

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.1716/Del/2021

निर्धारणवर्ष/Assessment Year: 2017-18

Anubhav Sachdeva B-3/95, Ashok Vihar, New Delhi.	बनाम Vs.	ITO Ward 34(4) New Delhi.
PAN No. DZWPS8346P		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Shri Sumit Arora, Advocate
राजस्वकीओरसे /Revenue by	Shri Om Prakash, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	07.03.2022
उद्घोषणाकीतारीख/Pronouncement on	08.04.2022

आदेश /O R D E R

This appeal is filed by the assessee against the order passed by the Ld. CIT (Appeals) National Faceless Appeal Centre (NFAC) dated 24.09.2021 for the AY 2017-18 in sustaining the addition of Rs.25,03,813/- made by the Assessing Officer u/s 69C of the Act.

2. Brief facts are that the assessee carrying on the business of sale of electric & electronic goods in the name of M/s Melody Enterprises, filed return of income declaring income of Rs.3,17,230/-. The assessment was completed u/s 143(3) on 30.12.2019 determining the income at Rs.28,21,043/-. While completing the assessment the Assessing Officer made addition of Rs.25,03,813/- as unexplained expenditure in respect

of the payment made by the assessee towards Custom Duty. In the course of assessment proceedings, the assessee furnished the details in respect of loan obtained by the assessee and also explained to the Assessing Officer that since his father expired on 08.10.2015 the business was taken over by him and the Custom Duty payable was cleared by him. It was stated by the assessee that the Custom Duty was paid through current account of M/s Melody Enterprises. The AO noticed that the capital account of the assessee was showing negative balance and, therefore, he was of the view that the source of payment of Customs Duty of Rs.25,03,813/- remained unexplained. The Assessing Officer required the assessee to explain the source for payment of Customs Duty. It appears that the assessee has not responded and, therefore, the AO treated the Customs Duty paid of Rs.25,03,813/- as unexplained expenditure u/s 69C of the Act and added the same to the income while completing the assessment. The Commissioner of Income Tax (Appeals) (NFAC) was of the view that since the cash deposits in the bank account are much more than the cash sales the payment of Customs Duty in cash remained unexplained and accordingly, the addition made by the Assessing Officer was sustained.

3. Before me, the Ld. Counsel for the assessee submits that the Ld. CIT(Appeals) (NFAC) has wrongly assumed that the assessee has paid Customs Duty in cash. Ld. Counsel submits that this is factually wrong. The Ld. Counsel for the assessee inviting my attention to page 85 of the

Paper Book which is the Kotak Mahindra Bank book in the books of the assessee as Proprietor Melody Enterprises submitted that Customs Duty was paid through cheque no. 000008 on 08.04.2016 after obtaining Demand Draft and the source for this payment of Customs Duty was loan of Rs. 13 lakhs taken from Saiyansh Enterprises and the balance was from out of cash sale of Rs. 14 lakhs made during the period from 04.04.2016 to 08.04.2016. Therefore, the Ld. Counsel submits that the Ld. CIT(Appeals) is factually wrong in assuming that the assessee has paid Customs Duty in cash.

3.1 The Ld. Counsel for the assessee further submits that in the course of assessment proceedings the assessee on 14.12.2019 furnished the information to the Assessing Officer in respect of the loan taken by assessee from Smt. Ruchika Nanda (Sachdeva) Proprietor of M/s Saiyansh Enterprises in the form of Income Tax Return, confirmation issued by her and bank statement of Saiyansh Enterprises reflecting the entry of bank transfer to the assessee. Therefore, the Ld. Counsel submits that since the Customs Duty was paid by way of Demand Draft and the sources for such payment was loan of Rs. 13 lakhs and the balance is out of cash sale of Rs. 14 lakhs the Customs Duty cannot be treated as unexplained expenditure u/s 69C of the Act.

4. Ld. DR supported the orders of the authorities below.

5. Heard rival submissions perused the orders of the authorities below and the documents placed before me. It is observed from the Paper Book page 79 & 80 furnished by the assessee that in the course of assessment proceedings the assessee made submissions before the Assessing Officer stating that he has taken loan of Rs. 13 lakhs from Smt. Ruchika Nanda Prop. of M/s Saiyansh Enterprises. Assessee also furnished copy of Income Tax Return, copy of confirmation issued by Smt. Ruchika Nanda and a copy of bank statement of Saiyansh Enterprises reflecting the entry, wherein Saiyansh Enterprises transferred an amount of Rs. 13 lakhs to Melody Enterprises. It was also submitted by the assessee that the Customs Duty paid was debited to his capital account in Melody Enterprises and not taken to profit and loss account and this was also stated in the balance sheet for the AY 2017-18. The Assessee also submitted that in the FY 2016-17 Customs Duty was paid from current account of Melody Enterprises. These submissions were reiterated before the Ld. CIT(Appeals) also. The assessee also submitted before the Ld. CIT(Appeals) that the source for the payment of Customs Duty is primarily the loan of Rs. 13 lakhs and deposit of cash sales into current account of Melody Enterprises. However, I find that the Ld. CIT(Appeals) misunderstood the facts and it is the finding that the assessee made Customs Duty in cash which is contrary to the record. The documents placed before me in the form of bank book, the loan confirmation, the bank statement of the lender clearly show that the assessee has taken

loan of Rs. 13 lakhs on 04.04.2016, assessee also deposited cash sales into the bank account from 04.04.2016 to 08.04.2016 amounting to Rs. 14 lakhs and finally the Customs Duty of Rs. 25,03,813/- was made on 08.04.2016 by way of Demand Draft (DD). All these facts goes to show that the assessee has never paid Customs Duty in cash but it was paid by way of Demand Draft after obtaining loan of Rs. 13 lakhs and the balance is from out of cash sales made from 04.04.2016 to 08.04.2016. In the circumstances, I have no hesitation to delete the addition made by the Assessing Officer in respect of Customs Duty paid by the assessee which was treated as unexplained expenditure u/s 69C of the Act. Thus, the Assessing Officer is directed to delete the addition made u/s 69C of the Act and re-compute the income for the AY 2017-18 accordingly. Grounds raised by the assessee are allowed.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 08/04/2022

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 08.04.2022
*Kavita Arora, Sr. P.S.

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi