

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH: 'F' NEW DELHI]**

**BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER
AND**

SH. YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 8351/DEL/2019 (A.Y 2015-16)

Income Tax Officer, Ward : 35 (5) Erstwhile Ward : 38 (5) New Delhi. (APPELLANT)	Vs.	M/s. Plasto Polymer (India) H-1379, First Floor, DSIDC Industrial Area, Narela, New Delhi – 110 040. PAN No. AALFP1401B (RESPONDENT)
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Appellant by	Shri Sameer Kapoor, C.A.;
Respondent by	Shri K. K. Mishra, Sr. D. R.;

Date of Hearing	07.12.2022
Date of Pronouncement	17.01.2023

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the Revenue for assessment year 2015-16 against the order of the Id. Commissioner of Income Tax (Appeals)-13, New Delhi [hereinafter referred to as CIT (Appeals)] dated 17.07.2019.

2. The Revenue has raised the following substantive grounds of appeal:-

“1. The Ld. CIT(A) has erred while considering the Remand Report submitted by the Assessing Officer.

2. The Ld. CIT(A) itself has claimed the non-availability of the Remand Report while deciding the case.

3. Whether it is the fit case to restore the file back to the Ld. CIT(A) for fresh adjudication on the basis of the facts of the case and conclusion recorded by the CIT(A) while deciding the case.

4. The assessee has failed to reconcile the item-wise purchases made while under assessment before the Assessing Officer.

5. Whether on facts and in circumstances of the case, the Ld. CIT(A) is right in deleting the addition of Rs. 8,74,08,069/-.

6.1 Whether CIT(A) has erred when assessee has failed to produce the Invoices Value- wise of the total figure in question before the assessing officer as well as Ld. CIT(A).

6.2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) is correct in ignoring the invoice value of goods as determined by CBEC based upon which the custom duty was calculated and was actually paid by the assessee and instead adopting the import value as shown by the assessee.

7. The assessee has failed to explain the reason of mismatch on three counts :- (i) Import- Turnover mismatch (ii) Custom Duty payment mismatch (iii) Sales -

Turnover mismatch

8. *That the appellant reserves right to add, amend or alter the grounds of appeal on or, before the date of disposal of appeal.”*

3. Brief facts of the case are that, the assessee has filed return of income declaring total income of Rs. 1,46,780/-. The case was selected for limited scrutiny, notice u/s 143(2) and notice u/s 143(1) were issued, the assessment proceedings have been initiated against the assessee. The Ld. A.O. has made an addition of Rs. 8,74,069/- on the ground that the assessee has not shown purchase through import worth Rs. 8,74,08,069.28 (difference of Rs. 16,24,00,543/- - Rs.7,49,92,473/-) as such the same has been treated as unaccounted purchase and added back to the income of the assessee for the year under consideration vide assessment order dated 04/12/2017.

4. Aggrieved by the assessment order dated 04/12/2017, the assessee has preferred an appeal before the CIT(A). The Ld.CIT(A) vide order dated 17/07/2019 allowed the appeal filed by the assessee by deleting the addition made by the A.O.

5. Aggrieved by the order of the Ld.CIT(A) dated 17/07/2019 the Department of Revenue has preferred the present appeal on the grounds mentioned above.

6. The Ld. DR has vehemently contended that the Ld.CIT(A) has erred while considering the remand report submitted by the Assessing Officer, wherein the Ld.CIT(A) himself claimed the non-availability of remand report while deciding the case. Further submitted that, the Ld.CIT(A) has erred when the assessee has failed to produced the invoice value of the total figure in question before the Assessing Officer .

7. Per contra, the Ld. Counsel for the assessee has relied on the order of the CIT(A) and also the paper book produced by the assessee and submitted that the assessee has produced more than 1000 pages before the revenue authorities to prove the purchases made by the assessee. During the appellate proceedings before the CIT(A), the Ld. A.O. has filed the remand report and based on the said remand report the Ld.CIT(A) is rightly deleted the addition made by the Ld. A.O.

8. We have heard the parties perused the material available on record and gave our thoughtful consideration.

9. The Ld. A.O. while making the addition of Rs. 8,74,08,069/- on the ground that there is a difference between the invoice value and the accessible value of the imports. As per the ITS sheets there were 131 transactions showing an invoice value of Rs. 16,24,00,543/- and the custom duty payment of Rs. 4,75,80,782/- was made, but the assessee had shown import purchases of Rs. 7,49,92,473.72 only. The assessee is justified the difference stating as follows:-

“We have shown value of our import purchase as Rs. 7,49,92,473.72 (this is amount which we have paid to our overseas suppliers in US \$ or EURO along with some high seas purchases) we have made payment only for this amount. Whereas CBEC record shows value as Rs. 16,24,00,543/-. This is not our purchase value, thus a value decided by CBEC as per their valuation norms to assess custom duty, they ignore our purchase value. They have fixed bench mark to impose custom duty by taking all imported stock

lot of plastic rolls @ 850\$ PMT irrespective of our purchase price weather it is 10\$ or 849\$. This creates a huge difference in our purchase value and value given by CBEC."

10. The above said clarification given by the assessee has not been accepted by the Ld. A.O. and made the addition. It is to be noted that subsequent year i.e. Assessment Year 2016-17 was also scrutinized on the same issue and was accepted on returned income. Besides the same, the Ld.CIT(A) has called for the remand report of the A.O. to verify the comment on purchase value invoice value and assessable value of the goods imported during the relevant period. The relevant extract of the remand report is as under:-

"2.3 Detailed CBEC data of import was generated from the ITD system which contain date details of imports alongwith their assessable value and invoice value (copy enclosed as Annexure A-1). Vide letter dated 23.01.2019 (copy enclosed as Annexure A-2), assessee was asked to reconcile the CBEC data with the declared purchases and to substantiate the same with documentary evidences including bills of entry, invoices and other documents. A letter also written to the Joint Commissioner of Customs, ICD Tughlakabad, New Delhi (copy enclosed as Annexure A-3) for clarification/basis of difference in the invoice value and assessable value. Assessee filed a reply alongwith documentary evidences vide letter dated 31.01.2019 (copy enclosed as Annexure A-4). A reply from the Custom Authority was received vide letter dated 01.03.2019 which was received in this office on 08.04.2019 (copy enclosed as per Annexure A-5).

3.1 After examination of the details/ documents, following has been observed :

Total import purchase = Rs.7,49,92,473.72/-

Total assessable value of import as per CBEC data= Rs. 16,46,38,702/-

Custom duty (minus 4% SAD which is accounted separately)-Rs.3,86,89,513/-

Shipping charges= Rs. 1,41,52,445/-

CHA charges = Rs.21,43,599/-

CCPL ground rent = Rs.5,18,789/-

Additional custom duty paid =Rs.26,200/-

Net purchase value as per books-Rs.13,05,23,019/-

Difference of assessment value and invoice value of imports Rs.8,74,08,069.28/-.

Assessable value of goods in transits = Rs.30,46,095/-.

Difference after considering goods in transits = Rs.8,43,61,974.28/-.

Assessee was asked to provide BE wise details of purchase/imports alongwith invoices/import bills and bills of entry and bank account statements. Assessee has furnished data of imports and reconciliation of the same in tabular form (copy enclosed as Annexure A-4). The same has been examined and found in order.

After reconciliation of the bills of entry, purchase invoice, shipping bills and bank statement of assessee, it has been found that the invoice value of imported bills has been considered as purchase value in the books of accounts of the assessee. A clarification was sought from a Authorities in regards to higher assessable value of import goods. Vide letter dated C.No. VIII/CD/TKD/64G/Gr. II/Misc Report /256/2018/54582 dated

01.03.2018 dispatched on 26.03.2019 and received in this office 08.04.2019, the custom authorizes has stated that under custom rules they either accept the transaction value (i.e. declared invoice value) or if the declared invoice value appears low, then a new value is re-determined on the basis of National Import Data Base (NIDB) for the purpose of custom duty calculation. It is clear from the reply of the custom authority that the assessable value calculated on the basis of imports/valuation rules for the purpose of levy of custom duty It doesn't enhance the invoice value of the imported goods. Accordingly, the value is a notional value only for the purpose of levy of custom duty."

11. Further, the Ld.CIT(A) has also received information from the office of the Commissioner of Customs (Import) ICD, Tughlakabad, New Delhi and after analyzing the remand report and the information received from the Office of the Commissioner of Customs (Import) the Ld.CIT(A) is of the opinion that accessible value of the goods is the value on which the custom duties are calculated and ultimately deleted the addition.

12. The transaction value of the goods (invoice values) are accessible value as defined in Section 14 of Customs Act, 1962. If declared invoice value appears to be low terms of Rule 12 of Customs Valuation Rules, 2007, then a new value is re-determined in terms of Rule 4 to 9 of Customs Valuation Rules, 2007 and this determined value becomes accessible value and custom duties collected on the said determined value even though transaction value is different. Thus, it appears that accessible value which has been considered by the A.O. is not suppression of purchase price or unaccounted purchase. Moreover, the value of the goods assessed/re-determined by the custom authorities as per valuation norms for the purpose of calculation of custom duty on the import. Therefore, the same would not attract the provisions of Section 69C of the Act, since, it has not been established as

unexplained expenditure actually incurred by the assessee. The Ld. CIT(A) has considered the remand report and pass the order impugned. Therefore, restoring the file back to CIT(A) for fresh adjudication does not arise. Moreover, the Ld. A.O. has conducted proper enquiry while preparing the remand report. In our considered opinion, the Ld.CIT(A) has committed no error in come to such conclusion and deleting the addition made by the Ld. A.O. thus, the grounds of Appeal No. 1 to 8 of the Revenue are devoid of merit. Accordingly, Ground No. 1 to 8 of the Revenue are dismissed.

13. In the result, the Appeal filed by the Revenue is dismissed.

Order pronounced in the Open Court on : 17th January, 2023

Sd/-
(B. R. R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated : 17/01/2023

MEHTA/R.N, Sr. PS

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

