

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**ITA 348/2007**

**41**

**28.11.2007**

**Date of decision : November 28, 2007**

**COMMISSIONER OF INCOME TAX ..... APPELLANT**

**Through Ms. Prem Lata Bansal, Advocate**

**versus**

**MAHAVIR ALLUMINIMUM LIMITED .... RESPONDENT**

**Through Mr. M.S. Syali, Senior Advocate with**

**Ms. Mahua C. Kalra, Mr. Saubhagya Agarwal and**

**Mr. Aseem Mewar, Advocates**

**CORAM:**

**HON'BLE MR. JUSTICE MADAN B. LOKUR**

**HON'BLE DR. JUSTICE S. MURALIDHAR**

**1. Whether Reporters of local papers may be  
allowed to see the order**

**Yes**

**2. To be referred to the reporter or not**

**Yes**

**3. Whether the order should be reported in the  
Digest**

**Yes**

**O R D E R**

**1. In this appeal under s. 260A of the IT Act, 1961 ('the Act'), the Revenue is aggrieved by an order dt.**

**9th June, 2006 passed by the Income-tax Appellate Tribunal, New Delhi, Bench 'E' ('Tribunal') in**

**ITA No. 413/Del/2003 relevant for the asst. yr. 1999-2000. Admit.**

**2. After hearing learned counsel for the parties, the following question of law is framed for**

**consideration :**

**"Whether the Tribunal was correct in law in allowing the adjustment of Rs. 54,83,272 to the assessee in**

**the opening stock for the previous asst. yr. 1998-99 (being a transitional year) under s. 145A of the IT**

**Act, 1961 ?"**

**3. Filing of paper book is dispensed with.**

**4. In its closing stock for the previous year ending on 31st March, 1999, the assessee had charged**

**Modvat credit on certain inputs. While doing so, the assessee made an adjustment in the opening stock**

**as on 1st April, 1998. The adjustment was to the extent of Rs. 54,84,272. According to the AO, s. 145A**

**of the Act (which came into force on 1st April, 1999) did not permit the assessee to make a change in**

**the valuation of the opening stock as on 1st April, 1998 although it permitted a change in the closing**

**stock as on 31st March, 1999. Sec. 145A of the Act reads as follows :**

**"Sec. 145A. Method of accounting in certain cases.— Notwithstanding anything to the contrary**

**contained in s. 145, the valuation of purchase and sale of goods and inventory for the purposes of**

**determining the income chargeable under the head profits and gains of business of profession shall**

**be—**

**(a) in accordance with the method of accounting regularly employed by the assessee; and**

**(b) further adjusted to include the amount of any tax, duty, cess or fee (by whatever name called)**

**actually paid or incurred by the assessee to bring the goods to the place of its location and condition as**

**on the date of valuation.**

**Explanation— For the purposes of this section, any tax, duty, cess or fee (by whatever name called)**

**under any law for the time being in force, shall include all such payment notwithstanding any right**

**arising as a consequence to such payment."**

**5. Feeling aggrieved by the decision of the AO, the assessee preferred an appeal before the**

**Commissioner of Income-tax (Appeals) ['CIT(A)'] who partly allowed the appeal but did not admit the**

**claim of the assessee to the extent of the amount mentioned above.**

**6. Feeling aggrieved by the said order, the assessee preferred a further appeal before the Tribunal and**

**by its order dt. 9th June, 2006, the Tribunal allowed the appeal. While doing so, the Tribunal relied**

**upon a decision rendered by the Kolkata Bench of the Tribunal in the case of ITO vs. Mehra Electric**

**Co. (2005) 148 Taxman 37 (Kol)(Mag) . The Tribunal also relied upon Circular No. 772 dt. 27th Dec.,**

**1998 passed by the CBDT as well as the Guidance Note issued by the ICAI.**

**Thereafter, the Tribunal held that the adjustment on account of Modvat credit and excise duty can be**

**made in the opening stock also and that the assessee did not commit any error in doing so. Therefore,**

**the Tribunal set aside the order of the AO.**

**7. The Revenue has now preferred an appeal before us under s. 260A of the Act.**

**8. Learned counsel for the assessee has drawn our attention to Notes on Clauses in the Finance Bill**

**when s. 145A of the Act was being inserted w.e.f. 1st April, 1999. It has been stated in the Notes of**

**Clauses as follows :**

**"It is proposed that while computing the value of the inventory as on the 1st and the last day of the**

**previous year, the computation according to the method of accounting regularly employed by the**

**assessee shall be adjusted to include the amount of any tax, duty, cess or fees paid or liability incurred**

**for the same under any law in force. This amendment is proposed as valuation of inventory after the**

**adjustment will present the correct value."**

**9. Our attention has also been drawn to the decision of the Privy Council in the case of CIT vs.**

**Ahmedabad New Cotton Mills Co. Ltd. AIR 1930 PC 56 where the effect of altering the method of**

valuation was considered. While discussing this issue, the Privy Council opined as under :

"If the method of altering both valuations is not adopted it is perfectly plain that the profit which is

brought forward is not the real one. It may be more or it may be less, but it has no relation to the true

profit if the stock is valued on one basis when it goes out without considering the value of the stock

when it comes in. When, therefore, there is under valuation at one end, the effect is to cause both a

smaller debit in respect of the stock introduced into the net account and a larger sum for profits realized

by the sale, change in market values being immediately reflected in the price obtained for the goods

that are sold, in these circumstances to contend that there should be under valuation at one end and not

at the other is to raise an argument which their Lordships cannot accept."

