

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.A.No.136 of 2005

Date of decision: 28.7.2006

**The Commissioner of Income-tax, Patiala**

**... Appellant**

Through

Dr.N.L.Sharda, Advocate

v.

**M/s Groz Beckert Asia Ltd., 133-135, Industrial Area-I, Chandigarh**

**... Respondent**

Through:

Ms.Radhika Suri, Advocate

CORAM:

Hon'ble Mr.Justice Adarsh Kumar Goel

Hon'ble Mr. Justice Rajesh Bindal

ORDER:

This is an appeal by the Revenue against order dated 24.9.2004, passed by the Income-tax Appellate Tribunal, Chandigarh, Bench 'B', Chandigarh (for short, 'the Tribunal') in I.T.A.No.375/Chandi/99, raising the following substantial questions of law:

“(i) Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that central excise duty component could not be included in the value of closing stock ?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that for the purpose of calculation of deduction under Section 80HHC of the Income-tax Act, 1961, sales tax and excise duty component cannot be included in the total turnover?”

As far as question No. (i) is concerned, the Tribunal, while rejecting the appeal of the Revenue, against the order passed by the Commissioner of Income-tax (Appeals), relied upon the order passed by it for the earlier year in the case of the assessee, wherein it was held as under:

“Similar issue had come up before the Tribunal in assessee's own case for assessment years 1991-92 to 1995-96 and the same was decided in favour of the assessee vide 9 of order dated 3.10.1997 in

I.T.A. No.462/Chandi/1995 and para 11 of order dated 13.5.2003 in I.T.A. Nos.99 and 198/Chandi/1996, I.T.A.No./85,299 and 1237/Chandi/1998. The relevant para 9 of the order of the Tribunal in I.T.A.No.462/Chandi/1995 is reproduced below:

“9. Coming to ground No.5, the DCIT has dealt with the issue in para 8 of the assessment order, which mentions that the assessee had not included Excise duty on stock of finished needles as on 31.3.1991. The assessee's contention that the Excise duty does not form part of the cost of goods where the goods have been manufactured but have not been cleared for Excise, was not accepted by DCIT. It was observed by him that the liability for payment of Excise duty accrues on completion of production but collection of the same is postponed to the date of removal of the goods. Before learned ca, it was submitted that the assessee has been consistently valuing inventory at cost. Other contentions put forth by the assessee have been recorded in para 6.2 to 6.5 of the impugned order and learned Commissioner of Income tax (Appeals) ultimately deleted the addition. Learned D.R. relied on the order of the DCIT and submitted that the case law cited before learned Commissioner of Income Tax (Appeals) stands overruled in 188 ITR 44(SC) and it was urged for restoration of Assessing Officer's order. Learned counsel, on the other hand, submitted that since this Excise duty amount was added by the DCIT in valuing closing stock and added, it cannot form part of the Closing Stock, as it has not been expended during the year under consideration and thus cannot form part of valuing Closing Stock. Reliance was placed on 49 ITD 21 and it was urged that learned Commissioner of Income tax (Appeals) has rightly deleted the addition. In view of the facts and circumstances of the case, we uphold the order of learned Commissioner of Income tax (Appeals) on the point for the reasons given therein and find no merit in the ground of the Revenue, which fails.”

Further, while dealing with an issue involving Modvat credit on unconsumed material, Hon'ble the Supreme Court in Commissioner of Income-Tax v. Indo Nippon Chemicals Co. Ltd., (2003) 261 ITR 275 held that merely

because the Modvat credit was an irreversible credit available to manufacturers upon purchase of duty-paid raw material, that would not amount to income which was liable to be taxed under the Act: income was not generated to the extent of the Modvat credit on unconsumed raw material.

It cannot be disputed that excise duty is to be paid to the State and the same is not a kind of profit in the hands of the assessee.

Accordingly, while accepting the findings of the Tribunal, the issue is decided against the Revenue.

As far as question No. (ii) is concerned, while delivering judgment in I.T.A.No.293 of 2005 – Commissioner of Income Tax-I, Ludhiana v. M/s Vardhman Polytex Ltd., Chandigarh Road, Ludhiana, decided on 22.5.2006, we have already decided an identical issue against the Revenue and in favour of the assessee. For the reasons recorded therein, we reject the appeal of the Revenue.

Accordingly, finding no merit, the appeal of the Revenue is dismissed on both counts.

**(Adarsh Kumar Goel)**  
**Judge**

**( Rajesh Bindal )**  
**Judge**

28.7.2006  
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