

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “B” BENCH: BANGALORE

BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA. No.2125/Bang/2018
Assessment Year: 2015-16

Indo Burma Agencies, No.1, Jasmine Mansion, Opposite SBI, JC Road, Bangalore-02. PAN: AAIFI 6533 L	vs.	DCIT, Circle-5(2)(1), Bangalore.
(Appellant)		(Respondent)

For Assessee:	Sri B.R. Sudheendra
For Revenue :	Sri I T Prakash, Addl. CIT

Date of Hearing :	04.04.2019
Date of Pronouncement :	15.04.2019

ORDER

PER PAVAN KUMAR GADALE, JM.

The assessee has filed an appeal against the order of the CIT (A)-5, Bengaluru dated 26/04/2018 passed u/s 143(3) and u/s 250 of the Act for the Assessment Year 2015-16. The assessee has raised the following grounds of appeal:

- “1. The order passed by the Ld CIT (A) to the extent prejudicial to the appellant is bad in law and liable to be quashed. The Ld DCIT, Circle-5(2)(1), Bangalore (AO) has erred in passing the assessment order in the manner passed by her and the Ld CIT, Bengaluru-5, [CIT (A)] has erred in concurring with Learned AO to the extent prejudicial to the appellant.*

Ground on the disallowance of Additional Customs Duty written off

2. *The Ld CIT (A), Bengaluru to the extent prejudicial to the appellant has erred in*
 - a. *Confirming the addition of Rs. 12,99,339/-;*
 - b. *not allowing the additional customs duty written off, as a business loss eligible for deduction u/s 28;*
 - c. *not appreciating the fact that the additional customs duty paid was not claimed as a business expenditure in the year of payment. Consequently, the expenditure is eligible for deduction u/s 37 of the Act.*

3. *On the facts and in the circumstances of the case and law applicable, the additional customs duty written off should be allowed as a deduction as claimed in the return of income.*

Ground relating to levy of interest u/s 234B and 234C

4. *On the facts and in the circumstances of the case and law applicable, interest u/s 234B and 234C is not leviable. The appellant denies its liability to pay interest u/s 234B and 234C.*

5. *In view of the above and other grounds to be adduced at the time of hearing, the appellant prays that the disallowance made by the Ld AO and confirmed by the Ld CIT (A) be deleted.”*

2. Brief facts of the case are that the assessee is in the business of trading (wholesale and retail) of Decorative Interior Products and filed the Return of income for the Assessment Year 2015-16 on 16/09/2015 declaring total income of Rs. 1,12,76,870/- and the Return of Income was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny under CASS and the notices u/s 143(2) and 142(1) r.w.s 129 alongwith questionnaire was issued. In compliance, the Ld AR of the assessee appeared from time to time and furnished the details. The Assessing Officer on verification of the financial statements found that the assessee has claimed Rs. 14,47,678/- towards ‘Additional Duty

on Customs' and further on examination it was found that out of the said amount, Rs. 12,99,339/- pertains to earlier years and therefore made a disallowance to that extent and assessed the total income of Rs. 1,25,76,209/- and passed order u/s 143(3) of the Act.

3. On an appeal to the CIT (A) confirmed the action of the Assessing Officer and dismissed the assessee's appeal. Aggrieved by the order, the assessee has filed an appeal before the Tribunal.

4. Ld AR submitted that the assessee has claimed Additional Customs Duty as it crystallized the current year and eligible for deduction u/s 37 of the Act. The contention of the Ld AR that this is the expenditure / claim which is wholly and exclusively incurred for the purposes of business and supported his stand by filing the Paper Book and judicial decisions.

5. Contrary, Ld DR supported the orders of the Lower Authorities.

6. We have heard the rival submissions and perused the material available on record. The sole matrix of the disputed issue is in respect of the disallowance of Additional Customs Duty written off in the Books of Account. We find that the Assessing Officer has allowed the claim to the extent of Rs. 1,48,339/- as it pertains to the current Financial Year of

2014-15. The Ld AR submitted that this Customs Duty was crystallized during the year therefore the claim was made as per the provisions. The Ld AR also referred to the Financial Statements, in particular the Bill of Entry of the earlier years and referred to the Written Submissions filed by the assessee before the Appellate Authorities. We find that the assessee has substantiated the Additional Customs Duty but the fact remains that this Customs Duty pertains to which Assessment Year could not be ascertained. The contention of the Ld AR that in earlier years Additional Customs Duty was written-off in the Books. We find the Revenue has not verified the nature of written-off of Additional Customs Duty. The contention of the Ld AR that the Additional Customs Duty paid u/s 3(5) of the Customs Tariff Act, 1975 is in respect of the imports made during the Financial Year 2009-10 to 2014-15 and such Duty was not debited to the Profit & Loss Account in that particular year as it is refundable as per the Customs Notification. Since the refund was rejected by the Authorities, the assessee could not get the refund and due to limitation of time the claim was written off. We found that the Ld AR could not substantiate why the claim is made in this particular year when the refund is received is subsequent year and whether offered for Income Tax assessment. We find, these facts are not coming out from the orders of the Lower Authorities or from the submissions of the

assessee. Accordingly, we grant one more opportunity to the assessee to substantiate its claim before the Lower Authorities and restore the matter to the file of the AO for limited purpose for examination and we order accordingly.

7. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 15th day of April, 2019.

Sd/-
(A.K. GARODIA)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Dated: 15th April, 2019.

OKK, Sr.PS
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1.	The appellant
2.	The Respondent
3.	CIT (A)
4.	Pr. CIT
5.	DR, ITAT, Bangalore.
6.	Guard File