

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

**SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.5409/Del/2018
Assessment Year: 2014-15

Genesis Associates Pvt. Ltd., 19, Furniture Block, Kirti Nagar, New Delhi	Vs.	DCIT, Circle-10(1), New Delhi
PAN :AAACG4978Q		
(Appellant)		(Respondent)

Assessee by	Sh. Raghav Sharma, CA Sh. Avinash Mishra, AR & Sh. Shivam Garg, Advocate
Department by	Sh. Anuj Garg, Sr. DR

Date of hearing	28.03.2024
Date of pronouncement	04.04.2024

ORDER

PER SAKTIJIT DEY, VICE-PRESIDENT

This is an appeal by the assessee against order dated 22.0.2018 of learned Commissioner of Income Tax (Appeals)-35, New Delhi.

2. Briefly the facts are, the assessee is a resident corporate entity. For the assessment year under dispute, the assessee filed

its return of income on 30.11.2014 declaring loss of Rs.62,68,037/-. As stated by the Assessing Officer, the assessee is engaged in trading of furniture items to Indian whole sellers, corporates, institutions and local retail customers. In course of assessment proceeding, the Assessing Officer, while verifying the return of income of the assessee, noticed that the assessee has debited an amount of Rs.55 lakhs to the profit and loss account towards deduction under section 43B on account of Custom duty paid. Noticing this fact, the Assessing Officer called upon the assessee to furnish the details of such payments with supporting evidences. After verifying the documentary evidences, the Assessing Officer noticed that the Customs authorities have raised additional custom duty demand of Rs.3,45,91,494/- based on the re-calculation on revaluation of the assessable value of all imports for the years 2010 to 2013. He further observed that the Customs department has also issued a show-cause for levy of interest and penalty on the additional duty amount. Alleging that the payment of Rs.55 lakhs on account of Custom duty is penal in nature, the Assessing Officer disallowed the deduction claimed by referring to the Explanation under section 37(1) of the Act.

Though, the assessee contested the aforesaid disallowance before learned first appellate authority, however, it was confirmed.

3. We have considered rival submissions and perused the materials on record. It is very much clear from the observations of the Assessing Officer in the assessment order that the Customs authorities have demanded additional custom duty of Rs.3,45,91,494/- based on re-calculation on revaluation of assessable value of imports made during the years 2010 to 2013. Out of the aforesaid demand, the assessee has paid Rs.55 lakhs and claimed deduction thereof. In fact, in the submissions filed before learned first appellate authority, the assessee has clarified the aforesaid factual position. Thus, from the aforesaid facts, it is quite clear that the deduction claimed by the assessee pertains to additional Custom duty, which cannot be in the nature of penalty. Therefore, in our view, the deduction claimed by the assessee cannot be disallowed invoking Explanation 1 to section 37 of the Act. Accordingly, the Assessing Officer is directed to delete the disallowance of Rs.55 lakhs.

4. Ground no. 4, being consequential and ground no. 5 being premature at this stage, are dismissed.

5. In the result, the appeal is partly allowed.

Order pronounced in the open court on 4th April, 2024

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
VICE-PRESIDENT

Dated: 4th April, 2024.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi