

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC' NEW DELHI**

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

**I.T.A .No.-5709/Del/2018
(ASSESSMENT YEAR-2015-16)**

Sanjay Bahl, R-520, 2 nd Floor, New Rajinder Nagar, New Delhi. PAN No. AAWPB3860H (APPELLANT)	vs	ITO Ward 50(3), New Delhi. (RESPONDENT)
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**I.T.A .No.-5710/Del/2018
(ASSESSMENT YEAR-2015-16)**

Sangeeta Bahl, R-520, 2 nd Floor, New Rajinder Nagar, New Delhi. PAN No. AAWPB3861G (APPELLANT)	vs	ITO Ward 50(3), New Delhi. (RESPONDENT)
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Appellant by	Shri Varun Kohli, CA
Respondent by	Shri S.L. Anuragi, Sr. DR

ORDER

These appeals filed by the different Assessees are directed against the separate orders dated 20.07.2018 and 19.07.2018 of the Ld. CIT(Appeals)-17, New Delhi relevant to assessment year 2015-16. Since the issue involved in these appeals is common, except the difference in figures, hence, the appeals were heard together and are being disposed of by this common order for the sake of convenience, by dealing with ITA No. 5709/Del/2018 (AY 2015-16)- Sh. Sanjay Behl vs. ITO and the

result thereof will apply *mutatis mutandis* to other ITA No. 5710/Del/2018 (AY 2015-16) – Smt. Sangeeta Bahl vs. ITO.

Grounds of ITA No. 5709/Del/2018 - SANJAY BEHL :

1. *"In law, facts and in the circumstances of the case the Ld. Commissioner of Income Tax (Appeal) was not justified in confirming the addition of Rs. 1,22,983/- being the amount of duty drawback added by the Assessing Officer instead of 8% as mandated by the provisions of section 44AD of the Income Tax Act, 1961.*
2. *That the appellant craves leave to alter, amend or add to the forgoing grounds before or at the time of hearing of the appeal."*

Grounds of ITA No. 5710/Del/2018 – SMT. SANGEETA BEHL:

1. *"In law, facts and in the circumstances of the case the Ld. Commissioner of Income Tax (Appeal) was not justified in confirming the addition of Rs. 1,47,271/- being the amount of duty drawback added by the Assessing Officer instead of 8% as mandated by the provisions of section 44AD of the Income Tax Act, 1961.*
 2. *That the appellant craves leave to alter, amend or add to the forgoing grounds before or at the time of hearing of the appeal."*
2. The brief facts of the case are that the assessee is engaged in the business of trade and export of handicraft in his proprietorship concern under the name and style of M/s Genex Exports. Assessee filed its e-return of income on 21.3.2016 declaring a total income of Rs. 1,53,200/-. The assessee was issued show cause notice dated

13.12.2017 wherein the assessee was asked to reconcile the export turnover declared at Rs. 21,38,294/- with the export summary data provided by CBEC. Copies of the sale invoices and shipping bills were furnished and the turnover reconciled to the entire satisfaction of the AO and no discrepancy thereafter was pointed out to the assessee. In the same show cause notice the AO referred to the figure of duty draw back sanctioned to the assessee amounting to Rs. 1,22,983/- and proposed to invoke the provisions of section 28(iic) of the Act to treat the duty draw backs as part of the turnover and assessee the assessee business income at 8% of this increased figure of turnover. The AO did not accept the contention of the assessee and accordingly, made the addition of Rs. 1,22,983/- by assessing the income at Rs. 2,76,180/- u/s. 143(3) of the Act vide order dated 26.12.2017. Against the assessment order, the assessee appealed before the Ld. CIT(A), who vide his impugned order dated 20.7.2018 has dismissed the appeal of the assessee. Aggrieved with the impugned order, assessee is in appeal before the Tribunal.

3. Ld. Counsel for the assessee submitted that Ld. CIT(A) was not justified in confirming the addition of Rs. 1,22,983/- being the amount of duty drawback added back by the AO instead of 8% as mandated by the provisions of section 44AD of the Act. He further submitted that AO without pointing out any discrepancy or communicating further framed

the assessment u/s. 143(3) of the Act on 26.12.2017 and made an addition of Rs. 1,22,983/- to the returned income treating the duty draw back sanctioned as undisclosed.

4. On the contrary, Ld. DR heavily relied upon the order of the Ld. CIT(A) and stated that he has passed a well reasoned, which does not need any interference.

5. I have heard both the parties and perused the records, especially the impugned order. I find that the assessee has declared his business income u/s. 44AD of the Act and the gross receipts/ turnover has been shown as Rs. 21,38,294/- and profit has been declared as @8% of turnover which amounts to Rs. 1,17,064/- and as per Export Summary Data provided by CBEC, Rs. 1,22,983/- has been sanctioned to the assessee as Duty Drawback during the FY 2014-15. The AO observed that the amounts sanctioned as duty drawback has not been taken into account while computing income of the assessee for the relevant year. I further find that the provisions of Section 44AD clearly stipulates that a sum equal to 8% of total turnover or gross receipts of the assessee in the previous year on account of such business of the such business shall be deemed to be the profits and gains of the such business chargeable to tax under the head of profits and gains of business or professions. I further note that in this case the duty drawback of Rs. 1,22,983/- is undoubtedly part of gross receipts of the assessee, therefore, it is to be

included while working out profit %8% of the gross receipts. Further, section 28(iii)© of the Act clearly brings the receipt of duty draw back in the nature of business receipts. Therefore, the addition made by the AO was rightly confirmed by the Ld. CIT(A), which does not need any interference on my part, hence, I uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground raised by the Assessee.

6. In the result, both the Appeal of the Assessee are dismissed.

Order pronounced on 24-04-2019.

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date: 24/04/2019

SRBhatnagar

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1.Appellant 2. Respondent 3. CIT 4.CIT (A) 5. DR, ITAT

By Order,

Assistant Registrar, ITAT, Delhi Benches