

IN THE INCOME TAX APPELLATE TRIBUNAL, KOLKATA BENCH 'SMC' KOLKATA

**BEFORE SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**ITA Nos. 611 & 612/Kol/2021
Assessment Year: 2015-16 & 2016-17**

Shovan Ghosh C/o. Subash Agarwal & Associates, Advocates Siddha Gibson, 1, Gibson Lane, Suite 213, 2 nd Floor, Kolkata- 700069. PAN: AMIPG 1329 A	Vs.	ITO, Ward-26(1), Kolkata
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Siddharth Agarwal, Advocate
Respondent by : Shri Altaf Hussain, Addl. CIT

Date of Hearing : 10.08.2023
Date of Pronouncement : 11.10.2023

ORDER

PER SONJOY SARMA, JM:

These captioned appeals are filed by the assessee against the two separate orders of ld. CIT(A)-7, Kolkata dated 24.02.2020 for the A.Y. 2015-16 and 2016-17 respectively. Since the identical grounds have been raised in the captioned appeals, therefore are being heard and disposed of by way of a consolidated order.

2. There is note by the Registry of delay of 597 days in filing of both appeals. Two separate applications for condonation of delay has been filed, wherein, it has been pointed out that the delay period was pertaining to Covid-2019 Pandemic period. In view of the directions of the Hon'ble Supreme Court in suo moto Writ Petition (C) No. 3 of 2020 dated 10.01.2022, the appeal is treated as filed within the limitation period.

3. First we take up ITA 611/Kol/2021 pertaining to A.Y. 2015-16 as lead case where the assessee has raised following grounds of appeal:

“i. For that on the facts and in the circumstances of the case, the ld. CIT(A) grossly erred in confirming the addition of Rs. 31,12,016/- made by the AO on account of imported purchases treating the same as unexplained and undisclosed expenditure u/s 69C of the Income Tax Act.

ii. The appellant craves leave to add further grounds of appeal or alter the grounds at the time of hearing.”

4. Brief facts of the case are that the assessee during the year had imported goods worth Rs. 55,06,503/- which included import duty amounting to Rs. 23,38,697/- and import inward expenses of Rs. 55,790/- and same had been debited in the profit and loss account by showing sundry creditors during the year under consideration. During the assessment proceeding, the ld. AO required the assessee to submit documentary evidence relating to import purchases made by the assessee vide notice issued u/s 142(1) but assessee failed to produce any details by taking plea that regular books of accounts were not maintained as asked by the AO. Further, the ld. AO found that none of the expenses were disclosed by the assessee in ITR filed for the A.Y. 2015-16. Ultimately, the ld. AO issued a final notice requiring the assessee to show cause as to why the amount of Rs. 55,06,503/- should not be treated as undisclosed expenditure and added to the income of the assessee. In response to the notice, the assessee stated that since the goods were purchased through import agent and the payment was to be given only on the sale of all imported goods. He also stated that since the goods reached to the assessee in damage condition therefore the assessee could not sold the goods and payment to the import agent was not made. During the assessment proceedings, the ld. AO had issued notice u/s 133(6) of the Act to the import agent by deputing departmental inspector to serve the notice but it could not be served. Ultimately, the ld. AO could not convince to the submission

made by the assessee and he had assessed the income of the assessee by making an addition of Rs. 31,12,016/-.

5. Dissatisfied with the above order, assessee went into appeal before the ld. CIT(A) where the appeal of the assessee was dismissed.

6. Aggrieved by the above order, assessee is in appeal before this Tribunal.

7. Ground no. 1 of the instant appeal is against confirming the addition of Rs. 31,12,016/- made by the AO on account of import goods purchased by the assessee and treating the same as unexplained and undisclosed expenditure u/s 69C of the Act. At the time of hearing, ld. AR submitted before the bench that the assessee incurred expenditure on the import purchased amounting to Rs. 31,12,016/- during the F.Y. 2014-15 and which was clearly evident from the copy of trading, profit & loss account and balance sheet for the F.Y. 2014-15 submitted during the course of hearing. However, the view taken by the AO considering the import of Rs. 31,12,016/- as unexplained import goods purchased and adding back to the income of the assessee merely on the ground that address of the importing agent was not accessible and importing agent failed to appear before the AO. In this context, the ld. AR submitted various decisions rendered by the Tribunals brought to our notice that ITAT Delhi Bench decision in the case of Kesha Appliances Pvt. Ltd. vs ITO where the Tribunal specifically laid down that the assessee cannot be penalized merely on the ground that the third parties failed to reply to the notices issued to them u/s 133(6) of the Act. On this issue, he further relied on the decision in the case of M.R. Ruia-HUF, Mumbai vs ITO 20(2)(2), it was held that purchase cannot be treated as bogus and unexplained u/s 69C of the Act. The ld.

AR in order to substantiate his argument filed the following copies of agreement before the Tribunal which are as under:

- i. Importing Agent Agreement dated 29.03.2013*
- ii. Addendum to Importing Agent Agreement dated 08.08.2013*
- iii. Settlement Agreement dated 25.05.2015 respectively.”*

In order to prove that such expenditure were made by the agent himself during the period. Therefore, the addition made by the authorities below needs to be set aside by the Tribunal.

8. On the other hand, ld. DR relied on the decision of the authorities below.

9. We after hearing the rival submission of the parties and going through the facts of the case and find that alleged documents are produced before us by the ld. AR of the assessee which were never produced before the AO while framing the assessment order to prove the fact in favour of assessee. Besides that the assessee completely failed to produce any other important document like confirmation, invoices and other related documents to show evidence that the importer facilitate such payment during the import of goods in favour of assessee. In such circumstances, we feel it necessary to remand back the whole issue to the file of AO to decide the matter afresh and direct the ld. AO to adjudicate the issue involved in accordance with law. While doing so, the ld. AO should give necessary opportunity to the assessee to furnish all such necessary documents in order to substantiate its claim before him at the time of hearing.

10. Now we take up ITA No. 612/Kol/2021 for A.Y. 2016-17 wherein the assessee has raised following grounds of appeal.

- “i. For that on the facts and in the circumstances of the case, the ld. CIT(A) grossly erred in confirming the addition of Rs. 22,23,661/- made by the*

AO on account of imported purchases treating the same as unexplained and undisclosed expenditure u/s 69C of the Income Tax Act.

ii. For that on the facts and in the circumstances of the case, the ld. CIT(A) grossly erred in confirming the addition of notional expenses of Rs. 8,41,845/- on account of freight, Rs. 25,879/- on account of insurance and Rs. 42,342/- on account of landing charges as undisclosed and unexplained expenditure.

iii. The appellant craves leave to add further grounds of appeal or alter the grounds at the time of hearing.”

11. The effective grounds in the appeal is against the order of ld. CIT(A) by which confirming the addition made by ld. AO of Rs. 22,23,661/- on account of imported goods purchase made by assessee by treating the same as unexplained and undisclosed expenditure u/s 69C of the Act and also confirming the addition on various notional expenses of Rs. 8,41,845/- Rs. 25,879/- and Rs. 42,342/- respectively on account of freight, insurance and landing charges as undisclosed expenditure. Since the facts are identical to ITA No. 611/Kol/2021 as arising from the imported goods transaction as made in A.Y. 2015-16, we, therefore, taking the considered view and following our own decision in ITA No. 611/Kol/2021 for A.Y. 2015-16 and in the present appeal ground nos. 1 & 2 are also allowed for statistical purposes and remand the whole issue to the file of AO for de novo adjudication.

12. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 11.10.2023

Sd/-

**(RAJESH KUMAR)
 ACCOUNTANT MEMBER**

Sd/-

**(SONJOY SARMA)
 JUDICIAL MEMBER**

Copy to:

1. The Appellant: Shovan Ghosh.
2. The Respondent: ITO, Ward-26(1), Kolkata.
3. The CIT,
4. The CIT (A)
5. The DR

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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata