

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **3337/CHNY/2018**

निर्धारण वर्ष/Assessment Year: 2015 - 16

**Shri Subahan Abdul
Majzeeth,**
F1, PRP Block-Rose Park,
No.10, Santhi Nagar,
1st Cross, Adambakkam,
Chennai – 600 088.

The Income Tax Officer,
vs. Non-Corporate Ward 10(1),
Chennai.

PAN: AGMPA 9389E

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri S. Sathyanarayanan, Advocate
: Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 14.11.2022

घोषणा की तारीख/Date of Pronouncement

: 16.11.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of order of the Commissioner of Income Tax (Appeals)-12, Chennai in ITA No.26/CIT(A)-12/2017-18 dated 28.09.2018. The assessment was framed by the ITO, Non-Corporate Ward 10(1), Chennai for the assessment year 2015-16 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 02.11.2017.

2. At the outset, it is noticed that this appeal is barred by limitation by 1 day and the assessee has filed condonation petition stating the reason that due to time involved in collecting the papers from assessee's chartered accountant and to hand over the same to his advocate, there was a delay of one day in filing of this appeal before the Tribunal. When this was confronted to Id.Senior DR, he could not object. Hence, we condone the delay and admit the appeal.

3. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in increasing the purchase figure from reported figure of Rs.22,83,686/- to Rs.51,89,330/- (adding custom value) and thereby making addition of Rs.29,05,644/-. The assessee has raised various grounds which are argumentative in nature and hence, need not be reproduced.

4. Brief facts are that the assessee is an individual and proprietor of Global Impex. He is in the business of trading of wet blue hides and skins. The AO during the course of assessment proceedings noted that the assessee had made import purchase for an amount of Rs.51,89,330/-. The assessee was requested to produce the details regarding import turnover and custom duty paid. The

assessee filed details and stated that actual import value of goods / import purchases is Rs.50,00,187/-. It was explained that due to variation of quality and material, a debit note to an extent of Rs.27,16,501/- was raised with the consent of exporter Nairobi Tanneries Ltd., and accordingly, assessed net value of import purchase at Rs.22,83,686/-. It was stated that the same was accounted in the trading and profit & loss account. The assessee filed ledger copy of Nairobi Tanneries Ltd., in its books of accounts and copy of purchase register. All these documents were reproduced by the AO in his order. The AO in the absence of substantial material evidences noted that the total purchase based on invoice value as per export and import summary data from CBEC is Rs.51,89,330/- and purchases claimed to have been debited in the purchase account amounting to Rs.27,16,501/- is nothing but suppression of purchases. Therefore, the AO added this amount of Rs.29,05,664/- as unexplained investment u/s.69 of the Act by noting in para 19 as under:-

“19. In view of the above findings, the total purchases is taken as per the Invoice value in Export and Import Data from CBEC and the difference in the Invoice value as per the Export Import Data of CBEC and the Total Purchases as per P&L A/c amounting to Rs.29,05,644 (Rs.5189330 – 2283686) is added to the total income as Unexplained Investments u/s.69.”

Aggrieved, assessee preferred appeal before the CIT(A).

5. The CIT(A) after examining the submissions of the assessee confirmed the addition by observing in para 9 as under:-

“9. I have examined the submissions and the copy of communications by the assessee with the party. Though the assessee had written to the party stating that there was defective material worth Rs.27,16,501/-, the email stated to have been sent by the party contains the message to the assessee to keep the same and start selling them. I am not finding any evidence to show that the party has accepted the value of any such defective material at Rs.27,16,501/-. There is no evidence related to the party carrying out the inspection of the warehouse to check quality and any further report on this. The assessee also did not produce any evidence to show that the exchange rates were correctly adopted by him. In absence of any clear evidence in support of the assessee’s claim, I confirm the order of assessment assessing the difference of Rs.29,05,644/- as unexplained investments under section 69 of the IT Act.”

Aggrieved, assessee is in appeal before the Tribunal.

6. We have heard rival contentions and gone through facts and circumstances of the case. We have examined the documents filed by the assessee i.e., invoice issued to Nairobi Tanneries Ltd., and e-mail communication with Nairobi Tanneries Ltd. We have also examined the debit note issued to Nairobi Tanneries Ltd., dated 18.07.2014 and credit note dated 20.09.2015. The debit note issued on 18.07.2014 is clearly accepted by that party and the text of the debit note dated 18.07.2014 reads as under:-

“BEING THE DEBIT NOTE FOR THE AMOUNT OF USD 46,635.00
(US Dollars forty six thousand six hundred and thirty five only)
VIDE YOUR INVOICE NO.EXP/GL/01 DATED 06-05-2014 TOWARDS
QUALITY AND QUANTITY VARIANCE.
Kindly accept and issue a credit note at the earliest.”

Even this was accepted by Nairobi Tanneries Ltd., vide credit note advice dated 20.09.2015 and that party agreed and noted as under:-

“Please refer our supply of wet blue hides & skins as per the below

Invoice No.& Date : Exp/GL/01 Dated 06.05.2014 Value :USD 85,845.00

Upon your complaint on the quality and the quantity variance of the goods sent by us and during the joint inspection in your warehouse, Chennai, we agreed that the value will be refixed due to quality issue.

We agree that the amount you have to pay for the above said bill is USD 39,210.00 only.”

6.1 We noted that the import invoice of the material imported was US \$85845/- which is equivalent to Rs.50,00,187/-. It is an admitted fact that after customs clearance in India under OGL, on physical examination of the materials, as contented by assessee and never refuted by Revenue, it was found that goods were not of quality and specification that was ordered for purchase. The imports were made under the terms – Stock & Sale. As the materials were defective, the assessee initiated discussion for reduction of price as the goods were defective. The exporter inspected the material and accepted the material as defective and after that the value of material was agreed between the assessee and Nairobi Tanneries Ltd., at Rs.22,83,686/- which was actually accounted for in the books of accounts. We noted from the facts of

the case that due to variation of quality and material, a debit note to the extent of Rs.27,16,501/- was issued with the consent of the exporter Nairobi Tanneries Ltd., and the net value of import purchase was reflected in the books of accounts and trading account at Rs.22,83,686/-. The ledger amount of Rs.29,05,644/- added by AO is nothing but claim made by assessee being defective material in purchase and the assessee has filed complete detail supporting evidence to explain the same. We find the explanation as correct and reasonable. Hence, we are of the view that there is no reason to make this addition. Hence, we delete the addition and allow the appeal of assessee.

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

Order pronounced in the open court on 16th November, 2022 at Chennai.

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 16th November, 2022

RSR

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |