IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ITA No. 430 of 2006.
Date of Decision : 07.01.2015.

Commissioner of Income Tax, Ludhiana-II ...Appellant

Versus

M/s Avery Cycle Inds. Ltd. ...Respondent

AND

ITA No. 400 of 2007.
Date of Decision : 07.01.2015.

Commissioner of Income Tax, Ludhiana-II ...Appellant

Versus

M/s Avery Cycle Inds. Ltd. ...Respondent

AND

ITA No. 295 of 2009.
Date of Decision : 07.01.2015.

Commissioner of Income Tax, Ludhiana-II ...Appellant

Versus

M/s Avery Cycle Inds. Ltd. ...Respondent

AND

ITA No. 296 of 2009.
Date of Decision : 07.01.2015.

Commissioner of Income Tax, Ludhiana-II ...Appellant

Versus

M/s Avery Cycle Inds. Ltd. ...Respondent

AND

ITA No. 297 of 2009.
Date of Decision : 07.01.2015.

Commissioner of Income Tax, Ludhiana-II ...Appellant

Versus

M/s Avon Cycles Ltd. ...Respondent

AND

ITA No. 298 of 2009.
Date of Decision : 07.01.2015.

Commissioner of Income Tax, Ludhiana-II ...Appellant

Versus

M/s Avon Cycles Ltd. ...Respondent

AND

ITA No. 286 of 2009.
Date of Decision : 07.01.2015.

Commissioner of Income Tax, Ludhiana-II ...Appellant

Versus

M/s Avon Cycles Ltd. ...Respondent

AND

ITA No. 593 of 2009.
Date of Decision : 07.01.2015.

Commissioner of Income Tax, Ludhiana-II ...Appellant

Versus

M/s Hero Cycle Inds. Ltd. ...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA.
HON'BLE MR. JUSTICE B.S. WALIA.

Present: Ms. Savita Saxena, Advocate for the revenue.

Mr. Akshay Bhan, Senior Advocate with
Mr. Alok Mittal, Advocate for the assessee.

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Rajive Bhalla, J.(Oral)

By way of this order, we shall decide ITA Nos. 430 of 2006,

400 of 2007, 295 of 2009, 296 of 2009 titled as Commissioner of Income Tax-II, Ludhiana Vs. M/s Avery Cycles Inds. Ltd., ITA Nos. 297 of 2009, 298 of 2009 and 286 of 2009, Commissioner of Income Tax-II, Ludhiana Vs. M/s Avon Cycles Ltd. and ITA No. 593 of 2009, Commissioner of Income Tax-II, Ludhiana Vs. M/s Hero Cycles Ltd..

The revenue is before us challenging orders passed by the Income Tax Appellate Tribunal (here-in-after referred to as 'the Tribunal') in these appeals by raising four substantial questions of law, which are common to all appeals :-

1. *Deletion of disallowance made on account of interest on money borrowed for purchase and installation of plant and machinery.*

2. *Deletion of addition on account of excise duty on closing stock as a result of application of section 145 A of the act.*

3. *Interest on interest free advances to directors and other parties.*

4. *Interest on 234D prior to insertion of section 234D.*

The first question arises in ITA No. 430 of 2006 and ITA No. 400 of 2007 but was answered against the revenue, at the time of admission of the appeal on 06.08.2008, by relying upon a judgment of the Supreme Court in **Deputy Commissioner of Income Tax, Ahmedabad** Vs. **Core Health Care Ltd. (2008) 2 SCC 465.** The first question, therefore, does not require any further consideration.

The second question arises in ITA Nos. 430 of 2006, 400 of 2007, 295 of 2009, 296 of 2009, 297 of 2009, 298 of 2009 and 286 of 2009. Facts necessary for adjudication of this question are being taken from ITA No. 430 of 2006. The assessee who manufactures cycle parts filed a return declaring a business loss of ₹1,03,32,832/- The return was processed under Section 143 (1) of the Income Tax Act, 1961

(hereinafter referred to as 'the Act'). A statutory notice under Section 143(2) of the Act was served upon the assessee, followed by a detailed questionnaire dated 23.05.2001. After considering the material on record, the Assessing Officer relied upon Section 145(A) of the Act to include excise duty while computing opening and closing stock, for evaluating the assessee's income.

Aggrieved by this order, the assessee filed an appeal before the Commissioner of Income Tax-II, Ludhiana. The CIT(Appeals) (hereinafter referred to as 'the CIT(A)') relied upon CBDT circular No. 772 dated 23.12.1998 and guidelines issued by the Institute of Chartered Accountants to delete the addition of ₹32,31,521/- made by the Assessing Officer. The revenue preferred an appeal before the Tribunal, which was dismissed by order dated 07.10.2005 by relying upon a judgment of the Hon'ble Supreme Court in **CIT** Vs. **M/s Indo Nippon Chemical Industries Limited, 261 ITR 275**.

Counsel for the revenue submits that the judgment in **M/s Indo Nippon Chemical Industries Limited (supra),** relates to inclusion of modvat credit and, therefore, does not apply to the present case, which pertains to inclusion of excise duty while calculating opening and closing stock.

Counsel for the assessee submits that it makes no difference whether the judgment in **M/s Indo Nippon Chemical Industries Limited's case (supra)** pertains to modvat credit as it is the method of accountancy and the principle set out in **M/s Indo Nippon Chemical Industries Limited's case (supra)** that are relevant.

A perusal of the facts reveals that the Assessing Officer included excise duty while computing opening and closing stock. The CIT(A), by relying upon a CBDT circular No.772, dated 23.12.1998 and guidelines issued by the Chartered Accountants set aside the inclusion

of excise duty while computing opening and closing stock by holding as follows :-

> *"I have considered this matter carefully and I find force in the contentions of the Learned Counsels for the following reasons:*
>
> *(i) Section 145A refers to the valuation of purchase and sale of goods and inventory. The section does not speak of closing stock only and as contended by the Learned A.Rs., the inventories would include the opening stock, purchases, as well as the closing stock.*
>
> *(ii) I am reminded of a CBDT circular No. 772 dated 23.12.98 which clarified the back ground for the insertion of the new section 145A. It was clarified that a new section 145A had been inserted w.e.f. 1.4.1999 with a view to put an end to the point of litigation as to whether the value of the closing stock of the inputs, work in progress, and finished goods must necessarily include the element for which modvat credit is available. It was clarified that the new section 145A was inserted in order to ensure that the value of opening and closing stock reflect the correct value.*
>
> *(iii) The Learned Counsel has also alluded to the guidelines issued by the Instituted of Chartered Accountants, which is the CA's Apex Body. After having considered the rival submissions, I find force in the contentions of the Learned Counsels that this new section mentions the word inventory; the CBDT circular also speaks of the correct value of the opening and closing stock, and in matters of accountancy, the guidelines of the Institute of the Chartered Accountants Apex Body, have to be taken as the correct method. In view of the above, I am inclined to agree with averments of the Learned Counsel. Accordingly, I allow this ground of appeal in favour of the appellant and direct the Assessing Officer to delete this addition of ₹32,31,521/- made on this account."*

The ITAT thereafter reconsidered the matter and held as follows :-

> *"4. The next ground pertains to deleting the addition of ₹32,31,521/- made as a result of application of section 145A of the Act. This issue has been deliberated upon by the tribunal in the case of M/s Nahar Spinning Mills Limited vide order dated 12.08.2005. Relevant discussion is available in para 19 and 20 at page 38 of the said order. In view of these facts, there is a force in the contention of the Ld. counsel for the assessee. This issue has also been decided by the Hon'ble Apex Court in the case of CIT Vs. M/s Indo Nippon Chemical Industries Limited, 261 ITR 275 wherein it was held that modvat credit available to assessee manufacturing goods with duty paid raw material is not on income liable to be taxed. While coming to his conclusion, the Hon'ble Apex Court affirmed the decision of the Hon'ble High Court where it was held that merely because the modvat credit was a reversible credit available to manufacturer, open purchase of duty paid raw material would not amount to income which was liable to be taxed under the act."*

A perusal of Section 145(A) of the Act and the clarification relating to the method of accounting, contained in the circular issued by the Institute of Chartered Accountant, does not enable us to hold that the opinion recorded by the Tribunal is in any manner perverse or arbitrary. The fact that the judgment in **M/s Indo Nippon Chemical Industries Limited's case (Supra)** relates to modvat credit would make no difference as it is the method of accountancy and the principle affirmed in **M/s Indo Nippon Chemical Industries Limited's case (Supra)** that is relevant. Consequently, the second question is answered against the revenue.

The third question, relates to interest on interest free advances to directors and other parties. Counsel for the revenue

submits that similar matters have been remitted to the Tribunal in view of a judgment of the Hon'ble Supreme Court in **S.A. Builders Ltd. Vs. Commissioner of Income Tax (Appeals) and another, (2007) 288 ITR 1.** Counsel for the assessee fairly concedes that this question has already been answered against assessees and prays that the course adopted in ITA No. 225 of 2004 titled as **Commissioner of Income Tax** Vs. **M/s Southern Bottles Pvt. Ltd.** may also be adopted in the present case.

In view of statements made by the counsel for the parties, the third question which arises in ITA Nos. 297 and 286 of 2009 is answered in favour of the revenue and against the assessee by setting-aside the order passed by the Income Tax Appellate Tribunal and restoring the matter to the Tribunal to adjudicate the matter afresh after taking into consideration the opinion recorded by the Hon'ble Supreme Court in **M/s S.A. Builders Ltd's case (supra).**

The fourth question arises in ITA Nos. 286 and 593 of 2009.

Counsel for the revenue submits that as Section 234D of the Act was in force on the date of assessment, the assessee was required to pay interest on excess refund admittedly received by the assessee. The assessing officer rightly levied interest but the CIT(A) and the Income Tax Appellate Tribunal have both erred in deleting the interest. Counsel for the assessee on the other hand, submits that Section 234D of the Act does not apply to the appellant and even it is held that Section 234D of the Act is applicable, the rate of interest has to be calculated from the date of incorporation of Section 234D and not from the date set out by the Assessing Officer.

Section 234D of the Act reads as follows:-

> ***234D. (i)*** *Subject to the other provisions of this Act, where any refund is granted to the assessee under sub-section(1) of section 143, and -*

(a) no refund is due on regular assessment; or

(b) the amount refunded under sub-section(1) of section 143exceeds the amount refundable on regular assessment,

the assessee shall be liable to pay simple interest at the rate of (one-half) per cent on the whole or the excess amount so refunded, for every month or part of a month comprised in the period from the date of grant of refund to the date of such regular assessment.

(2) Where, as a result of an order under section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount of refund granted under sub-section (1) of section 143 is held to be correctly allowed, either in whole or in part, as the case may be, then, the interest chargeable, if any, under sub-section (1) shall be reduced accordingly.

Explanation (1)- Where, in relation to an assessment year, an assessment is made for the first time under section 147 or section 153A, the assessment so made shall be regarded as a regular assessment for the purposes of this section.

Explanation (2)- For the removal of doubts, it is hereby declared that the provisions of this section shall also apply to an assessment year commencing before the Ist day of June, 2003 if the proceedings in respect of such assessment year is completed after the said date."

A bare perusal of Section 234D of the Act, leaves no ambiguity that the assessee is liable to pay interest on excess refund. The opinion recorded by the Tribunal that Section 234D of the Act does not apply to the case of the assessee is incorrect. The assessee does not deny receipt of excess refund and, therefore, is obliged under Section 234D of the Act to pay interest. However, as Section 234D came into force on 01.06.2003 and admittedly does not operate

retrospectively, the assessee would be required to pay interest from the date of incorporation of Section 234D i.e. 1.6.2003.

Consequently, the question of law is answered in favour of the revenue by holding that the assessee is liable to pay interest on excess refund from 1.6.2003.

The questions of law having been answered, the appeals are disposed of accordingly.

(RAJIVE BHALLA)
JUDGE

(B.S. WALIA)
JUDGE

January 07, 2015.
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