10. The opinion of the Privy Council was that whenever there is a change in the valuation at one end

(that is on 31st March, 1999 as in the present case) then there must necessarily be a corresponding

change at the other end (that is on 1st April, 1998 as in the present case) otherwise, the true profit

would not be reflected.

**11. Circular No. 772 dt. 23rd Dec., 1998 issued by the CBDT refers to the method of accounting and in**

**para 52.1 thereof, it is mentioned that whether the value of the closing stock of the inputs must**

**necessarily include the element for which Modvat credit is available, has been a matter of considerable**

**litigation over the years. In para 52.2, the CBDT has clarified that with a view to put an end to this**

**point of litigation, both the opening and closing stock should reflect the correct value and that is why s.**

**145A was inserted to the statute book. It is further stated that the valuation shall be further adjusted to**

**include the amount of any tax, duty, cess or fee (by whatever name called), actually paid or incurred by**

**the assessee to bring the goods to the place of its location and condition as on the date of valuation.**

**Para 52.2 of the circular reads as follows :**

**"52.2 . Consistent with the other provisions of the Act, with a view to put end to this point of litigation**

**and in order to ensure that the value of opening and closing stock reflect the correct value, a new s.**

**145A is inserted. This section provides that the valuation of purchase, sale and inventory shall be made**

**in accordance with the method of accounting regularly employed by the assessee and such valuation**

**shall be further adjusted to include the amount of any tax, duty, cess or fee (by whatever name called),**

**actually paid or incurred by the assessee to bring the goods to the place of its location and condition as**

**on the date of valuation."**

**12. Learned counsel for the Revenue referred to the Guidance Note on Tax Audit under s. 44AB of the**

**Act issued by the ICAI, New Delhi. She referred to paras 23.8, 23.13 and 23.14 thereof. The contention**

**of learned counsel for the Revenue was that by changing the method of valuation, the assessee has in**

**fact got a double benefit which is not permissible. The paras cited by learned counsel for the Revenue**

**read as follows :**

**"23.8 Sec. 145A has been enacted by the Finance (No. 2) Act, 1998 and has come into force from the**

**accounting year 1st April, 1998 to 31st March, 1999 (asst. yr. 1999-2000). This section provides that**

**the valuation of purchase and sale of goods and inventory for the purpose of computation of income**

**from business or profession shall be made on the basis of the method of accounting regularly employed**

**by the assessee but this shall be subject to certain adjustments.**

**Therefore, it is not necessary to change the method of valuation of purchase, sale and inventory**

**regularly in the books of account. The adjustments provided in this section can be made while**

**computing the income for the purpose of preparing the return of income. These adjustments are as**

**follows :**

**(a) Any tax, duty, cess or fee actually paid or incurred on inputs should be added to the cost of inputs**

**(raw materials, stores etc.) if not already added in the books of accounts.**

**(b) Any tax, duty, cess or fee actually paid or incurred on sale of goods should be added to the sales, if**

**not already added in the books of account.**

**(c) Any tax, duty, cess or fee actually paid or incurred on the inventory (finished goods,**

**work-in-progress, raw materials etc.) should be added to the inventories, if not already added while**

**valuing the inventory in the accounts.**

**23.13 It may be noted that when the adjustments are made in the valuation of inventories, this will**

**affect both the opening as well as closing stock. Whatever adjustment is made in the valuation of**

**closing stock, the same will be reflected in the opening stock also. Question for consideration is**

**whether the opening stock as on 1st April, 1998 should be adjusted as required under s. 145A. It is now**

**well settled that if any adjustment is required to be made by a statute, effect to the same should be**

**given irrespective of any consequence on the computation of income for tax purposes. Sec. 145A starts**

**with the non obstante clause 'Notwithstanding anything to the contrary contained in s. 145'. Therefore,**

**to give effect to s. 145A, the opening stock as on 1st April, 1998 will have to be increased by any tax,**

**duty, cess or fee actually paid or incurred with reference to such stock if the same has not been added**

**for the purpose of valuation in the accounts.**

**23.14 It may be noted that while making the adjustments stated in paras 23.8 and 23.13 above, the tax**

**auditor should ensure that if any deduction is claimed for any tax, duty, cess or fee on the items**

covered by these two paras by way of debit in the P&L a/c, either in the earlier year or in the year

under report, adjustment for the same should be made in such a manner that no double deduction is

claimed for the same expenditure. Similarly adjustment should be made for any item of income to

ensure that the same item is not treated as income twice."

13. We are of the opinion that in the present case, there is no question of any double benefit being

given to the assessee. Para 23.13 of the Guidance Note itself makes it clear that whenever any

adjustment is made in the valuation of inventory, this will affect both the opening as well as the closing

stock. It is also to be noted that if any adjustment is required to be made by a statute, (as for example s.

145A of the Act), effect to the same should be given irrespective of any consequences on the

computation of income for tax purposes. Sec. 145A of the Act begins with a non obstante clause, and

therefore, to give effect to s. 145A of the Act, if there is a change in the closing stock as on 31st March,

1999, there must necessarily be a corresponding adjustment made in the opening stock as on 1st April,

1998. Para 23.14 of the Guidance Note postulates that adjustment should be made in such a manner

that no double deduction is claimed for the same expenditure. In the present case, the question of

double deduction does not arise, since no adjustment was made by the assessee in the P&L a/c for the

year ending 31st March, 1998.

Under the circumstances, we answer the question in the affirmative, that is in favour of the assessee

and against the Revenue. Accordingly, this appeal is disposed of.