filed by the revenue.

7. Hence, the present appeal by the revenue.

8. Respondent had explained before the assessing officer that the adjustment under Section 145-A was on account of variation in excise duty paid by procuring raw materials and discharge of excise duty liability on non-finished goods. It was also mentioned that the adjustment was due to difference in CENVAT credit availed on opening stock and purchases of raw material made during the year against the CENVAT credit utilized on discharge of excise duty liability on sale of finished goods. Respondent had pointed out that there was always excess amount of CENVAT credit taken on raw materials remaining unutilized as excise duty payable on the finished goods manufactured from those raw materials was less.

9. In the appellate proceedings, the first appellate authority elaborately examined payment of excise duty by the respondent and the fact that respondent had applied Accounting Standard 2 issued by the Institute of Chartered Accountants of India (ICAI). First appellate authority noted that under this method, entry in the books of accounts at the purchase of raw materials is made only on the cost of goods and not with regard to the excise duty paid to the supplier. Such amount of excise duty is credited to CENVAT credit receivable account at the time of payment of excise duty on finished goods. Thus, the manufacturer is entitled to set-off against the credit available in the CENVAT credit receivable account in order to discharge the excise duty payable on the clearance of finished goods.

9.1. First appellate authority also noted that respondent followed the above accounting method while accounting for its excise duty paid on raw materials and final products. Respondent had explained which was accepted by the first appellate authority that ICAI mandates usage of exclusive method as per which the amount of excise duty actually paid on inputs cannot be debited to the profit and loss account. But this was an expenditure which had actually been incurred and thus, adjustment under Section 145-A should be allowed to the respondent and deducted from the profits subject to tax in India. Following its earlier decision in the case of the respondent itself for the assessment year 2009-10, the first appellate authority took the view that deduction on account of adjustment under Section 145-A should be allowed.

10. When the matter came up before the Tribunal, Tribunal also relied upon its own decision in the case of the respondent itself for the assessment year 2009-10 and upheld the finding of the first appellate authority. The decision of the Tribunal in the case of the respondent for the assessment year 2009-10 is extracted hereunder:

> "10. Rival contentions have been heard and record perused. We have also deliberated on the judicial pronouncements referred by AO and CIT(A) in his order as well as cited by ld. AR and DR during the course of hearing before us, in the context of factual matrix of the case. From the record we found that assessee used to pay custom duty on import of raw marbles blocks, which is based on its weight. The custom duty paid on these blocks include a component of CENVAT, which assessee is entitled to take a credit for set-off, M/s Classic Marble Co. Pvt. Ltd. under "inverted duty structure". The CIT(A) has categorically recorded a finding to the effect that excise duty paid on final product was less than the taxes paid on the raw materials, the assessee was always left with huge balances in CENVAT Credit Receivable Account. However, the AO has made addition on the assumption that input is equal to output through rate of Excise Duty on the opening stock/purchases of raw material should be equal to the rate of Excise Duty on value of consumption of raw materials/closing stock of raw materials. Since the duty paid by the assessee on raw materials is much more than the duty payable on final products, the hypothetical equation drawn by the AO was not applicable to the facts of the present case. The categorical finding has also been recorded by the CIT(A) to the effect that because of "inverted duty structure" huge balance has been accumulated in the CENVAT Credit Receivable Account, hence, the assessee's case is exception to the general rule. The CIT(A) is also dealt with the decision of the Tribunal in the case of Hawkins Cooker Ltd. and after calling the facts and figures of the assessee, came to the conclusion it that formula laid down in the case of Hawkins Cooker Ltd., is not applicable to the facts of this case. The CIT(A) also taken into consideration increase in case of opening stock on inclusion of excise duty on which MODVAT credit is available/availed and also increase in purchase of raw materials, increase in sales of finished goods on inclusion of excise duty.

> The excise duty paid on sale of finished goods, as a result of inclusion in sales, were also taken into account. After giving detailed finding at para 3.3 to 3.12, the CIT(A) deleted the addition. The detailed finding recorded by CIT(A) after observing that assessee has been consistently following the same method of adjustment u/s.145A over the years has not been controverted by Id. DR by brining any positive material on record. The detailed working so arrived at by CIT(A) and the findings given there on are as per material on record, thus, do not require any interference on our part. Accordingly, we upheld the order of the CIT(A) for deleting the addition made by the AO u/s. 145A of the I.T. Act."

11. During the hearing, Mr. Kumar fairly submitted that appeal being Income Tax Appeal No.1400 of 2017 filed by the Revenue against the above decision of the Tribunal for the assessment year 2009-10 was withdrawn on 20.12.2018 as the tax effect was below the prescribed limit in terms of C.B.D.T. Circular No.3 of 2018 dated 11.07.2018.

12. Irrespective of the fact that Revenue's appeal for the assessment year 2009-10 was dismissed on withdrawal on the ground that the tax effect was below the prescribed limit, we have independently applied our mind to the said order which has been followed by the Tribunal for the present assessment year and we find that the view taken by the first appellate authority as affirmed by the Tribunal is correct and no interference is called for. The first appellate authority had rightly deleted the addition, which has been affirmed by the Tribunal.

13. On thorough consideration, we do not find any merit in this appeal as no substantial question of law arises out of the order of the Tribunal.

14. Consequently, the appeal is dismissed.

(MILIND N. JADHAV, J.) **(UJJAL BHUYAN, J.)**