

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकरअपीलसं./ITA No.789/SRT/2018

(निर्धारणवर्ष / Assessment Year: (2015-16)

(Virtual Court Hearing)

Chetak Manufacturing Co. Survey No.2/77/2/3, Damini Village, Dadra.	Vs.	The ACIT, Circle-Vapi.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AACFC1909J		
(Assessee)		(Respondent)

Assessee by : Ms Rushi Parekh, CA

Revenue by : Ms Anupama Singhla, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 07/09/2021

घोषणाकीतारीख/Date of Pronouncement : 16/09/2021

आदेश / O R D E R

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the assessee pertaining to assessment year (AY) 2015-16, is directed against the order passed by the Learned Commissioner of Income Tax(Appeals), Surat [in short “the ld. CIT(A)”] in Appeal No. CIT(A)/VLS/432/17-18 dated 26.10.2018, which in turn arises out of an assessment order passed by the Assessing Officer under section 143(3) of the Act (hereinafter referred to as “the Act”).

2. Grounds of appeal raised by the assessee are as follows:

“1.That the CIT(A) erred in confirming addition of Duty Draw back Rs.2,84,465/-.

2. The assessee craves leave to add, amend, alter, vary and/or withdraw any or all the above grounds of Appeal.”

3. The facts necessary for disposal of the appeal are stated in brief. During the course of assessment proceedings details of Duty Drawback were called for by the assessing officer to examine the same. It was noticed by the assessing officer that assessee has credited an amount of Rs.3,60,058/- on account of Duty Drawback, to its Profit and Loss account, which was also shown in its return of

income. However, in the 26AS Statement, amount of Duty Drawback claimed and, received, is shown at Rs.6,44,523/-. Thus, assessing officer noticed that assessee has offered less income on account of Duty Drawback, in its return, by Rs.2,84,465/- (Rs.6,44,523 - Rs.3,60,058) Therefore, the assessee, (vide letter dated 21/08/2017 of assessing officer), was asked to show cause as to why the amount, of Rs.2,84,465/- representing the difference in the amount of Duty Drawback as per 26AS Statement of the assessee and Income Tax Return for the A.Y. 2015-16 should not be added back to its total income for the A.Y. 2015-16.

4. In response, the assessee filed a written submission before assessing officer, which is reproduced as under:

"Duty Drawback is directly credited to the bank a/c of Chetak Manufacturing Co, by the Customs Dept During the F.Y. we have received a total Rs, 3,60,058/- and the same is taken as income as it was done in the earlier years,"

However, assessing officer rejected the contention of the assessee and observed that assessee has accounted the receipt of the Duty Drawback on actual receipt basis, by following Cash System of Accounting, whereas, as per the Audit Report in Form 3CB/3CD, it is stated at Column No, 13(a) that Method of Accounting employed by the assessee is 'Mercantile'. It is not correct and proper on the part of the assessee to follow mercantile system of accounting for its business and at the same time to follow Cash System only for a particular Income/Receipt, i.e. Duty Drawback, in the instant case, on actual receipt basis. Therefore, the reasoning given by the assessee for offering lesser income on account of Duty Drawback is not correct and not acceptable. Hence, assessing officer made addition to the tune of Rs. 2,84,465/-, being the difference between the amount of Duty Drawback as per 26AS Statement of the assessee and as per its Income Tax Return for the A.Y. 2015-16.

5. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the ld. CIT(A) who has confirmed the addition made by Assessing Officer. Aggrieved by the order of the ld. CIT(A), the assessee is in appeal before us.

6. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. Learned Counsel submits before us that DEPB/ Duty Drawback credits are accounted as per receipt basis, as there is no certainty in collection. However, learned DR for the Revenue argues that as per column no.13(a) of audit report in form 3CD, it is stated that assessee is following mercantile system of accounting. Thus, is not correct and proper on the part of the assessee to follow mercantile system of accounting for its business and at the same time to follow Cash System only for Duty Drawback.

7. We note that issue under consideration is no longer *res-integra*. In case of Duty Drawback, there is no certainty of actual collection of revenue, therefore, it is accounted on cash bases. We note that issue under consideration is covered in favour of assessee by the judgment of Hon'ble Bombay High Court in the case of Matchwell Electricals (I) Ltd, order dated 11.12.2002 wherein it was held as follows:

“Arguments

3. *Mr. R.V. Desai, learned Senior Counsel for the Department contended that the assessee was following mercantile system of accounting and that, for the first time during the assessment years in question, the assessee changed the system of accounting only restricted to cash assistance and duty drawbacks. He contended that the assessee cannot have a mixed system of accounting for a part of the source of the income, namely, business income. He contended that the assessee has continued with mercantile system of accounting for all other receipts except cash assistance and duty drawbacks which was not permissible.*

Findings

4. *We do not find any merit in the above argument advanced on behalf of the Department. The Commissioner of Income-tax (Appeals) has recorded a finding of fact that on several occasions cash assistance and duty drawbacks come under litigation with Government of India and, therefore, the change in the method of accounting was bona fide. The Appellate Authority has further found that by this change no loss is sustained by the revenue. This finding of fact has been confirmed by the Tribunal. Therefore, we see no reason to interfere with the judgment of the Tribunal. In the case of CIT v. Citibank N.A. [1994] 208 ITR 930 mixed system of accounting has been approved in respect of interest on problem loans receivable by banks by the Bombay High Court. It has also been approved by the judgment of Supreme Court in UCO Bank v. CIT [1999] 237 ITR 889. Basically, mixed system of accounting is not to*

be discarded unless there is loss of income. In the present case, there is no such loss. In the present case, the change is held to be bona fide.”

8. From the above judgment of the Hon'ble Bombay High Court in the case of Matchwell Electricals (I) Ltd (supra), it is vivid that on several occasions cash assistance and duty drawbacks come under litigation with Government of India and, therefore, the change in the method of accounting was bona fide. For example, if the assessee does not fulfill certain conditions of Duty Drawback, he may lose the claim hence there is always uncertainty as to whether actual amount would be collected or not therefore, for such items, the income will be recognized in the books of accounts on actual receipt basis. The Hon`ble Court in the case of Matchwell Electricals (I) Ltd (supra), also stated that mixed system of accounting is not to be discarded unless there is loss of income. We note that in assessee`s case, there is no such loss. Hence, respectfully following the judgment of Hon'ble Bombay High Court in the case of Matchwell Electricals (I) Ltd (supra), we allow the claim of the assessee.

9. In the result, appeal filed by the assessee is allowed.

Order is pronounced in the open court on 16/09/2021 by placing the result on the Notice Board as per Rule 34(5) of the Income Tax (Appellate Tribunal) Rule 1963.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूरत /Surat

दिनांक/ Date: 16/09/2021

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat