आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "ए" अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

(through web-based video conferencing platform)

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BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No. 1694/Ahd/2019 & CO No. 16/Ahd/2020
Assessment Years : 2013-14

DCIT, Circle-2(1)(1), Ahmedabad	Vs	M/s. Galaxy Global Pvt. Ltd., UGF 1-2, Riviera Arcade, Nr. Prahladnagar Auda Garden, Satellite Road, Ahmedabad-380014 PAN : AACCG 1840 P
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ **(Respondent/ Cross-Objector)**

Revenue by :	Shri S.S. Shukla, Sr DR
Assessee by :	None

सुनवाई की तारीख/**Date of Hearing : 28/09/2021**
घोषणा की तारीख /**Date of Pronouncement: 04/10/2021**

आदेश/O R D E R

PER RAJPAL YADAV, VICE PRESIDENT :

The Revenue is in appeal before the Tribunal against the order of the learned Commissioner of Income-Tax (Appeals)-2, Ahmedabad ("CIT(A)" in short) dated 14.08.2019 passed for Assessment Year 2013-14. On receipt of notice in the Revenue's appeal, the assessee has filed Cross Objection bearing CO No.16/Ahd/2020.

2. The grievance of the Revenue is that the learned CIT(A) has erred in deleting the disallowance of Rs.3,22,561/- which was added by the Assessing Officer with the aid of Section 43B of the Income Tax Act, 1961.

3. In response to the notice of hearing, no one has come present on behalf of the assessee. However, with the assistance of the learned Departmental Representative, we have gone through the record carefully and proceed to dispose of the appeal *ex parte* qua the assessee.

4. With the assistance of learned Departmental Representative, we have perused the order of the learned CIT(A) which is a well reasoned order exhibiting every details. We deem it appropriate to take note of his findings recorded at paragraph No. 3.3 to 3.5 of impugned order which read as under:-

> *"3.3. I have carefully considered the facts of the case, assessment order and statement of facts filed by the appellant. The Assessing Officer has observed that appellant has claimed custom duty expenditure of Rs. 3,22,561/- on the ground that such duty was not claimed as expenses in the year of actual payment as appellant was entitled to receive special benefits as per Custom & Excise Rules but said special benefits were not received hence expenses were claimed as revenue expenditure in year under consideration. The AO has stated that as per provisions of Section 43B of the Act, any duty, taxes, cess or fees by whatever name called, shall be allowed only in previous year in which such sum is actually paid and custom duty is paid in earlier year hence cannot be allowed as expenditure under Section 43B of the Act. Accordingly, he made disallowance of Rs.3,22,561.*
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> *3.4. The appellant has claimed that it has paid custom duty in earlier assessment year and same was not claimed as revenue expenditure but shown as custom duty receivable as it was entitled to receive refund of such custom duty benefits from the Government. As such benefits were not received, appellant has written off balance lying in custom duty receivable account in Profit & Loss Account in current year and claimed it as revenue expenditure under Section 37 of the Act. The appellant has contended that custom duty is already paid in earlier years, provisions of Section 43B would not apply when expenditure is claimed as revenue expenditure in current year. The appellant in its alternate contention has stated that if such expenditure is not allowed allowable expenditure, same may be allowed in earlier assessment year as revenue expenditure.*

3.5. Appellant has paid custom duty in earlier assessment years but same was not claimed as revenue expenditure in the year of payment but was shown as "custom duty receivable account" in balance sheet. As above amount is not received from concerned authority as per relevant schemes, such amount is written off as business loss/expenditure in year under consideration. The provisions of Section 43B relied upon by AO are not applicable because payment of custom duty is already made by appellant which is not in dispute. The provision of Section 43B does not envisage that expenditure is allowable only in the year of payment and if payment has preceded the year of claiming of such payment as expenditure, disallowance of expenditure cannot be made under this provision. So far as allowability of such expenditure as revenue expenditure is concerned, it is found that Hon'ble Ahmedabad ITAT in the case of ACIT V/s Rangoli Industries Pvt. Limited in ITA No. 1936/Ahd/2010 vide order dated 11th January, 2013 has held as under:

> *"Facts in brief as emerged from the corresponding assessment order passed u/s.143(3) r.w.s. 147 dated 22.12.2009 were that the assessee-company is following the "Mercantile" system of accounting. It was noted by the Assessing Officer that for the year under consideration an amount of Rs.65,24,121/- was written off by debiting the profit & loss account pertaining to Excise Duty. According to him, Government had declared the scheme wherein the assessee has been given an option to continue with the present rate of Excise Duty or to avail a route of exemption. After going through the submissions of the assessee, the Assessing Officer was not convinced and held that there was no evidence from the Excise Department through which the assessee could establish that the assessee was entitled to write off the amount in the year under consideration....*
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> *4. Having heard the submissions of both the sides and considering the facts of the case as narrated before the lower authorities, it was observed that the aforesaid amount of the Excise Duty was written off at the time of surrender of Excise Registration Certificate. On this issue, the Respected Coordinate Bench Chandigarh in the case of M/s.Mohan Spinning Mills (supra) has opined as under:-*
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> > *"7. We have heard the rival contentions and perused the record. The issue arising in the present appeal is in respect of the deduction claimed on account of CENVAT amounting to Rs.35,94,577. The assessee was engaged in the business of*

manufacturing and trading of yarn and fibre. The yarn manufactured by the assessee was an excisable item. The assessee was paying excise duty on the raw material purchased i.e. acrylic yarn/fibre and polyester yarn/fibre. In turn, assessee was liable to pay duty on its manufactured items. The rate of excise duty payable on the raw material was higher and the assessee was depositing the excise duty in PLA account which in turn was adjustable against the excise duty payable on the finished products. The excise duty payable on the finished products was on the lower side and consequently over the period of years the assessee had credit of excise duty resulting in accumulation of CENVAT."

"10. Various tests have been laid down by various High Courts and the Apex Court in relation to the ailowability of expenditure under section 37(1) of the Act while computing the income from profits and gains of business or profession. In the facts of the present case, the assessee had paid CENVAT on purchase of raw material which was deposited in its PLA account for claiming the benefit of set off against the excise duty payable on the manufactured items i.e. branded yearn. The assessee was paying higher rate of excise duty on the raw material purchased by it as against the rate of excise duty applicable on the manufactured items, consequently credit of excise duty was available with the assessee. The said excise duty paid from year to year was not claimed as an expenditure but was carried forward from year to year to be adjusted against the excise duty payable by the assessee on its manufactured items. However, during the year under consideration the assessee closed down its manufacturing unit and consequently the benefit of the CENVAT credit remained unadjusted. Once the manufacturing unit of the assessee is closed down, admittedly the benefit of CENVAT credit not availed of against the excise duty payable on manufactured items, cannot be utilized by the assessee and the said write off of CENVAT credit, is allowable as an expenditure in the year under consideration on the closure of the business. The write off of CENVAT credit by the assessee in its books of account is thus allowable as business expenditure under the provisions of section 37(1) of the Act relatable to the year, in which the manufacturing activities are closed down by the assessee. Accordingly, we direct the Assessing Officer to allow the claim of the assessee in respect of write off of CENVAT credit of Rs 35,94,577/-. Ground No.1 raised by the assessee is thus allowed."

4.1. We have also noted that Respected Coordinate Bench "A" Ahmedabad in the case of Girdhar Fibres Pvt.Ltd. (supra) has also opined as under:-

> *"9. We heard both the sides. Before us, Form E.R.I, i.e. Return of Excisable goods and availment of CENVAT credit has been placed. The explanation of the assessee was that the impugned two amounts were part of the duty which was paid by the assessee at the time of purchase of raw-material, however, the assessee had maintained exclusive system of accounting, therefore the duty paid was not debited as a part of the purchases but a separate account was maintained and carried to the balance-sheet. The AED and NCCD were applicable on POY, i.e. raw-material. When the finished goods, i.e. texturized yarn is manufactured, the excise is levied in the form of basic duty. The assessee has adopted exclusive method of accounting, therefore debited the net purchases and those were separately recorded in the books of accounts. We find force in this argument of the assessee because while maintaining the exclusive method of accounting the assessee had a choice to increase the value of the purchases in respect of the duty paid in the form of AED & NCCD. In other words, an expenditure was incurred but that expenditure could not be adjusted against the CENVAT Rules because on the finished goods, i.e. texturized yarn only the basic duty is leviable. We, therefore, hold that the amount which is now written off being part of the business expenditure, hence allowable under the provisions of the Act. In the result, we hereby reverse the findings of the authorities below and allow the ground raised by the Assessee."*

> *5. In the light of the above decisions, once on identical facts, a view has already been taken in favour of the assessee on this issue, therefore respectfully following that view, we hereby hold that ld.CIT(A) has rightly allowed the claim. In the result, ground raised by the Revenue is hereby dismissed."*

Relying upon the decision referred supra and the facts of the case, addition made by AO for Rs.3,22,561/-pertaining to custom duty is allowed as revenue expenditure."

5. A perusal of the above would indicate that the assessee has paid custom duty which was allowable deduction of the assessee under Section 43B of the Act in the year of payment itself. However, the assessee was expecting certain special benefits as per Custom and Excise Rules; therefore, the assessee did not claim it in that year. Ultimately, those benefits were not given to the assessee and, in this year, he has written off the alleged customs duty receivable in the accounts and claimed it as revenue expenditure in the profit and loss account. We find that the learned First Appellate Authority has rightly adjudicated this issue after putting reliance upon the decision of the ITAT in the case of ACIT Vs. Rangoli Industries Pvt. Limited (Supra) and no interference is called for.

6. So far as the Cross-Objection is concerned, the assessee has raised two grounds of appeal. In Ground No.1, it has challenged the reopening of the assessment and Ground No.2 is a general ground of appeal which does not call for recording of any finding.

7. We have dismissed the appeal of the Revenue on merit. No one has come present on behalf of the assessee and no paper-book was filed in support of its Cross-Objection. The learned CIT(A) upheld the reopening of assessment by recording a well reasoned findings recorded at paragraph Nos. 2.3 to 2.5 of the impugned order. After going through the well reasoned findings, as recorded by the learned CIT(A), we do not find any merit in the Cross-Objection filed by the assessee and the reopening of the assessment is upheld. Accordingly, the Cross-Objection filed by the assessee is rejected.

8. In the result, the appeal filed by the Revenue and Cross-Objection filed by the assessee, both are dismissed.

Order pronounced in the Court on 4th October 2021 at Ahmedabad.

Sd/- Sd/-

(PRADIP KUMAR KEDIA) **(RAJPAL YADAV)**
ACCOUNTANT MEMBER **VICE-PRESIDENT**

Ahmedabad, Dated 04/10/2021

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , /DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

TRUE COPY

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad