

IN THE INCOME TAX APPELLATE TRIBUNAL, “A” BENCH, KOLKATA
[Before Shri Waseem Ahmed, AM and Smt. Madhumita Roy, JM]

I.T.A. No. 219/Kol/2020
Assessment Year:2015-16

A.C.I.T, Cir-25, Kolkata	Vs.	Shankha Subhra Maity PAN: AFYPM5996C
Appellant		Respondent

Date of Hearing (Virtual)	10-11-2020
Date of Pronouncement	16/12/2020
For the Appellant	Shri Dhruvajyoti Ray, JCIT, Ld.Sr. DR
For the Respondent	Shri Subash Agarwal, Advocate, Ld.AR

ORDER

Per Smt. Madhumita Roy, JM

The instant appeal filed by the Revenue is directed against the order dated 19-11-2019 passed by the Ld. CIT(A)-7, Kolkata arising out of the assessment order dated 29-12-2017 passed by the ACIT(The AO), Circle-25, Kolkata u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “ the Act”) for the Assessment Years 2015-16.

2. Brief facts leading to the case is this that the assessee an exporter of crabs & importer of fruits filed his return of income on 30-09-2015 disclosing total income at Rs. 48,01,550/-. Notice u/s. 143(2) of the Act was issued on 05-01-2017 followed by notice issued u/s. 142(1) of the Act on 11-07-2017. The details and documents relating to assessment were directed to be submitted by the Ld.AR. It appears that the assessee derived his income from his proprietary business under the name and style M/s. Chetana Enterprise. During the course of assessment proceedings upon verification of the details given by the assessee, it was found that the assessee as per export-import data (CBSE) has paid custom

duty of Rs. 4,27,06,863 whereas as per ITR and P & L account the payment of custom duty has been charged at Rs. 4,29,12,699/-. Further, it transpired that the assessee has imported items worth total invoice value of Rs. 9,45,53,760/- assessable value of customs whereof was Rs. 9,55,96,210/-, for which an amount of Rs. 4,27,06,863/- was paid as custom duty. Apart from that it appears from the books of account that the import purchase was registered only Rs. 5,64,85,142/- and there was a difference of Rs. 3,80,64,618/- in the value of import. Ultimately the AO made the addition of Rs. 3,80,64,618/- on account of such difference in the value of imported goods as per CBEC data and books (of account) of the assessee holding the same as out of books purchase expenditure and therefore, added back to the income of the assessee u/s. 69C of the Act.

3. In appeal, a remand report was submitted by the Ld. A.O where the Ld. AO concluded that the difference of Rs. 1,02,96,348/- is yet to be reconciled. It was further observed by the Ld. AO that since the appellant has raised an altogether new plea of damaged goods which was not averred at the assessment proceedings, it was not possible for the AO to take such plea into consideration. Ultimately, the Ld. CIT(A) confirmed the addition to the extent of Rs. 1,02,96,348/-. Hence, the Revenue has come up in appeal against deletion of addition of Rs. 2,33,15,269/- on account of damaged fruits.

4. At the time of hearing of the instant appeal before us the Ld. DR submitted that the loss of damaged fruits to the tune of Rs. 2,23,15,269/- was not forwarded by the assessee. But the same was ultimately deleted by the Ld. CIT(A). He further relied upon the remand report wherein it was mentioned that the invoices nos. mentioned in the list of damage could not be verified as the purchase documents do not mention any invoice no. He further contended that the assessee had purchased for Rs. 6,67,81,490/- and failed to establish his claim of purchase of Rs. 5,64,85,142/- as it appears from the profit and loss

account for the year ended on 31-03-2015. The Ld.DR finally relied on the order passed by the Ld.AO.

5. On the other hand, the Ld. Counsel appearing for the assessee relied on his reply against the said remand report as appearing at page-6 of the impugned order before us. He further submitted that the purchase was recorded on the basis of custom valuation, and the assessee recorded on actual USD payment after considering the damaged materials. The custom authority has their own valuation method, which is generally more than the actual invoice, again more the USD payment to exporter against their invoice. It was further argued that also with the submissions of the reconciliation statement, the assessee submitted the letter from the exporter confirming the damaged fruits as per request of the assessee, which was accepted by them and relief from payment of invoices amounting to Rs. 2,32,15,269.33 was granted. It was his argument that the Ld. CIT(A) therefore, confirmed the addition of Rs. 1,02,96,348/- being difference in custom valuation.

6. We have heard respective parties and also perused the relevant materials on record. We have also considered the orders passed by the lower authorities. The Ld. CIT(A) has dealt with the issue in the following manner:-

"7.2. I have considered both the remand report as well as the rejoinder to the said report. In the assessment order, the AO made an addition of Rs.3,80,64,818/- on account of difference in the value of imported goods as per CBEC data and books of the assessee as being held as out of books purchase expenditure and was added u/s. 69C of the Act. However, during the remand stage, after hearing the AR' of the appellant and considering the relevant evidence produced on account of purchase" the AO concluded that the difference of Rs.1,02,96,348/- is yet to be reconciled. It is also pertinent to observe that the appellant has raised an altogether new plea of damaged goods which was not averred at the assessment stage. Therefore it was not possible for the AO to take such plea into consideration. In my considered opinion, the said view of the AO seems to be justified for the reason that apart from raising such contention the appellant was unable to substantiate the same by adducing the relevant evidence. It was categorically recorded by the AO in his remand report that" The invoices nos. mentioned in the list of damage could not be verified as the purchase document does not mention any invoice no." This finding could not be disturbed by the appellant by adducing any clinching

evidence to the contrary. It is trite that anyone which asserts a fact has to prove it. In this case, the appellant raised the issue of damaged goods and it was for him to establish the same. The main contention of the appellant is that the difference is due to the valuation resorted to by the Customs Authorities. However, the prognosis of such valuation was not made available at this end. Therefore, the appellant failed miserably to dislodge the finding of the AO in the remand report which is on a correct footing and accordingly, the addition to the extent of Rs. 1,02,96,348/- is confirmed.

This ground is partly allowed.”

7. Thus it appears from the records and the observations made by the authorities below that the assessee was granted relief for making payment of the invoices amounting to Rs. 2,32,15,269.33

8. Taking into consideration the entire aspect of the matter we find no ambiguity in the order passed by the Ld. CIT(A) in granting relief to the amount of Rs.2,32,15,269.33 which was not accepted by the exporter on the request made by the assessee for the reasons explained hereinabove and also in confirming the difference of amount of Rs. 1,02,96,348/- since not reconciled.

9. Hence, the order passed by him is affirmative i.e in favour of the assessee and against the revenue. In absence of any merit found in the appeal preferred by the revenue stands dismissed.

10. In the result, the appeal of the revenue is dismissed.

Order is pronounced in the open court on 16/12/2020

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Madhumita Roy)
Judicial Member

Dated : 16/12/ 2020

**PP(Sr.P.S.)

Copy of the order forwarded to:

1. Respective Appellant/Revenue : ACIT, Cir-25, Kolkata, Aaykar Bhawan Dakshin, 2 Gariahat Road, South, 1st Fl., Kolkata-700 068.
2. Respondent/Assessee; Shankha Subhra Maity 23/13 Babu Bagan Lane, Dhakuria, Kolkata-700 031.
3. CIT(A),
4. CIT- ,
5. DR, ITAT, Kolkata.

/True Copy,

By order,

Assistant Registrar