

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री आर.एल. नेगी, न्यायिक सदस्य  
BEFORE: SHRI. N.K.SAINI, VP & SHRI , R.L. NEGI, JM

आयकर अपील सं./ ITA NO. 1520/Chd/2019

निर्धारण वर्ष / Assessment Year : 2016-17

M/s Amitt Enterprises, B-30, 4048, Ambala Road, Samrala Chowk, Ludhiana	बनाम	The ITO Ward-2(1), Ludhiana
स्थायी लेखा सं./PAN NO: AACFA4598D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Pariikshit Aggarwal, CA  
राजस्व की ओर से/ Revenue by : Smt. Meenakshi Vohra, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 06/04/2021  
उद्घोषणा की तारीख/Date of Pronouncement : 06/04/2021

**आदेश/Order**

**PER N.K. SAINI, VICE PRESIDENT**

This is an appeal by the Assessee against the order dt. 13/11/2019 of Ld. CIT(A)-1, Ludhiana.

2. Following grounds have been raised in this appeal:

1. That the Ld. CIT(A) has erred in confirming the disallowance of Rs. 42,23,659/- on account of difference in the purchases (Imports) and Rs. 21,833/- on account of difference in the custom duty ignoring the submissions of the appellant.

2. The appellant had filed all the evidence explaining the difference in the purchases by way of confirmation from the foreign parties and the CIT(A) without giving any finding on the same and without making a reference to the AO for verification erred in upholding the aforesaid disallowance.

3. That the Ld. CIT(A) has erred in confirming the disallowance on the grounds which were irrelevant for deciding the issue.

4. *That in any case the addition upheld by the Ld. CIT(A) is against the law and facts of the case.*

5. *That the Appellant craves leave for permission to add, amend or alter any ground of appeal at the time of hearing.*

3. Facts of the case in brief are that the assessee filed its return on 30/09/2016 declaring an income of Rs. 1,97,810/-, later on the case was selected for limited scrutiny under CASS for the reason that the purchases shown in the ITR were less than the invoice value of imports shown in the export import data. During the course of assessment proceedings the A.O. observed that the assessee had shown purchases of Rs. 28,56,224/- from outside India, in its books of accounts and as per the information gathered from CBEC Export-Import Summary tab on ITBA, the assessee had made purchases of Rs. 70,79,889/- from China. The A.O. asked the assessee to explain the above discrepancy, however no reply was received. He therefore treated the difference of Rs. 42,23,659/- on account of purchases made from outside India out of its unexplained / undisclosed source of income, as taxable income of the assessee. The A.O. also observed that the assessee had shown custom duty of Rs. 22,50,000/- in its books of accounts and as per the information received from CBEC Export-Import Summary tab on ITBA, the assessee had made payment of Rs. 22,71,833/- of custom duty of purchases made from outside India. As no reply was received from the assessee to explain the difference, the A.O. treated the amount of Rs. 21,833/-(Rs. 22,71,833/- (-) Rs. 22,50,000/-) as income of the assessee from unexplained / undisclosed sources and made the addition of the said amount.

4. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and submitted that the assessee made import of only Rs. 28,56,224/- as disclosed in the ITR. It was further stated that a Chinese Exporter raised two bills dt. 10/02/2015 & 15/02/2015 amounting to \$ 20,980/- & \$ 20,714/- respectively and dispatched the goods to India which were taken possession by the assessee

after payment of custom duty. However it was found that the said goods were not according to the specification, pursuant to which the goods were returned and since no payment for the said goods were made, no entry was made in the purchase account, the letter from the Exporter was also adduced as additional evidence which was forwarded to the A.O. for the comments by the Ld. CIT(A). The A.O. opposed the admission of the additional evidence on the ground that the assessee was not prevented by any reasonable cause in not responding to the notices of the A.O. during the assessment proceedings.

4.1 The A.O. commented that the one of the letters, furnished by the assessee had date inscribed on it whereas another letter from the Exporter having the same content was undated, and that the assessee had not submitted any proof of return of goods to the agents of the Exporter. The A.O. also stated that goods worth Rs. 70,79,889/- could not have been dispatched without receiving any payment.

4.2 In his rebuttal the assessee submitted to the Ld. CIT(A) as under:

*"As already submitted, the earlier notices issued by the AO stood duly complied. The issue on merit is still pending for decision and the ITO has not been able to challenge the same. It may incidentally be mentioned that the AO has not supplied any details of the value of import taken by him at Rs.70,79,883/-. That why in our submissions at page no. 13-14, we had given the copies of the two import bills (not entered in the books) the value of which works out to Rs.13,50,063/- and Rs.13,04,982/- totalling to Rs.26,55,045/-. Without prejudice to our grounds that the addition of Rs. 42,23,659/- is not justified, the addition on account of non-entering of the bills would come to Rs. 26,55,045/- and not Rs. 42,23,659/-."*

4.3 The Ld. CIT(A) after considering the submissions of the A.O. as well as the assessee admitted the additional evidence and held that the assessee firm was prevented by the reasonable cause in not responding to the notices and reminders of the A.O. The Ld. CIT(A) observed that the assessee had not been able to reconcile the difference in the import value as declared in its ITR and the

data available on the CBEC tab and that the onus to reconcile the difference in figure of purchase through import remained woefully un-discharged. He also observed that the letter of the exporter adduced as additional evidence also did not explain the difference in the import value as per CBEC record. He therefore sustained the addition made by the A.O. As regards to the addition on account of difference in custom duty, the Ld. CIT(A) observed that the assessee had not furnished any explanation regarding the difference, therefore the said addition of Rs. 21,833/- was also sustained.

5. Now the assessee is in appeal.

6. Ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that neither the A.O. nor the Ld. CIT(A) appreciated the facts in right perspective, even after the admission of the additional evidence, by the Ld. CIT(A). He requested to set aside the issue to the file of the A.O. so that the proper reconciliation and explanation may be furnished to him by the assessee.

7. The Ld. Sr. DR although supported the orders of the authorities below, however could not controvert the aforesaid contention of the Ld. Counsel for the assessee.

8. We have considered the submissions of both the parties and perused the material available on the record. In the present case, it appears that the additional evidence furnished by the assessee particularly this facts that the goods dispatched by the Chinese Firm were not according to the specification, the same were not received, therefore, there was no question of making the payment had not been considered in right perspective. At the same time, it is also not clear as to whether the assessee furnished the reconciliation statement either before the A.O. or before the Ld. CIT(A) and explained satisfactorily the difference in the purchase found entered in the books of account and as

mentioned in the CBEC Export Import Summary tab. We therefore by considering the peculiar facts of this case, deem it appropriate to set aside this issue back to the file of the A.O. to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

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

(Order pronounced in the open Court on 06/04/2021)

**Sd/-**

**आर.एल. नेगी**

**(R.L. NEGI )**

**न्यायिक सदस्य/ Judicial Member**

**AG**

**Date: 06/04/2021**

**Sd/-**

**एन.के.सैनी,**

**( N.K. SAINI)**

**उपाध्यक्ष / VICE PRESIDENT**

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar