(2013) 09 DEL CK 0026

In the Delhi High Court

Case No : Income Tax Appeal No. 130 of 2000

Commissioner of Income Tax APPELLANT

Vs

M/s. Samtel India Limited RESPONDENT

Date of Decision : 26-09-2013

Acts Referred:
Income Tax Act, 1961 — Section 37(1)

Citation : (2013) 8 AD 576 : (2013) 204 DLT 425 : (2013) 359 ITR 62

Hon'ble Judges : Sanjiv Khanna, J;Sanjeev Sachdeva, J

Bench : Division Bench

Advocate : N.P. Sahni and Mr. Ruchesh Sinha, for the Appellant;

Final Decision : Disposed Off

Judgement

Sanjiv Khanna, J.—This appeal by the Revenue, which pertains to Assessment Year 1995-96, was admitted for hearing vide order dated 30th January, 2001 on the following substantial questions of law:-

(i) Whether ITAT was justified in not deciding the issue which was before it namely whether Rs. 3,95,11,874/- being the excise duty on raw material consumed during the year is allowable u/s. 37(1) as claimed by the respondent before A.O.?

(ii) Whether the assessee is entitled to MODVAT credit on account of excess of excise duty/additional customs duty, paid by it on purchase of raw material, over the duty payable on finished goods, in the year of accrual i.e. when the raw material is purchased or in the year of receipt, when the assessee is maintaining accounts on mercantile system of accounting?

The assessment order records that there was accumulation of unutilised input MODVAT credit of Rs. 3.95 crores. The assessee had claimed this as a deduction in the computation of income. This claim was made in the revised return. Assessee premised that they had paid excise duty and additional customs duty and this constitutes an expense u/s 37(1) of the Income Tax Act, 1961 (Act, for short). The claim was rejected by the Assessing Officer observing that the MODVAT credit had not been utilised and could have been utilised in the next year.

2. Commissioner of Income Tax (Appeals) recorded the statement of the assessee that excise duty and additional customs duty paid on the raw material formed part of the cost of the raw material and had to be allowed when the raw material has been consumed. Under the excise rules, additional customs duty and excise duty paid on raw material formed part of MODVAT credit, which was utilised at the time of clearance of goods, subject to fulfilling conditions. The CIT (Appeals) observed that the assessee had received refund of MODVAT credit in the subsequent assessment year 1996-97, but it could not be ascertained whether the refund was against the MODVAT credit available as on 31st March, 1995. He also observed that while valuing the closing stock on 31st March, 1995, excise duty paid on input and utilised in the finished goods was not taken into consideration and as per note No. 4 of the accounting policy and note on accounts, excise duty payable on finished goods was accounted for at the time of removal of goods. He observed that whether the cost of raw material utilised for manufacture of finished goods included customs duty or not was not very clear. He further held that the respondent-assessee had got refund and the addition should be confirmed.

3. Income Tax Appellate Tribunal by the impugned order accepted the appeal of the assessee. It was noted that during the relevant previous year the respondent-assessee had consumed raw material of Rs. 146.03 crores, which included MODVAT amount of Rs. 24.02 crores. Out of this, the assessee had utilised MODVAT credit of Rs. 19.46 crores and the balance Rs. 3.95 crores was claimed as a deduction u/s 37(1) of the Act as it was forming part of raw material. The Assessing Officer held that credit in respect of MODVAT had accrued and was still available and, therefore, deduction u/s 37(1) was rejected. It was noticed that the refund received from the excise department of Rs. 7.16 crores was offered for taxation in the Assessment Year 1996-97 by the respondent-assessee and was accordingly taxed. The tribunal observed that as payment of excise and additional customs duties had been made, it was to be allowed as a deduction u/s 37(1) of the Act. Unutilised MODVAT credit remained on the credit side and was refunded in the next assessment year, i.e., Assessment Year 1996-97, when income of the assessee to the tune of Rs. 7.16 crores was taxed on account of refund. This would amount to double taxation of the same amount in the two years. It was also stated that the claim for refund had to be examined by the excise department and there was substantial reduction from the refund claim as made. It was observed that to get the refund the assessee had to make application and only then refund was possible.

4. The issue in question is covered by the decision of the Supreme Court in Commissioner of Income Tax Vs. Indo Nippon Chemicals Co. Ltd., wherein it was observed that the Assessing Officer/Revenue was not correct in holding that

MODVAT credit was irreversible credit available to the manufacturers upon purchase of duty paid raw material and it should amount to income, which is liable to be taxed under the Act. However, in the said case it was also noticed that the assessee had uniformly applied the net method, namely, valuing the raw material at purchase price minus MODVAT credit and the order of the Assessing Officer/Revenue was adversely commented upon because they had adopted "gross method" which included the MODVAT credit at the time of purchase and "net method" at the time of valuation of stock in trade. This practice was depreciated. This decision was followed by the Supreme Court in Commissioner of Income Tax, New Delhi Vs. Shri Ram Honda Power Equipment Ltd., and in the case of the respondent-assessee in Civil Appeal No. 6449/2012.

5. The facts stated by Commissioner of Income Tax (Appeals) create some doubt and suspicion whether net method was followed by the assessee, but the Assessing Officer has not commented adversely about the same in the assessment order. Findings of the Commissioner of Income Tax (Appeals) are tentative and not firm. In the income tax appeal and the grounds taken, there is no allegation or averment that the respondent-assessee was following "gross method" and not the "net method" or was following two different methods at the time of purchase/opening stock and valuation of the stock in hand. As noted above, SLP preferred by the Revenue in the case of the respondent was admitted as Civil Appeal No. 6449/2012 but has been dismissed. In view of the aforesaid position and also noticing the fact that the MODVAT credit paid was brought to tax in the next year, we do not see any ground or reason to interfere with the order of the tribunal. Questions of law are accordingly answered against the Revenue and in favour of the respondent-assessee.

The appeal is disposed of. No costs.

