

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH,
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 3680/DEL/2019 [A.Y. 2015-16]

Shri Sunil Gupta
33G, Swadeshi Market
Sadar Bazar, New Delhi

Vs.

The I.T.O
Ward - 63(2)
New Delhi

PAN: AAHPG 7832 M

(Applicant)

(Respondent)

Assessee By : Shri Ved Jain, Adv
Ms. Supriya Mehta, CA
Ms. Uma Upadhyay, CA

Department By : Shri Vivek Kumar Upadhyay, Sr. DR

Date of Hearing : 11.07.2023

Date of Pronouncement : 14.07.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A) - 20, New Delhi dated 29.03.2019 pertaining to Assessment
Year 2015-16.

2. The grievances of the assessee read as under:

"1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in enhancing the income of the assessee by the addition of Rs. 1,00,50,008/-.

3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in enhancing the income without following due procedure as prescribed under the law.

4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition at Rs. 1,51,10,339/- as against the addition of Rs. 51,02,608/- made by the AO in the order passed under section 143(3) of the Income Tax Act.

5. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in making/confirming the addition of Rs. 1,33,43,641/- on account of difference in the value of import declared by the assessee as against the value reported by the Custom Authority. (ii) That the addition has been made without any application of mind by grossly indulging into surmises and mere conjectures.

6. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition in total disregard to the evidences brought on record by

the assessee that the total invoiced value of the goods is Rs. 1,27,15,897/- computed as US\$2,05,733.08 @ 61.81 as mentioned in the invoices.

7. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition despite the facts that the assessee is maintaining proper books of accounts and no discrepancy have been found by the AO.

8. On the facts and circumstances of the case, the learned CITCA) has erred both on facts and in law in confirming the addition despite the fact that complete stock tally have been maintained by the assessee and no discrepancy have been found by the AO.

9. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition despite there being no adverse material with the AO to show that assessee has paid the alleged amount to such overseas buyer.

10. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of AO making addition of Rs. 17,66,698/- on account of gross profit @13.24% on the alleged difference of Rs. 1,33,43,641/- in the value of imports.

11. The appellant craves leave to add, amend or alter any of the grounds of appeal. "

3. The representatives of both the sides were heard at length, the case records carefully perused and with the assistance of the Id. Counsel, we have considered the documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules and have also perused the judicial decisions relied upon by both the sides.

4. Briefly stated, the facts of the case are that the assessee filed his return of income electronically on 23.09.2015 declaring net taxable income at Rs. 9,68,420/-. The return was selected for scrutiny assessment through CASS to examine the following issues:

- (i) Purchases shown in the ITR is less than the invoice value of imports shown in the export import data [CBEC tab of ITS]
- (ii) Custom duty paid as shown in the ITR is less than the duty paid as per export import data [CBEC tab of ITS].

5. Statutory notices were issued and served upon the assessee. The assessee is an individual engaged in the business of trading in hosiery items. On perusal of the statement and individual transaction statement, the Assessing Officer found that the invoice value debited

in the profit and loss account was Rs. 1,27,15,897/- whereas the same has been reported by Customs Department at Rs. 2,60,59,538/-, leaving a difference of Rs. 1,33,43,641/-. Similarly, customs duty debited to the profit and loss account was Rs. 63,08,820/- whereas the same has been reported by the Customs Department as Rs. 53,12,035/.

6. The assessee was asked to explain why the purchases shown in the ITR is less than the invoice value of import/export data.

7. It was explained that the purchase in the profit and loss account is the amount actually paid to the vendors, whereas the amount reported by the Customs Department is for calculating the customs duty, hence the difference.

8. The Assessing Officer dismissed the reply of the assessee as devoid of merit. Referring to the transaction report as generated from ICEGATE, the Assessing Officer noted that the assessee has paid customs duty of Rs. 53,12,058/-. Therefore, the difference exists only in respect of invoice value as mentioned by the assessee in his profit and loss account and as provided by the Customs Department.

9. Once again the assessee was asked to explain the difference between the invoice value and customs value.

10. Once again, the assessee replied that the customs authorities have reported assessable value and not invoice value.

11. The Assessing Officer once again observed that the Customs Duty is paid on the assessed value and not on invoice value and proceeded to compute the addition on the basis of percentage of gross profit as shown in the financial statement during the year under consideration and went on to make addition on the basis of gross profit percentage @ 13.24% of the differential value of Rs. 1,33,43,641/- u/s 69C of the Act and made addition of Rs. 17,66,698/-.

12. The Assessing Officer further made addition of Rs. 32,93,633/- towards requirement of working capital, which would have been necessary to make imports during the whole year as per the invoice value provided by the Customs Department.

13. The assessee carried the matter before the Id. CIT(A) but without any success.

14. However, the ld. CIT(A) went on to enhance the addition of Rs. 32,93,633/- to Rs. 1,00,50,008/-, thereby making total addition of Rs. 1,33,43,641/- being the alleged difference between the invoice value of imported goods reported by the assessee vis a vis invoice value of imported goods reported by the Customs Department.

15. Before us, the ld. counsel for the assessee drew our attention to the commercial invoices dated 28.04.2014 and pointed out that total invoice value was 18677.68 US dollars. The ld. counsel for the assessee further pointed out that the bill of entry received acknowledgment on 23.09.2014 was 186677.68 US dollars equivalent to Indian Rs. 11,38,358/- on Customs Duty paid was 8,03,860/-.

16. It is the say of the ld. counsel for the assessee that the entire additions have been made by the Assessing Officer on wrong appreciation of facts. It is the say of the ld. counsel for the assessee that as per the bill of entry, invoice value of imports is 20573308 dollars which has been recorded in the profit and loss account as Rs. 1,27,15,896.94 and there is no dispute regarding the value of imports and the entire addition has been made on the basis of conjectures and surmises.

17. Per contra, the ld. DR strongly supported the findings of the Assessing Officer and the ld. CIT(A) and placed strong reliance on the enhancement made by the ld. CIT(A).

18. We have carefully perused the orders of the authorities below.

The invoice-wise tabulated chart is as under:

v. Invoice wise tabulated chart is appended below for ready reference:

Invoice No.	Bill of Entry No.	Date	Invoice Value in USD	Invoice Value on Commercial Invoice	Commercial Invoice Pg. No.	Invoice Value on Bill of Entry in USD	Assessable Value on Bill of Entry	Bill of Entry PB Pg. No.
JT/05 1/014	5634676	28.04.2014	18,677.68	18,677.68	16	18,677.68	33,63,993.00	23-27
JT/05 1/014	6441606	01.07.2014	16,575.12	16,575.12	28	16,575.12	30,49,795.86	35-43
OCL/ 105/0 4	6505142	13.07.2014	15,351.88	15,351.88	44	15,351.88	12,39,956.09	50-58
OCL/ 020/0 4	6571879	20.07.2014	15,512.30	15,512.30	59	15,512.30	14,50,217.59	65-71

COCL/ 0025/0 14	6574037	27.07.2014	16,070.78	16,070.78	72	16,070.78	16,65,750.83	78-88
COCL/ 0030/0 14	6815347	05.08.2014	16,413.70	16,413.70	89	16,413.70	27,67,631.38	95-99
COCL/ 0065/0 14	6959894	30.08.2014	16,084.32	16,084.32	100	16,084.32	21,70,697.53	106-111
COCL/ 0070/0 14	7194425	13.09.2014	15,620.00	15,620.00	112	15,620.00	23,38,172.50	119-125
COCL/ 0105/0 14	7210185	24.09.2014	15,091.00	15,091.00	126	15,091.00	13,28,242.95	132-138
COCL/ 0111/0 14	7322047	28.09.2014	20,749.50	20,749.50	139	20,749.50	26,32,925.39	145-151
COCL/ 0121/0 14	7628663	08.11.2014	18,577.00	18,577.00	152	18,577.00	22,50,938.65	158-172
COCL/ 0011/0 15	8574213	07.02.2015	21,009.80	21,009.80	173-174	21,009.80	29,15,018.82	183-196
Total			2,05,733.08	2,05,733.08		2,05,733.08	2,71,73,340.59	

19. We have also verified the commercial invoices, bill of entry and corresponding customs duty paid and the same are placed in the Paper Book from pages 16 to 196. There is nothing on record to prove that the assessee has paid anything extra over and above the transaction value shown in the import invoice. Surprisingly, no independent enquiry has been made from the seller of goods nor there is any evidence to show that Customs Department has alleged under valuation of import price.

20. Since the Customs authorities had enhanced the value of goods imported for the purpose of payment of customs duty which prompted the Assessing Officer/ld. CIT(A) to make the impugned addition assuming that the assessee had made unaccounted purchases. Addition made by the Assessing Officer was enhanced by the ld. CIT(A) without any independent application of mind and completely relying on the report received from the Customs Department which itself has no basis given the fact that the invoice value, as computed by the Customs Department, is not substantiated by any document/evidence/computation method.

21. In our considered opinion, there is a difference between the invoice value of import goods and their assessable value of import goods is the transaction value of such goods i.e. price actually paid or payable for goods. The undisputed fact is that during the year under consideration, the assessee has imported goods of dollar 2,05,733.08 equivalent to Rs. 1,27,15,896.94, which is duly recorded in the books of accounts of the assessee.

22. However, for payment of Customs Duty on imported goods, Customs Department may compute assessable value in terms of Rule 12 of Customs Valuation Rule, 2007 and Rule 4 to 9 of Customs Valuation Rules. The Custom Duty is collected by the Customs Department on assessable value, which may be different from transaction/invoice value of imported goods.

23. A perusal of the bill of entry shows assessable value on which customs duty is computed and which is more than the invoice value reported by the Customs Department and invoice value reported by the assessee. We find that the difference of Rs. 1,33,43,641/- has been computed by the Assessing Officer/ld. CIT(A) by comparing invoice value as per Customs Department Rs. 2,60,59,538/- against the invoice value as per assessee Rs. 1,27,15,897/- but no basis has been brought on record by the Assessing Officer /ld. CIT(A) for taking the invoice of Rs. 2,60,59,538/- since the assessable value which is also mentioned in the bill of entry is almost similar to the invoice value taken by the Customs Department and as mentioned elsewhere, assessable value is computed for the purpose of payment of Custom Duty and such assessable value can be different from the actual invoice value of the import goods.

24. The Hon'ble Bombay High Court in the case of Central Province Manganese Ore Co. Ltd 296 ITR 217 had an occasion to consider a similar conflict and held as under:

"7. In the present case, it is not in dispute that the Assessing Officer has made additions only on the basis of the market price determined by the customs authorities under the [Customs Act](#). Admittedly, there is no evidence on record to show that the assessee had recovered any amount in excess of invoice issued. The fact that the customs authorities have taken the market value of the exported goods for the purpose of customs duty could not be a ground to make additions in the case of the assessee unless there was any material to show that the assessee had in fact received more amount than what was shown in the invoices/bills. Admittedly, there is no material on record to show that the assessee had received amounts in excess of what is reflected in the books of account."

25. The co-ordinate bench in the case of Plasto Polymer [India] 2023

(1) TMI 1078 - ITAT order dated 30.09.2022 held as under:

"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 8 ITA No. 8351/Del/2019 ITO Vs. Plasto Polymer, ND 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."

26. Considering the facts of the case in totality, we do not find any merit in the addition made by the Assessing Officer. We also do not find any merit in the enhancement done by the ld. CIT(A). Accordingly, all the additions made by the Assessing Officer and enhancement done by the ld. CIT(A) are directed to be deleted.

27. In the result the appeal of the assessee in ITA No. 3680/DEL/2019 is allowed.

The order is pronounced in the open court on 14.07.2023.

Sd/-

**[ANUBHAV SHARMA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 14th JULY, 2023.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	