

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH, COCHIN**

Before Shri Sanjay Arora, Accountant Member and  
Shri Manomohan Das, Judicial Member

**ITA Nos. 162 & 324/Coch/2023**  
(Assessment Year:2015-16)

Ushadevi Purushothaman 18/1555, Pallichal Road Thoppumpady Kochi 682005 [PAN:ACIPP7594A]	vs.	The Income Tax Officer Non Corporate Ward – 2(3), Kochi
(Appellant)		(Respondent)

Assessee by:	Shri Lukose Joseph, CA
Revenue by:	Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing:	12.10.2023
Date of Pronouncement:	31.10.2023

**ORDER**

PerSanjay Arora, AM

This is an Appeal (ITA No. 324/Coch/2023) by the Assessee agitating the confirmation of her assessment under section 143(3) of the Income Tax Act, 1961 ('the Act') dated 14.12.2017 for assessment year 2015-16 by the Commissioner of Income-Tax (Appeals), NFAC [CIT(A)] vide it's order dated 31.3.2023.

2. The only issue in quantum assessment is *qua* the assessee's export turnover, assessed at Rs.288.55 lakhs by the Assessing Officer (AO), reduced in first appeal to Rs.177.12 lakhs. The assessee's returned turnover (Rs.94.14 lakhs) bears nil export turnover, and, further, being below the threshold limit of Rs.100 lakhs for audit u/s. 44AB, she did not get the accounts of her business audited u/s.44AB of the Act, and which explains the second appeal (ITA No.162/Coch/2023) contesting the levy of penalty u/s. 271B for non-audit.

3. The assessee is running a Government approved sea-food processing unit in a proprietary-firm 'Bell Foods', with approvals from the regulatory authorities, earning processing income and freezing rent. The merchant exporters who do not have their processing units are permitted to process and manufacture their seafood in approved plants, as the assessee's. The income arises to her is only by way of processing charges, which stands returned u/s.44AD of the Act. However, as per the procedure followed under the Customs Act, the name of the processor/manufacturer is to be shown on the invoice. As such, the customs invoices (shipping bills) bear the name of the assessee as the manufacture-exporter, even as the invoices submitted to the bank/foreign customers bear the name of the actual exporter. The turnover reflected in the shipping bills for the relevant year was at Rs.32,02,72,567. The assessee, in assessment, explaining the procedure under Customs, furnished confirmations from merchant exporters for Rs.2914.17 lakhs, so that the balance Rs.288.55 lakhs was regarded as her export turnover and, accordingly, assessed at 8% thereof. In first appeal, a further reduction of Rs. 111.43 lacs was allowed in view of furnishing confirmations from another two exporters, even as claimed during the assessment proceedings, leaving a balance of Rs.177.12 lakhs, being objected to by the assessee.

4. Before us, Sh. Joseph, the learned counsel for the assessee, would take us through the assessee's submissions before the Id. CIT(A), reproduced at pages 3-7 of the impugned order. The same contains reconciliation of the total export turnover. The value of the purged bills, i.e., cancelled on account of non-execution of the export contract (Rs.567.55 lakhs), and freight, insurance, etc. (Rs.98.01 lakhs), has not been taken into account, whereupon the entire export turnover, which in fact is at Rs.34.95 crores, and not Rs.32.03 cr., as taken by the Revenue authorities, gets explained. The Id. CIT(A), however, had omitted to take notice of the same.

5. We have heard both parties, and perused the material on record.

The burden to prove it's return, and the claims preferred thereby, is only on the assessee. She has, we find, nowhere explained the phenomena of purged bills, as Sh. Joseph would seek to before us. No specific Ground in respect thereof, furnishing the necessary evidence alongwith, is taken before the first appellate authority as well. When the Revenue has the relevant evidence with it, it is entitled to draw the presumption that the exporter mentioned in the custom invoice is the actual exporter. It is only on the assessee furnishing evidence to the effect that the corresponding bill raised on the foreign buyer, copy of which is marked to the bank and other agencies, bears the name of the merchant exporter, that the identity of the actual exporter gets established, and said presumption rebutted on facts and, thus, in law. Even so, it is open for the Revenue to verify the same, satisfying itself in the matter. The presentation of her case by the assessee is seriously wanting.

At the same time, the assessee's consistent stand throughout has been that she is undertaking only processing on job-work basis. Though undertaking export up to the year 2005, non-servicing of her bank loan and rejection of exports, led to her bank account being categorised as a Non-Performing Asset (NPA) by the bank, which carried the matter of recovery to the Debt Recovery Tribunal (DRT). She is since undertaking only processing activity. This aspect has been overlooked by the Revenue, as indeed the reconciliation submitted at the first appellate stage.

6. The matter, accordingly, shall travel back to the file of the AO for verifying the assessee's claim/s, the burden to prove which would be on it. The AO shall decide by issuing definite findings of fact after allowing due opportunity to the assessee. The levy of penalty u/s. 271B of the Act being intimately related to the turnover, is, accordingly, also set aside for consequential adjudication. We decide accordingly.

7. In the result, the assessee's appeals are allowed for statistical purposes.

*Order pronounced in the open court on October 31, 2023 under Rule 34 of The  
Income Tax(Appellate Tribunal) Rules, 1963.*

Sd/-  
(Manomohan Das)  
Judicial Member

Sd/-  
(Sanjay Arora)  
Accountant Member

Cochin, Dated: October 31, 2023

Copy to:

1. The Appellant
  2. The Respondent
  3. The CIT concerned
  4. The Sr. DR, ITAT, Cochin
  5. Guard File
- n.p.

By Order

Assistant Registrar  
ITAT, Cochin