

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'SMC' BENCH, KOLKATA**

Before Shri P.M. Jagtap, Accountant Member

**I.T.A. No. 1049 /KOL/ 2015
Assessment Year: 2010-2011**

***BDG Metal and Power Limited,.....Appellant
HMP House, 5th Floor,
4, Fairlie Place,
Kolkata-700 001
[PAN : AACCB 2298 Q]***

-Vs.-

***Deputy Commissioner of Income Tax,.....Respondent
Central Circle-XXI (Now DCIT, CC-4(4),
Aayakar Bhawan Poorva,
110, Shantipally,
Kolkata-700 107***

Appearances by:

Shri A.K. Tibrewal, FCA, for the assessee

N o n e, for the Department

Date of concluding the hearing : July 20, 2016

Date of pronouncing the order : August 19, 2016

O R D E R

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-21, Kolkata dated 15.05.2015 and the solitary ground raised by the assessee in the said appeal reads as under:-

“That on the facts and in the circumstances of the cases, the Id. CIT(Appeals) erred in confirming the addition of an aggregate sum of Rs.10,14,708/- in respect of the VAT payment made to the Sales Tax Department on account of tax on assessment made by the sales tax authorities on the alleged ground that the appellant maintained separate VAT & CST accounts and any payment made subsequently is not allowable as deduction even on payment basis”.

2. The assessee in the present case is a Company, which is engaged in the business of manufacturing of Steel Semies, Silica Manganese and Hot

Rolled products. The return of income for the year under consideration was filed by it on 23.09.2010 declaring total income at 'nil'. The original assessment in the case of the assessee was made by the Assessing Officer under section 143(3) on 30.12.2011. The same, however, was set aside by the Id. CIT under section 263, inter alia, on the issue of deduction claimed by the assessee on account of "Input VAT Reverse" amounting to Rs.10,14,708/-. According to the Id. CIT, the said deduction was not admissible since the VAT accounts were maintained separately as per the Notes on Accounts. As per the order of the Id. CIT passed under section 263, a fresh assessment was made by the Assessing Officer vide his order dated 21.02.2014, wherein he disallowed the deduction claimed by the assessee on account of "Input VAT Reverse" amounting to Rs.10,14,708/-. Against the said order of the Assessing Officer, an appeal was preferred by the assessee before the Id. CIT(Appeals), who confirmed the addition made by the Assessing Officer on account of disallowance of assessee's claim for "Input VAT Reverse" by following his order passed in assessee's own case for A.Y. 2009-10, wherein a similar issue was decided against the assessee. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

3. I have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that a similar issue had come up for consideration before this Bench in assessee's own case for A.Y. 2009-10 and the same was decided in favour of the assessee vide an order dated March 09, 2016 passed in ITA No. 1047/KOL/2015 for the following reasons given in paragraph no. 6:-

"6. I have considered the rival submissions and also perused the relevant material available on record. As rightly contended by the Id. counsel for the assessee, it appears that the exact nature of amount in dispute paid by the assessee on account of reversal of VAT inputs has not been appreciated either by the Assessing Officer or by the Id. CIT(Appeals) in the right perspective. The input tax credit on account of VAT paid on purchases was actually claimed by the assessee in the F.Ys. 2006-07 and 2007-08 and since the relevant materials purchased by the assessee

were used for manufacture of goods, which were transferred to its consignment agent without charging sales tax, the assessee was not entitled for the input tax credit. Such credits, however, were wrongly claimed by the assessee against CST/VAT payable for the relevant years and only as a result of show-cause notice issued by the Assistant Commissioner, Commercial Taxes, the credit wrongly claimed was reversed by the assessee and the amount in question was paid against such reversal. The said payment made by the assessee thus was on account of CST/VAT actually payable for the F.Ys. 2006-07 and 2007-08 and the same having been paid in the year under consideration. I agree with the contention of the Id. counsel for the assessee that the assessee was entitled for deduction of the same in the year under consideration as per section 43B of the Act. The method of accounting followed by the assessee to maintain a separate VAT account to make all credit and debit entries relating to VAT therein is not relevant to decide the allowability of the amount in question paid by the assessee on account of reversal of Input VAT Credit, inasmuch as the wrong claim of credit for inputs in the earlier years had resulted in short payment of CST/VAT payable by the assessee and the same having been paid during the year under consideration, the assessee, in my opinion, was entitled for deduction of such tax on payment basis under section 43B. I, therefore, delete the addition made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on this issue and allow this appeal of the assessee".

As the issue involved in the year under consideration as well as all the material facts relevant thereto are similar to A.Y. 2009-10, I respectfully follow the decision dated 09.03.2016 rendered by the Tribunal in A.Y. 2009-10 and delete the addition made by the Assessing Officer and confirmed by the Id. CIT(Appeals) by way of disallowance of assessee's claim for deduction on account of "Input VAT Reverse".

4. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on August 19, 2016.

Sd/-

(P.M. Jagtap)

Accountant Member

Kolkata, the 19th day of August, 2016

- Copies to :
- (1) **M/s. BDG Metal and Power Limited,
HMP House, 5th Floor,
4, Fairlie Place,
Kolkata-700 001**
 - (2) **Deputy Commissioner of Income Tax,
Central Circle-XXI (Now DCIT, CC-4(4),
Aayakar Bhawan Poorva,
110, Shantipally,
Kolkata-700 107**
 - (3) *Commissioner of Income Tax (Appeals)-21, Kolkata;*
 - (4) *Commissioner of Income Tax- ,*
 - (5) *The Departmental Representative*
 - (6) *Guard File*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.