

Recd on 8/17/17
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**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH; AMRITSAR**

BEFORE SH. T.S. KAPOOR, ACCOUNTANT MEMBER AND
SH. N.K. CHOUDHRY, JUDICIAL MEMBER

I.T.A No.432(Asr)/2015
Assessment Year:2010-11



M/s. Kashmir Udyog,
Phase-1, Industrial Area,
Gandwal, Jammu.

PAN:AADFK-9880Y

(Appellant)

Vs. Jt. CIT, Range-1,
Panama Chowk,
Jammu.

(Respondent)

Appellant by: Sh. Tarun Bansal, (Ld. Adv.)
Respondent by: Sh. Charan Dass (Ld. DR)

Date of hearing: 27.07.2017.

Date of pronouncement: 31.07.2017

ORDER

PER N.K. CHOUDHRY:

The instant case deals with the technical grounds which has been raised by the assessee by challenging the order dated 12.06.2015 passed in Appeal No.16/13-14 by CIT(A), Jammu.

2. The assessee raised the following grounds of appeal.

- 1.) *That order under appeal is against law and facts of the case.*
- 2.) *That the Ld. CIT(A) has not been justified in holding that no addition has been made of excise duty refund when the Ld. A.O. has clearly held that disallowance of Rs.83,14,695/- is made on account of excise duty refund.*
- 3.) *That both the Ld. A.O. and Ld. CIT(A) have erred in law in not accepting the contention of the appellant that excise duty refund is capital receipt as held by the Hon'ble jurisdictional High Court in the case of Shree Balaji Alloy's case (333 ITR 335) and by the Hon'ble Tribunal in the case of the appellant itself for the earlier assessment years.*
- 4.) *That the Ld. CIT(A) has not been justified in law in mixing up the issue of deduction under section 80-IB vis-a-vis the question*

whether excise duty refund is capital receipt as both are different issues/ questions.

- 5.) *That the Ld. CIT (A) has also not been justified in holding that cognizance of revised return could not be taken as the Ld. A.O. is bound in law to make correct assessment and pass legal and reasonable order as the correct facts and law was brought to the notice of Ld. A.O. by way of revised return and the Ld. A.O. has taken the cognizance of the revised return.*
- 6.) *That the appellant may kindly be allowed to alter any of the above grounds and alternate/substituted or additional grounds at the time of hearing of appeal."*

3. The brief facts of the case are as under:

That the assessee is a SSI Unit and filed its return at Rs.1,56,83,470/- after claiming deduction @ 20% U/s 80IB. For the year under consideration, the appellant had received Excise Duty Refund to the tune of Rs.83,14,695/- which was also included in the income for claim of deduction U/s 80IB.

Subsequently, on the basis of the judgment of the Hon'ble High Court of Jammu and Kashmir in the case of Shree Balaji Alloy's case, the appellant filed revised return after excluding Excise Duty Refund from its income because the Hon'ble High Court has held that the Excise Duty Refund is a capital receipt.

Before the authorities below, the assessee specifically submitted that according to aforesaid judgment the Excise Duty Refund is a capital receipt is required to be excluded being not a revenue receipt and therefore, cannot be included in total income, however, both the authorities below dismissed the contention of the assessee on the ground that the order of

Hon'ble High Court of Jammu and Kashmir has not attained finality because the same is under challenge in SLP before the Hon'ble Supreme Court of India.

4. Feeling aggrieved against the order passed by the authorities below, specifically Id. CIT(A), Jammu, the assessee preferred the instant appeal.

5. We have gone through with the facts and circumstances of the case and also the arguments of the parties, as it is not *res-integra* that the Excise Duty Refund is capital in nature as upheld by the Hon'ble High Court of Jammu & Kashmir as well as Apex Court. In the instant case, the both authorities below did not consider the prayer of the assessee on the ground that the Department has not accepted the aforesaid judgment passed by the J & K High Court and carried the matter to the Apex Court by challenging the same, however, now the controversy has been settled by the Apex Court, therefore, the assessee is entitled for the relief by considering the Excise Duty Refund as capital in nature.

6. In the result, the appeal filed by the assessee is allowed

Order pronounced in the open Court on 31.07. 2017.

Sd/-
(T. S. KAPOOR)
ACCOUNTANT MEMBER

Dated:31.07.2017.

/PK/ Ps.

Sd/-
(N.K.CHOUDHRY)
JUDICIAL MEMBER

Copy of the order forwarded to:

- (1) The Assessee: *mm*
(2) The
(3) The CIT(A),
(4) The CIT,
(5) The SR DR, I.T.A.T.,

True copy

Barnal Kumar
By order

वरिष्ठ निजी सचिव
Sr. Private Secretary
आयकर अपीलिंग अधिकरण
Income Tax Appellate Tribunal
अमृतसर
Amritsar