

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

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
A N D
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 2256/DEL/2019 (A.Y. 2015-16)

(THROUGH VIDEO CONFERENCING)

Chandra Mani, C-26, Anand Vihar, Uttam Nagar, New Delhi - 110 059. PAN: AFJPG9882L (APPELLANT)	Vs	ITO, Ward : 44 (2) New Delhi. (RESPONDENT)
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Appellant by	Shri Satish Aggarwal, C.A.;
Respondent by	Shri Umesh Takyash, Sr.DR

Date of Hearing	17.11.2020
Date of Pronouncement	23.11.2020

ORDER

PER SUCHITRA KAMBLE, JM :

This appeal is filed by the assessee against the order dated 31/12/2018 passed by CIT(Appeals)-15, New Delhi, for Assessment Year 2015-16.

2. The grounds of appeal are as under:-

- (1) *That the Learned Commissioner of Income Tax (Appeals) has grossly erred in law and on facts in confirming the addition made by the Assessing Officer in an ex-parte appeal order.*
- (2) *That the Learned Commissioner of Income Tax (Appeals) has grossly erred in passing an ex- parte appeal order without affording a proper and meaningful opportunity to the appellant to represent his case.*
- (3) *That the Learned Commissioner of Income Tax (Appeals) has grossly erred in confirming the estimated addition of Rs. 56,42,864/- @ 8% of alleged export/ sales*

of Rs. 7,74,93,304/- made by the Assessing Officer ignoring the contention of the appellant that he was engaged in the business of fabrication of the garments and that his import export code number had been misused by unauthorized persons contrary to his knowledge.

- (4) That the Learned Commissioner of Income Tax (Appeals) has grossly erred in confirming the action of the Assessing Officer in making an addition of Rs 73,12,472/- on account of duty drawback admissible on export made through his import export code number which had been misused by unauthorized persons contrary to his knowledge.
- (5) Without prejudice to the Ground no 4 advocating deletion of an addition of Rs 73,12,472/- for accrual of duty drawback, the Learned Commissioner of Income Tax (Appeals) has further grossly erred in ignoring that the amount of Rs. 26,79,098/- only had been realized on account of duty draw back and withdrawn immediately by 3rd party without the appellant being the beneficiary of the same in view of which confirmation of addition, if any, could not have been more than the amount received as duty drawback.
- (6) Without prejudice to the above Ground nos. 4 and 5 for confirming addition of Rs 73,12,472/- for accrual of duty drawback by the Learned Commissioner of Income Tax (Appeals) ignoring the facts of the case, the Learned Commissioner of Income Tax (Appeals) has further grossly erred in confirming the said addition of Rs 73,12,472/- ignoring the fact that no separate addition could have been made by the assessing officer as he had made an addition of 8% of the alleged export business receipt and the amount of duty drawback is in separable part of business profit.
- (7) Without prejudice to the fact that the above Grounds advocating deletion of confirmation of addition @ 8% of alleged export by the Learned Commissioner of Income Tax (Appeals) however, in any case the addition made by the assessing officer and confirmed by the CIT (Appeals) is very excessive.
- (8) That the Learned Commissioner of Income Tax (Appeals) has grossly erred in confirming action of the Assessing Officer in sustaining the addition made by the Assessing Officer ignoring the fact that a criminal complaint had been filed before the Commissioner of Police, EOW Cell, Delhi and DCP South West, Dwarka and nothing adverse has been brought on record by the department to disprove the averment of the appellant that he was not the beneficiary of the export allegedly made by unauthorized 3rd parties using the import export code number.”

3. The assessee was engaged in the business of import and export of goods. The assessee filed e-return of income on 31.03.2017 declaring an income of Rs.5,09,690/-. The Assessing Officer passed assessment order dated 28.12.2017 thereby assessing the total income at Rs.1,34,65,020/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT (Appeals). The CIT (A) dismissed the appeal of the assessee.

5. The Ld. Authorized Representative submitted that the CIT (Appeals) has not given an appropriate opportunity of hearing to the assessee to represent his case.

6. The Ld. Departmental Representative relied upon the assessment order and the order of the CIT (Appeals).

7. We have heard both the parties and perused all the material available on record. It is pertinent to note that the CIT (Appeals) has not given any categorical finding on merits of the case and also did not give sufficient opportunity of hearing to the assessee. Therefore, the CIT (Appeals) was not right in dismissing the appeal of the assessee without giving proper opportunity of hearing. Hence, we are remanding back the entire issue to the file of the CIT (Appeals) to be decided on merits. Needless to say, the assessee be given an opportunity of hearing by following the principles of natural justice. The appeal of the assessee is partly allowed, for statistical purpose.

8. In result, appeal of the assessee is partly allowed, for statistical purpose.

Order pronounced in the Open Court on this 23rd Day of November, 2020

**Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated : 23/11/2020

MEHTA

Copy forwarded to :-

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	18.11.2020
Date on which the typed draft is placed before the dictating Member	18.11.2020
Date on which the typed draft is placed before the Other Member	23.11.2020
Date on which the approved draft comes to the Sr. PS/PS	23.11.2020
Date on which the fair order is placed before the Dictating Member for pronouncement	23.11.2020
Date on which the fair order comes back to the Sr. PS/PS	23.11.2020
Date on which the final order is uploaded on the website of ITAT	23.11.2020
Date on which the file goes to the Bench Clerk	23.11.2020
Date on which the file goes to the Head Clerk	