

**IN THE ITAT MUMBAI BENCH 'D'**

**Rallis India Ltd.**

**v.**

**Additional Commissioner of Income-tax, Range 1(3), Mumbai\***

**D. MANMOHAN, VICE-PRESIDENT**

**AND RAJENDRA SINGH, ACCOUNTANT MEMBER**

**IT APPEAL NO. 2464 (MUM.) OF 2010**

**[ASSESSMENT YEAR 2006-07]**

**SEPTEMBER 14, 2012**

**ORDER**

**D. Manmohan, Vice-President** - This appeal is directed against the order, dated 7.1.2010, passed by learned CIT(A)-2, Mumbai and it pertains to A.Y 2006-07. Number of grounds were urged before us which are taken up in seriatim.

**2.** Vide ground No. 1 the assessee contends that learned CIT(A) erred in confirming an addition to closing stock on account of purchase tax not included therein. The Assessing Officer observed that the assessee-company purchased stock from unregistered dealer and paid purchase tax amounting to Rs. 53,71,399/- . In the tax audit report it was pointed out that purchase tax was not included in the value of closing stock on the goods purchased from unregistered dealer though this was debited to the profit and loss account. Since purchase tax had to be loaded to be purchases the Assessing Officer enhanced the value of purchase by Rs. 53,71,399/- . On an appeal filed by the assessee, learned CIT(A) observed that under identical circumstances in assessee's own case for A.Y. 2004-05 his predecessor added purchase tax to the cost of value of closing stock and by respectfully following the same the issue was decided against the assessee.

**3.** Further aggrieved the assessee is in appeal before us.

**4.** Learned counsel for the assessee fairly admitted that in respect of A.Y. 2004-05 ITAT "D" Bench, Mumbai (ITA No. 5257 & 5701/Mum/2008 dated 30.8.2011) upheld the view taken by the Assessing Officer by holding that as per provisions of section 145A, the value of purchase tax has to be taken into account while valuing the closing stock. The Bench further observed that in the light of the decision of Hon'ble Bombay High Court in the case of *CIT v. Mahalaxmi Glass Works (P.) Ltd.* [2009] 318 ITR 116 the opening stock valuation should also be correspondingly adjusted. By respectfully following the decision of ITAT (*supra*) we set aside the issue to the file of the Assessing Officer to re-compute in line with the view taken therein.

**5.** Vide ground No. 2 the assessee challenged the disallowance made by the Assessing Officer/learned CIT(A) u/s. 14A read with Rule 8D. At the time of hearing learned counsel submitted that the assessee-company is not interested in pursuing the issue. Learned Departmental Representative has no objection for the same. Under the circumstances, we reject ground No. 2 on the ground that it is not pressed by the assessee.

**6.** Vide ground No. 3 it was contended that learned CIT(A) erred in confirming the addition made to closing stock u/s. 145A on account of Modvat credit amounting to Rs. 3,09,18,828/- . Without prejudice to the above it was contended that learned CIT(A) erred in not directing the Assessing Officer to increase the opening stock and purchases for the year under consideration by applying section 145A in its entirety, in the light decision of Hon'ble Bombay High Court in the case of *CIT v. Cabot India Ltd.* [ITA No. 2123 of 2009 dated 16.10.2009].

**7.** Facts necessary for the disposal of the issue are stated in brief. The Assessing Officer noticed that unutilized Modvat credit/Cenvat credit outstanding at the end of the year works out to Rs. 3,09,18,828/- which deserves to be added to the closing stock as per the provisions of section 145A. Case of the assessee-company was that the net impact in profit and loss account is nil if suitable adjustment is made with regard to closing and opening stock. It was further submitted that in the light of the decision of Hon'ble Apex Court in the case of *CIT v. Indo Nippon Chemicals Co. Ltd.* [2003] 261 ITR 275/130 Taxman 179 whatever method the Assessing Officer adopts, the method has to be consistent with the accepted principles of Accountancy.

**8.** The Assessing Officer however observed that the provisions of section 145A has came into the Statue w.e.f. 1.4.1999 whereby 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 or profession" shall be in accordance with the method of accounting regularly employed by the assessee and by making further adjustment to include the amount of any tax actually paid or incurred by the assessee to bring the goods to the place of its location as on the date of valuation. Therefore as per the provisions of section 145A un-utilised Cenvat credit as on 31.3.2006 in respect of raw material is added to the closing stock u/s. 145A of the Income Tax Act. On an appeal filed by the assessee learned CIT(A) observed that post amendment section 145A requires all such amounts to be added to the value of closing stock for every subsequent year; whatever valuation is put to the closing stock will surface as opening stock of the subsequent year and consequently the change will have nil or neutral tax effect over the years. However in the instant case even provisions of section 145A were introduced long back, its effect was not given in computation of income. Therefore in the first year of giving effect to the provisions of section 145A, there is bound to be a positive impact upon the income of the assessee. In this regard learned CIT(A) relied upon the decision of ITAT, Mumbai Bench in the case of *West Coast Paper Mills Ltd. v. Asstt. CIT* [2006] 103 ITD 19.

**9.** Aggrieved, the assessee is in appeal before us. Learned counsel for the assessee adverted our attention to a Note on Cenvat credit (page 14 of the paper book) to submit that the assessee has been consistently following exclusive method of accounting i.e. purchases are reduced by the Modvat receivable at inception. The effect of this is that the profit is increased at the very inception by claiming a lower figure in respect of purchases. If the entire amount of Modvat is credited to purchases and thereafter stocks are valued at rates which are gross of Modvat, then it

amounts to double taxation of the amount of Modvat pertaining to raw materials lying in closing stock. He referred to the decision of Hon'ble Bombay High Court in the case of *CIT v. Indo-Nippon Chemical Ltd.* [2000] 245 ITR 384/112 Taxman 555 to submit that whether one applies the net method or gross method there is no understatement of profits and hence by applying inclusive method, if at all is to be applied, it has to be applied in totality and not in piecemeal i.e. if the closing stock has to be valued u/s. 145A, purchases also to be valued accordingly. Learned counsel placed reliance upon the decisions in the case of *Cabot India Ltd.*'s case (*supra*) and others to submit that any adjustment to the closing stock requires suitable modification to the opening stock, since net effect of adjustment will not result in any tax effect. It was also submitted that the Assessing Officer has not made any addition in A.Y. 2008-09 and thereafter. In other words, addition was confined only for 2 years i.e. A.Y. 2006-07 & 2007-08. It was also submitted that in respect of A.Y. 2000-01 which is the first year after the amendment the Assessing Officer has not made any addition and thus in the year of making adjustment the assessee is entitled to adjustment of opening stock as well as closing stock in which event, there will not be any tax impact.

**10.** On the other hand learned Departmental Representative submitted that section 145A speaks of only adjustments to the closing stock and hence opening stock need not be revalued by applying inclusive method. However he fairly admitted that the issue is covered by the decisions cited by learned counsel, in the paper book.

**11.** We have carefully considered the rival submissions and perused the record. The assessee has been consistently followed exclusive method and by virtue of insertion of section 145A the assessee has to follow inclusive method in which event, similar adjustment has to be made to the opening stock, purchases, sale and closing stock also. Even if there is no tax impact, section 145A of the Act has to be applied for valuation of opening stock, purchases, sale, and closing stock, as held by Hon'ble Bombay High Court in the case of *Cabot India Ltd.*'s (*supra*) and *Nicholas Piramal India Ltd.* [IT Appeal No. 8 of 2009]. The Assessing Officer is directed to recompute accordingly.

**12.** Vide ground No. 4 the assessee-company contends that learned CIT(A) erred in confirming the addition of Rs. 21,01,380/- u/s. 50 read with section 50C of the Act, in respect of the flat sold in the building called "Nanak Niwas". The assessee-company declared short term capital gains on sale of flats u/s. 50 of the Act. Out of the flats sold, the company sold a flat in Nanak Niwas, Shyam Cop. Housing Society for a sale consideration of Rs. 1,65,00,000/-. Registration was made on 31.8.2005. The Assessing Officer addressed a letter, u/s. 50C of the Income Tax Act, to Joint Sub-Registrar, Department of Stamp and Registration, Worli to furnish the value adopted by the Stamp Valuation Authority. The Joint Sub-Registrar informed that the stamp value of the said property was Rs. 1,86,01,380/-. Therefore the Assessing Officer sought to take into consideration the value adopted by the Stamp Valuation authority in preference to the value declared in deed. In other words, the Assessing Officer called upon the assessee to explain as to why an amount of Rs. 21,01,380/- should not be added further as short term capital gains on the sale of said flat.

**13.** The case of the assessee was that in respect of depreciable assets provisions of section 50 are applicable in which event method prescribed under 50C cannot be invoked. It was also

contended that there is deemed short term capital gains, in the instant case, by virtue of the fact that block of assets were exhausted upon sale of Nanak Niwas but the fact remains that it is depreciable asset and hence valuation adopted by stamp valuation authority should not be taken into consideration. It was further submitted that on the date of sale, property was more than 50 years old and as per the stamp duty Ready Reckoner 50% depreciation has to be adopted and if such a method is adopted value as per the Stamp Act works out to Rs. 1.55 crores whereas the property was sold for a consideration of Rs. 1.65 crores and hence no addition is called for. It was also contended that it was a mistake on the part of the buyer who has taken into consideration 40% depreciation and was willing to pay higher stamp duty as per value adopted by the Joint Sub-Registrar. Since registration and stamp charges are payable by the buyer, the assessee did not challenge the value adopted by the Joint Sub-Registrar but for the purpose of value to be adopted in the case of seller, u/s. 50C of the Income Tax Act, fair market value has to be adopted.

**14.** The Assessing Officer as well as learned CIT(A) rejected the contention of the assessee. Since section 50C of the Act speaks of the value adopted for stamp duty purposes as the basis addition of Rs. 21,01,380/- was made by the Assessing Officer and the same was confirmed by learned CIT(A).

**15.** Aggrieved, the assessee is in appeal before us. Learned counsel for the assessee strongly submitted that section 50 is applicable to business assets. Even otherwise the valuation adopted by the Joint Sub-Registrar, Department of Stamp and Registration cannot be the basis to make an addition in the hands of the assessee since stamp valuation authority has not taken the correct depreciation as per the Stamp Valuation Ready Reckoner.

**16.** Learned Departmental Representative submitted that u/s. 50C of the Act the legislature has not provided for any relaxation in the case of seller. Plain language of the section gives no room for doubt that value adopted or assessed by the stamp valuation authority should be deemed to be full value of consideration received and only in a case where this valuation is disputed before the stamp valuation authority, the matter can be referred to valuation officer. In the instant case, the assessee having not challenged the value adopted by the stamp valuation authority; there is no case to dispute the addition made by the Assessing Officer.

**17.** We have carefully considered the rival submission and perused the record. With regard to applicability of provisions of section 50C, in the case of depreciable assets, the issue now stands squarely covered by the ITAT, Mumbai Special Bench in the case of *ITO v. United Marine Academy* [2011] 130 ITD 113/10 taxmann.com 320 wherein the Special Bench observed that sections 50 & 50C operate in two different fields and if the value adopted by the stamp valuation authority is accepted by the purchaser/seller there cannot be any variation for limited purposes of computing the consideration received, under section 50C of the Income Tax Act, 1961. In the light of the decision cited (supra), we do not find any infirmity in the order passed by learned CIT(A). We therefore uphold the order of learned CIT(A) and reject ground No. 4 of the assessee.

**18.** In the result, appeal filed by the assessee is treated as partly allowed.