

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.192 of 2009

The Commissioner of Income Tax-6. ..Appellant.

Vs.

M/s. The Mahalaxmi Glass Works Pvt. Ltd. ..Respondent.

Mr.J.S.Saluja for the Appellant.

Mr.A.K. Jasani for the Respondent.

CORAM : F.I. REBELLO & R.S. MOHITE, JJ.

DATE: 1st April, 2009.

PC:

1. The substantial question of law as raised in this appeal is as under.

Whether on the facts and circumstances of the case and in law, the Hon'ble Tribunal was justified in confirming the order of CIT(A) whereby he directed to the Assessing Officer to make adjustment of unutilized MODVAT Credit to the opening stock and thus ignoring the ratio laid down in Melmould Corporation Vs. CIT (202 ITR 789) Bombay wherein it was held that changing the value of opening stock will lead to chain reaction and hence the same should not be done?

2. This question has been dealt with and answered by the Delhi High Court in the case of **Commissioner of Income Tax Vs. Mahavir Alluminium Ltd.** reported in (2008) 297 ITR 77 (Delhi). This question concerns the method of valuation of inventory as contemplated by Section 145A of the Income Tax Act. In the case before the Delhi High Court, the Assessing Officer contended that Section 145A did not permit the assessee to make a change in the valuation of the opening stock as on 1.4.1998 though it permitted a change in the closing stock as on 31.3.1999. The question before the Delhi High Court was that the adjustment of excise duty could be made in the opening stock also. In this connection, relying upon the decision of Privy Council in the case of **CIT Vs. Ahmedabad New Cotton Mills Co. Ltd.** reported in AIR 1930 PC 56, the Delhi High Court took a view that to give effect to Section 145A, if there is any change in the closing stock at the end of the year then there must necessarily be a corresponding adjustment made in the opening stock of that year. It has been held that this

would not amount to give double benefit to the assessee and would be necessary to compute the true and correct profit for the purpose of assessment.

3. We may reproduce here, the relevant observation in the judgment of the Privy Council in the case of **CIT Vs. Ahmedabad New Cotton Mills Co. Ltd.** which was relied upon by the Delhi High Court and which is as under.

"If the method of altering both valuation 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 next account and a larger sum for profits realised by the sale, change in market value 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".

4. We are in respectful agreement with the reasoning and the finding given by the Delhi High Court.

5. Apart from this, we find from the judgment of the ITAT that when counsel for the assessee contended that the closing stock of the previous year be taken as opening stock of the next year and that the Assessing Officer be directed to establish the valuation for closing stock as opening stock of the next year, the D.R. stated that he has no objection for the same. This concession has been recorded in the order.

6. In this view of the matter, we are of the opinion that the question of law as raised by the appellant does not arise. Accordingly, the appeal is summarily dismissed.

(R. S. MOHITE, J.) (F. I. REBELLO, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 302 OF 2009

The Commissioner of Income-tax-8, Mumbai. ... Appellant.

V/s.

Kolsite Maschine Fabrik Ltd. ... Respondent.

Suresh Kumar for the appellant.

S.E.Dastur, senior counsel with Nitesh Joshi i/b. A.K.Jasani for the respondent.

CORAM: V.C.DAGA AND J.P.DEVADHAR, JJ.

DATED: 20th April 2009.

P.C:

Heard learned counsel for the rival parties. Perused appeal.

2. The Tribunal while considering the submission made on the basis of section 145A of the Income Tax Act, 1961 ruled that if there was any change in the closing stock at the end of the year, then there must necessarily be a corresponding adjustment made in the opening stock of that year.

The said view is in consonance with the view taken by the Division Bench of this Court in I.T.Appeal No.192/2009 (**C.I.T. v. M/s. The Mahalaxmi Glass Works Pvt.Ltd.**) decided on 1st April, 2009.

3. In the above view of the matter, no substantial question of law is involved in this appeal. Appeal is dismissed in limine with no order as to costs.

(J.P.DEVADHAR, J.) (V.C.DAGA J.)