

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &  
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No. 1556/Ahd/2016  
(Assessment Year: 2008-09)

Income Tax Officer, Ward-1(1)(1), Ahmedabad	Vs.	Shri Sushil D. Agarwal 301, Sarthak Complex, Nr. Lal Bungalows, Off. C.G. Road, Ahmedabad
[PAN No. AEDPA8004K]		
(Appellant)	..	(Respondent)

Assessee by :	Shri Parin Shah, CA
Revenue by :	Shri V. K. Singh, Sr. DR
Date of Hearing	27.04.2022
Date of Pronouncement	10.06.2022

ORDER

**PER Ms. MADHUMITA ROY - JM:**

The instant appeal filed by the Revenue is directed against the order dated 23.03.2016 passed by the Commissioner of Income Tax (Appeals)-1, Ahmedabad arising out of the order dated 24.06.2014 passed by the ITO, Ward-1(1), Ahmedabad under Section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for A.Y. 2008-09.

2. Deleting the addition of Rs. 1,94,33,245/- out of the total disallowance of Rs. 2,39,40,305/- made on account of “Estimation of gross profit on the import transactions” is the subject matter before us.

3. The assessee company had filed its return of income on 10.07.2008 showing total income at Rs. 3,12,960/- which was finalized under Section 143(3) of the Act accepting the returned income. However, on 27.03.2014 the

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case was reopened under Section 147 by recording reasons and notice under Section 148 was issued whereupon the assessee filed its return on 10.07.2008. Subsequently, notice under Section 143(2) and 142(1) alongwith annexure was issued on 25.04.2014. As per the Ld. AO during the course of enquiries carried out by the customs authorities, it was established that the real beneficiaries of the transactions carried out in the name of both the concerns namely M/s. Parth Marketing, Gandhinagar and M/s. Chinmay Corporation, was Shri Sushil Agarwal the assessee herein. The details of the value of imports of both the concerns as mentioned in the assessment order is as follows:

***Parth Marketing***

<i>S.No.</i>	<i>Imports as shown (Rs)</i>	<i>Duty Paid (Rs)</i>	<i>Assessed value of Imports without duty (Rs)</i>
<i>1.</i>	<i>2,27,37,318</i>	<i>92,82,810</i>	<i>6,56,02,750</i>

***Chinmay Corporation***

<i>S.No.</i>	<i>Imports as shown (Rs)</i>	<i>Duty Paid (Rs)</i>	<i>Assessed value of Imports without duty (Rs)</i>
<i>1.</i>	<i>2,05,22,980</i>	<i>71,93,382</i>	<i>4,10,92,262</i>

The total value of imports without duty is Rs. 10,66,95,012/- (Rs.6,56,02,750 + Rs. 4,10,92,262) out of this Rs. 1,09,33,791/- pertains to A.Y.2007-08 and balance amount of Rs. 9,57,61,221/- pertain to A.Y. 2008-09.

4. Notice under Section 142(1) of the Act was issued directing the assessee as to why the total value of imports without duty of Rs. 9,57,61,221/- pertain to the year under consideration should not be taxed in the hands of the assessee.

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5. In reply the assessee categorically stated that the import of goods was made by Shri Pragnesh Shah and Shri Jayant Bachheta on which the appellant has received commission on sales only which is recorded in his books of accounts. It was stated by the assessee that Shri Jayant Bachheta and Shri Pragnesh Shah filed their applications before the Hon'ble Settlement Commission and admitted an oath through their proprietary concerned as mentioned above, they had resorted to undervaluation, additional admitted duty was paid alongwith interest thereon and prayed to grant immunity from prosecution. In fact, it is the case of the assessee that these two persons were handling all transactions of imports, payment and collection of sales proceeds. He further relied upon the statement of Shri Pragnesh Shah and Shri Jayant Bachheta recorded under Section 108 of the Customs Act, 1962 before the Settlement Commission. The assessment proceeding was further finalized by making addition of Rs. 9,57,61,221/- i.e. 25% of the estimated Gross Profit of Rs. 2,39,40,305/- which was, in turn, restricted to 5% of the Gross Profit by the Ld. CIT(A). Hence, the instant appeal before us.

6. We have heard the rival submissions made by the respective parties, and we have also perused the relevant materials available on record.

7. We have further considered the order passed by the Ld. CIT(A) while granting relief to the assessee the Ld. CIT(A) as follows:

*“4.4 I have gone through the facts of the case, submission of the appellant and findings of A.O. in assessment order carefully. The A.O. has estimated GP @ 25% stating that it is gathered from the market that GP ratio in such type of business is 20 to 25%. The A.R. of the appellant argued that in such type of cases, the net profit can only be taxed, as held by the Hon'ble High Court of Gujarat In the case of CIT vs. President Industries (2002) 258 ITR 654 and Hon'ble High Court of Madhya Pradesh in the case of CIT vs. Balchand Ajit Kumar (2003) 263 ITR 610 and prayed that the net profit may kindly be taxed. The contention of the appellant found acceptable in the light of decision of Hon'ble Gujarat High Court and accordingly the net profit is to be estimated.*”

*The A.R. of the appellant brought evidences on record that the average GP of some items which are mentioned by DRI in its SCN and Order of Commissioner of Customs (Imports) is 8.27%. In statements of local buyers /retailers the profit margin is 6.56%, which also indicates that the profit margin of importers is lesser than or equal to the retail margin. From the gross profit, there are other expenses like godown rent, staff salary security charges, conveyance expenses, telephone expense, carting expense from godown to transporters, etc., which are to be borne by importer and if the same are considered the net profit is hardly 5 to 6% to the importer and not such huge gross profit as estimated by A. O. @25%. On the basis of evidences in SCN, Order of Commissioner of Customs (Imports) and statements of local buyers, the net profit can be easily estimated @ 6% instead of gross profit as estimated by A.O. @ 25%. Such net profit is to be taxed in the hands of beneficiaries /persons involved in import transactions and in the local sales.*

*From the show cause notice of the DRI and Order of Commissioner of Customs (Imports), it is seen that the beneficial owner of import transactions is Shri Sushil Agarwal i.e. the appellant. However, the A.R. of the appellant brought on record that in Affidavit filed by Shri Pragnesh Shah, statement of Shri Jayant Bachheta and Shri Pragnesh Shah recorded by DRI u/s. 108 of the Customs Act and by ADIT u/s. 131 of the I. T. Act, it is seen that Shri Jayant Bachheta is employee of Shri Mayur Shah and Shri Pragnesh Shah is relative of Shri Mayur Shah, who is the person behind these import transactions. The appellant has also submitted that material fact clearly established that Shri Mayur Shah is beneficial owner of all such import transactions in the name of Shri Jayant Bachheta Prop: M/s. Parth Marketing and Shri Pragnesh Shah Prop: M/s. Chinmay Corporation. Such facts are also mentioned by A.O. in assessment order in Para c & d. The A.R. of the Appellant further stated that the appellant from day one before DRI and ADIT always submitted that he has helped the importers in making local sale of imported items viz. car CD/DVD player, MP3 player, stereo, speakers, etc. This view of the appellant is not convincing and is difficult to subscribe as every aspects of the transactions (from purchase to sale) has been done by Shri Sushil Agarwal i.e. the appellant.*

*The A.O. has made addition on value of import transactions of Rs. 9,57,61,221/- @ 25% and estimated gross profit at Rs. 2,39,40,305/-. According to above findings, the net profit on such transactions of Rs. 9,57,61,221/- may be estimated @ 5% keeping in mind the income and expenditures in this business pertaining to the appellant as discussed above. In view of the above, @5% on value of import transactions of Rs. 19,57,61,221/- comes to Rs.47,88,060/-. Furthermore, the appellant has shown commission income as received from concerns importing goods of Rs. 2,80,000/- and offered in return of income. Accordingly, the A.O. is directed to give relief of Rs. 1,94,33,245/- (estimated profit of Rs. 1,91,52,245/- + commission of Rs. 2,80,000/- on such estimated profits and tax estimated net profit of Rs.45,08,060/- (net profit of Rs.47,88,060/- less: commission of Rs. 2,80,000/-) in the hands of the appellant. This ground of appeal is partly allowed.”*

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It appears from the order passed by the Ld. CIT(A) that the average Gross Profit of some items mentioned by DRI in its SCN and the order of Commissioner of Customs (Imports) of 8.27% as on record as submitted by the AR was considered. He has further taken into consideration of the statement of the local buyers/retailers according to whom the profit margin is 6.56% i.e. lesser than or equal to the retail margin.

Apart from that the fact of bearing other expenses like godown rent, staff salary, security charges, conveyance expenses etc. by the importer was also under consideration while determining the net profit at 5 to 6% and not as huge gross profit as estimated by 25%. Therefore, keeping in mind the income and expenditure of this business pertain to the appellants estimation of 5% of the value of import transactions is according to us just and proper without any ambiguity so as to warrant interference. Hence, the order passed by the Ld. CIT(A) is confirmed. The appeal filed by the Revenue is found to be devoid of any merit and, thus, dismissed.

6. In the result, the appeal preferred by the Revenue is dismissed.

**This Order pronounced in Open Court on 10/06/2022**

Sd/-  
(WASEEM AHMED)  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 10/06/2022  
TANMAY, Sr. PS

**TRUE COPY**

**आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

Sd/-  
(Ms. MADHUMITA ROY)  
**JUDICIAL MEMBER**

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad