

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, AHMEDABAD BENCHES, AHMEDABAD**

**BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA Nos. 296 & 297/AHD/2021
Assessment Year(s): 2014-15 & 2015-16

The Asstt. Commissioner of Income-tax, Circle-2(1)(1), Ahmedabad Room No. 406, 4 th Floor, Aayakar Bhavan (Vejalpur), Nr. Sachin Tower, 100 Feet Road, Anandnagar-Prahladnagar Road, Ahmedabad-380015,Gujarat	v.	Shri. Sanjay Kishanlal Bishnoi 11, Nirav Palace, Chandkheda, Sabarmati, Ahmedabad-382424, Gujarat
		PAN:AMUPB7496D
(Appellant)		(Respondent)

Assessee by:	Sh. Umedsingh Bhati & Sh. Abhimanyu Singh Bhati, AR's
Revenue by:	Sh. Subhendu Das, CIT, DR
Date of hearing:	17.01.2024
Date of pronouncement:	10.04.2024

ORDER

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

These two appeals, filed by Revenue, have arisen from the common appellate order passed by the learned Commissioner of Income-Tax(Appeal), Ahmedabad dated 13.08.2021 for the assessment years 2014-15 and 2015-16(common appellate order is for assessment year(s) 2011-12 to 2015-16), which appeals are in turn has arisen from the separate assessment order(s) dated 29.12.2016 for assessment year 2014-15 passed by learned Assessing Officer u/s 143(3) of the Income-tax Act, 1961 and the assessment order dated 30.12.2017 passed by learned AO for assessment year 2015-16 u/s 143(3) of the 1961 Act .

2. The Revenue has raised following grounds of appeals in Memo of Appeal filed with Income Tax Appellate Tribunal, Ahmedabad, for assessment year 2014-15 :-

“(1) The Id. CIT(A) erred in law and on facts in restricting the G.P. addition @ 2% on the turnover of watermelon seeds instead of taking 2% of total turnover as the books of accounts were rejected by the A.O. by invoking the provisions of section 145(3) of the Act which empowers the A.O. to deduce the correct peak profit of the business.

(2) The Id. CIT(A) erred in law and on facts in deleting the addition of Rs.1,80,69,095/- made by the A.O. by invoking the provisions of section 69C of the Act.

(3) It is, therefore, prayed that the order of Id. CIT(A) may be set aside and that of the Assessing Officer be restored.”

2.2 The Revenue has raised following grounds of appeals in Memo of Appeal filed with Income Tax Appellate Tribunal, Ahmedabad , for assessment year 2015-16:-

“(1) The Id. CIT(A) erred in law and on facts in deleting the addition of Rs. 20,85,229/- (sic. Rs. 2,62,41,611/- u/s 69C of the Act holding that when peak deficit is brought to tax in A.Y. 2011-12 , the same has to be considered while computing the deficit of peak of cash in A.Y. 2015-16 without appreciating that:

(a) Deficit in cash in A.Y. 2011-12 was occasioned due to outflow of cash;

(b) When the cash has been expended in A.Y. 2011-12 itself, the assessee does not possess the said cash for expenditure in subsequent year;

(c) The assessee cannot be said to have in possession of the cash during the A.Y. 2015-16 which was already expended in A.Y. 2011-12 and therefore the question of including the same in the cash flow of A.Y. 2015-16 does not arise.

(2) It is, therefore, prayed that the order of Id. CIT(A) may be set aside and that of the Assessing Officer be restored.”

3. These appeals are time barred by 21 days as these two appeals were filed by Revenue beyond the time provided u/s 253(3) of the 1961 Act. The Revenue has claimed that in view of extension of period of limitation by Hon'ble Supreme Court owing to Pandemic Covid-19 in ***Suo Motu Writ Petition(C) No. 3 of 2020*** , wherein Hon'ble Supreme Court extended the period of limitation for filing appeals, there is

no delay in filing this appeal with Tribunal. Reference is made in the letter of Authorization filed by Department vide No. Pr.CIT-1/ITO(HQ-1)/SKB/2014-15/2021-22 to the order of Hon'ble Supreme Court in **Miscellaneous Civil Application 665/2021 in SMW(C) No. 03 of 2020 dated 23.09.2021**. Thus, keeping in view orders of Hon'ble Supreme Court passed from time to time excluding period from 15.03.2020 till 28.02.2022 for computing limitation period , we are of the considered view that these two appeals are filed by Revenue in time and there was no delay in filing appeal by Revenue. The assessee has also not raised any objection to the contentions raised by Revenue. Thus, we proceed to decide these two appeals on merits in accordance with law.We order accordingly.

4. First, we shall take up appeal of the Revenue for Assessment year 2014-15. The brief facts of the case are that the assessee filed return of income on 31.10.2014 declaring total income of Rs. 40,40,202/-. Case was selected for framing scrutiny assessment, and notice under sections 143(2) and 142(1) were issued by the AO to the assessee. The assessee filed various details before the AO during the course of assessment proceedings. The background of the case is that in this case information was received from DDIT(Inv.) vide its letter no. DDIT(Inv.)-1(1)/Ahd/BTC/DRI/2016-17 dated 30.08.2016,wherein it was informed that the Directorate of Revenue Intelligence(DRI) had carried out a search action in this case. It was found by DRI that the assessee had imported watermelon seeds from Sudan and Pakistan. During the search proceedings , it was revealed that the assessee had undervalued the imports of watermelon seeds and evaded custom duties. The AO called for the necessary information and other details/documents from the office of DRI Zonal Unit, Ahmedabad. The AO on detailed examination and analysis of documents and other details furnished by DRI, observed that it revealed that the assessee was indeed involved in the under valuation of imports of watermelon seeds. The assessee had remitted the purchase price as declared before the custom authority, through banking channel, but however, the excess purchase price over

and above the value declared before the custom authorities for payment of custom duty was paid to overseas suppliers through adjustments or through their local agents which were unaccounted and from undisclosed and unexplained sources. The AO observed that the DRI has carried out deep investigation and analysis of documents, email conversations and also after recording the statements of the assessee, had also issued show cause notice to the assessee. The AO reproduced the observations and finding given by DRI in its assessment order at page no. 3, which is reproduced as under:-

"Whereas an intelligence was gathered that an importer M/s. Bishnoi Trading Corporation (IEC No. 3708002261), 46, 2nd Floor, 4D square Mall, Motera, Ahmedabad (hereinafter referred to as 'M/s, BTC' for the sake of brevity) engaged into import of Watermelon Seeds (CTH-12077090/12079990) had resorted to undervaluation of the said goods while presenting the said goods for clearance from Customs with an intent to evade payment of appropriate Customs duty leviable thereon. It was also gathered that M/s. BTC imported Watermelon Seeds mainly from Sudan and Pakistan through Nhava Sheva Port, Mumbai and differential amount i.e. difference of actual value and mis-declared value was being sent to overseas suppliers through other than legal channels.

2. Following the above intelligence, a letter F. No. DRI/AZU/G1-I/INT-19/2014, dated 11.08.2014, was issued by the Additional Director General, Directorate of Revenue Intelligence, Ahmedabad, to the Commissioner of Customs (Imports), JNCH, Nhava Sheva, inter alia, requesting not to allow any clearance and to keep on hold all the containers lying/received of water melon seeds consignments at the port in the name of M/s. Bishnoi Trading Corporation, Ahmedabad.

SEARCHES OF PREMISES OF M/S. BISHNOI TRADING CORPORATION:

3. Acting upon the above intelligence, a search was conducted at the office premises of M/s. Bishnoi Trading Corporation, 46, 2nd Floor, 4D square Mall, Motera, Ahmedabad, Gujarat, in presence of independent panchas under Panchnama dated 12.08.2014 (RUD No. 11. During the course of Panchnama it was revealed that Shri Sanjay K. Bishnoi was the proprietor of M/s. Bishnoi Trading Corporation. However, all the activities of M/s. Bishnoi Trading Corporation were being looked after by his brothers Shri Mohan Bishnoi and Shri Omprakash Bishnoi. The domestic- trading of the agro product was looked after Shri Mohan Bishnoi whereas import work was looked after by Shri Omprakash Bishnoi. During the course of search at the office premises of M/s. Bishnoi Trading Corporation under Panchnama dated 12.08.2014, it was admitted by Shri Omprakash that he used the email ID, therefore, print outs of various documents from a computer installed in the premises were taken and placed in a four separate files marked as Made up file containing email print outs" and the same was also retrieved along with other documents like Import documents, ledgers

etc, as mentioned in the Panchnama dated 12.08.2014. The made up files contained documents in the form of email correspondences, sale contracts, proforma invoices, conversation with overseas suppliers etc., related to the import of Watermelon Seeds by M/s. BTC, Ahmedabad. The same were withdrawn under the provisions of Customs Act, 1962, for further investigation.

4. Statements of Shri Omprakash Kishanlal Bishnoi, Authorised Person of M/s. Bishnoi Trading Corporation, 46, 2nd Floor, 4D Square Mall Motera, Ahmedabad, Gujarat - 380005, was recorded under Section 108 of the Customs Act, 1962 before DRI, AZU, Ahmedabad on 12.08.2014 & 1.10.2014 (RUD No, 2 & 3) wherein he, inter alia, stated that his youngest brother Shri Sanjay Kishanlal Bishnoi was proprietor of M/s. Bishnoi Trading Corporation, Ahmedabad; however the overall work of the firm was looked after by him and his other brother Shri Mohan Kishanlal Bishnoi. He was also responsible for the import related work of M/s. Bishnoi Trading Corporation.

4.1 Shri Omprakash was shown the following documents which were retrieved during the course of the Panchnama dated 12.8.2014:

4.1.1 Page No. 110 to 113 of the made up File No. 5, which was an email correspondence between e-mail ID: alphaagriproduct@hotmail.com (Mr. Yassir of M/s. Alpha Agricultural Processing) and their firm's e-mail id: btcfeeds@pahoo.in on 18.04.2014.

4.1.2 Page No. 61 to 65 of file no 5, wherein they had finalized the deal at USD 950/PMT for (5X20 FCL) on 09.01.2014;

4.1.3 Page No. 56 to 60 of file no 5, wherein they had finalized the deal at USD 925/PMT for 88 MT (5X20 FCL) on 14.02.2014

4.1.4 Page No. 31 to 34 of file no 5, wherein he had confirmed the transfer of their payment of 10X20 fcl i.e. Total payment of USD 890-300 = 590X180= USD 106200 on 25.06.2014 through channels other than normal banking channel.

4.1.5 Page No. 45 to 51 of the made up File No. 5, which was an email correspondence between e-mail ID: info@africorp-sd.com (Mr. Mohmmed Huron of M/s. Africorp - International Co., Ltd.) and their firm's e-mail id: btcfeeds@yahoo.in on 06.11.2012.

4.1.6 Page No. 106 of the made up File No. 5, which was an email correspondence between e-mail ID: amanpsheth@gmail.com (Mr. Paresh Seth of M/s.' Aagam Import and Export) and their firm's e-mail Id: btcfeeds@yahoo.in on 07.05.2014, wherein the price for the 'watermelon seeds' was negotiated and final deal was confirmed at USD 910/PMT for 108 MT (6X20).

4.1.7 Pages No. 13 to 18 of file No. 5 (RUD No. 41) which was an email conversation with Shri Yassir Moneim of M/s. Alpha Agriculture Processing, Sudan for import of watermelon seeds.

4.1.8 Pages No. 34 of file No. 5 (RUD No, 5) which was an email conversation with Shri Yassir of M/s. Alpha Agriculture Processing Co, Sudan, showing details of excess payment made through Shri Paresh.

4.1.9 Page No. 41 of file No. 5 (RUD No. 6) which was a Proforma Invoice No. ATR/PI/22/2014, dated 04.02.2014, of M/s Alpha Agriculture Processing Co, Sudan, fof 180 MTS of Watermelon seeds which were negotiated with them @ USD 850 Per MT C&F, Nhava Sheva.

4.1.10 Pages No. 42 & 43 of file No. 5 (RUD No. 7)which was an email conversation with Shri Yassir of M/s Alpha Agriculture Processing Co, Sudan, wherein at page No. 42 Shri Yassir had quoted a price of USD 985 per MT for 3 containers of 20 ft and at page No. 43, he had informed him (Shri Yassir) that as per their telephonic discussion, the deal was finalized at USD 915 per MT. CNF Nhava Sheva..

4.1.11 Pages No. 45 to 51 of file No. 5 (RUD No. 8) which was an email conversation with Shri Ashraf /Shri Huron of M/s. Africorp International, Sudan, showing correspondences related to the payment over and above the declared value.

4.1.12 Page No. 57 of file No. 5 (RUD No. 9) which was an email conversation with Shri Yassir of Alpha Agriculture Processing Co, Sudan relating to payment of the imported watermelon seeds.

4.1.13 Page No. 64 of file No. 5 (RUD No. 10) which was an email conversation with Shri Yassir of Alpha Agriculture Processing Co, Sudan showing price negotiation for import of watermelon seeds.

4.1.14 Pages No. 74 to 76 of file No. 5 (RUD No. 11) which was an email conversation with Shri Naresh Dadia, who was a broker and dealt with the agricultural Products for import of watermelon seeds

4.1.15 Pages No. 88 to 90 of file No. 5 (RUD No. 12) which was an email conversation with Shri Abnaalnee of M/s Abna regarding negotiation and payment in respect of import of watermelon seeds

4.1.16 Page No. 106 of file No. 5 (RUD No. 13)which was an email conversation with Shri Paresh, a broker of watermelon seeds for purchase of watermelon seeds.

4.1.17 Pages No. 111 & 112 of file No. 5 (RUD No. 14) which was an email conversation. with Shri Yassir of M/s Alpha Agriculture processing Co, Sudan for purchase of watermelon seeds.

4.1.18 Pages No. 28 to 30 of file No. 6 (RUD No. 15) which was an email conversation with Shri Vinesh H Mehta for purchase and payment related to import of watermelon seeds.

4.1.19 Pages No. 167 to 169 of file No. 6 (RUD No. 16) which was an email conversation with M/s. Alpha Agri Processing Co, Sudan, regarding purchase of watermelon seeds.

4.1.20 Pages No. 1 to 7 of file No. 7 (RUD No. 17) which was an e-mail communication/ proforma invoice pertaining to import of 88 MT watermelon seeds in M/s. Bishnoi Trading Corporation from M/s. Alpha Agri Processing, Sudan for purchase of watermelon seeds.

4.1.21 Pages No. 46 to 48 of file No. 7 (RUD No. 18) which were email conversations with a company called M/s. Lafia Co, Sudan, who had offered to sell watermelon seeds to them.

4.1.22 Pages No. 49 to 51 of file No. 7 (RUD No. 19) which were email conversations with M/s. Alpha Agriculture Processing, Sudan, which provided details of the price of watermelon seeds negotiated by them alongwith request for good quality watermelon seeds

4.1.23 Pages No. 57 & 59 of file No. 7 (RUD No. 20) which were email conversations with Shri Mohamad Badwai Ibrahim Osman of Emeco Group, for negotiation and finalization of purchase of watermelon seeds @ USD 865/MT.

4.1.24 Pages No. 62 & 63 of file No. 7 (RUD No. 21) which were e-mail conversations with Shri Mohamad Badwai Ibrahim Osman of Emeco Group, for negotiation & payment particulars and giving the general practice for making commercial invoice at lower value.

4.1.25 Pages No. 68 of file No. 7 (RUD No. 22) which was a contract made by them with M/s Alpha Agriculture Processing, Sudan for import of 180 MTS of watermelon seeds at USD 890 Per MT in May, 2014.

4.1.26 Page No. 70 of file No. 7 (RUD No. 23) which was a purchase contract made by them with M/s. Lafia Investment Co Ltd, Sudan, for import of 126 MTS of watermelon seeds at USD 1000 Per MT CNF Nhava Sheva in July, 2014.

4.1.27 Page No. 71 of file No. 7 (RUD No. 24) which was a contract made by them with M/s Alpha Agriculture Processing, Sudan for import of 180 MTS of watermelon seeds at USD 785 Per MT in April, 2014,

4.1.28 Page No. 72 of file No. 7 (RUD No. 25) which was a contract made by them with M/s Alpha Agriculture Processing, Sudan for import of 180 MTS of watermelon seeds at USD840 Per MT in April, 2014.

4.1.29 Pages No. 73 & 74 of file No. 7 (RUD No, 26) which was a contract made by them with M/s Alpha Agriculture Processing, Sudan for Import of 90 MTS & another 90 MTS of watermelon seeds at USD 1000 & USD 975 Per MT in July, 2014

4.1.30 Page No. 75 of file No. 7 (RUD No. 27) which was a contract made by them with M/s Alpha Agriculture Processing, Sudan for import of 180 MTS of watermelon seeds at USD 800 Per MT in April, 2014.

4.1.31 Pages No. 76, 77 & 78 of file No. 7 (RUD No. 28) which were email conversation with Shri Vinesh Mehta and Shri Niraj Mehta of Aknan International wherein they had negotiated the price for 54 MTS of 870/MT CNF Nhava Sheva.

4.1.32 Page No. 80 of file No. 7 (RUD No. 29) which was an email conversation with Shri El Sayed of M/s Albarakawi of Sudan, wherein they had finalized a price of USD 870 CNF Nhava Sheva, for 3 containers of watermelon seeds in June, 2011.

4.1.33 Page No. 109 of file No. 7 (RUD No. 30) which was an email conversation with Shri Haroon of M/s Afri Corp, Sudan wherein he had confirmed the price of 18 MTS of watermelon seeds @ USD 875/MT, CNF Nhava Sheva

4.1.34 Page No. 110 of file No. 7 (RUD No. 31) which was an email conversation with Shri Niraj Mehta of M/s Aknan International, Sudan, wherein conversation was made regarding the settlement of the amount payable towards the purchase of watermelon seeds against the export of guar gum.

4.1.35 Pages No. 34 to 36 of file No. 7 (RUD No. 32) which were e-mail communications between their firm and Shri Vinesh Mehta of M/s. Divyesh Kumar Harilal & M/s Aknan International of Dubai for import of 54 MT watermelon seeds @885 USD/MT.

4.2 Shri Omprakash Bishnoi when confronted with above evidences admitted that he was the Authorised signatory of M/s. Bishnoi Trading Corporation and that he was negotiating with the overseas supplier for import of watermelon seeds through telephone and also through emails even though he was not the proprietor. He also admitted that the actual transaction values of the watermelon seeds imported by him in the name of M/s Bishnoi Trading Corporation, were as per the proforma invoice/ email conversation, sales contract etc. which were retrieved during the course of the search at their office premise. He also revealed that after negotiation for the price of watermelon seeds, the overseas supplier was requested to send a proforma invoice for the full value. A separate commercial invoice for USD 300-350 along with the import documents, would be sent by the overseas supplier at the time of import and the same would be presented to the Customs for assessment. He admitted that the amount which was declared to the Customs at the time of Import would be sent to the overseas supplier through banking channels and the value over and above the declared value was sent to the overseas supplier either directly or from Dubai or adjusted against the export of some other product or handed over to the representative of the overseas supplier in India. He also admitted that they have imported watermelon seeds by declaring the value as USD 300-350 PMT, whereas the actual transaction value of the watermelon seeds during the relevant period was ranging between USD 800-900 PMT.

4.3 As regards the actual rate of the watermelon seeds imported by him in the name of M/s. Bishnoi Trading Corporation, he requested the officers to prepare a list of the import consignments in excel sheet wherein he would declare the actual transaction value of the watermelon seeds imported by him in the said two firms. The said prices were on C&F basis. Accordingly, the officers prepared an Annexure showing the details of the imports made by him in the name of M/s. BTC and he declared the actual transaction value of the watermelon seeds (on C&F basis] in the column meant for actual transaction value per MT in USD. He produced the said annexure

duly filled in with the actual transaction prices of watermelon seeds against the relevant Bill of Entry (RUD No. 33)

4.4 He had also filed a Bill of Entry No. 6328451, dated 4.8.2014 for import of 198 MT of watermelon seeds by declaring the price of AED 1105.50 (equivalent to approx USD 300) which were pending clearance at JNCH port whereas the actual transaction value in respect of the said consignment was USD 950 per MT.

4.5 Watermelon seeds imported by them were sold mostly to manufacturers/traders based in Gujarat and Rajasthan wherein the actual rate of said watermelon seeds sold to them varied between Rs. 60 to 72 whereas invoices were issued in the range of Rs. 25 to 32. The differential amount was either received by them or sometimes received by the persons of overseas suppliers.

4.6 The Phytosanitary certificate issued by the country of origin was always attached with the import documents and the same were sent every time by the overseas suppliers. He accepted that they had imported watermelon seeds from Sudan & Pakistan at undervalued rates. He further admitted his duty liability evaded by them at the time of import.

5. Meanwhile, a letter F. No. DRI/AZU/GI-02/INT-19/2014, dated 20.08.2014 (RUD No. 34) was issued by DRI, Ahmedabad Zonal Unit to the Customs, Nhava Sheva to provide the details of the consignments put on hold in respect of importers of watermelon seeds. Accordingly, a letter F. No. SG/Misc-113/2014-15/SIIB (I) JNCH, dated 28.08.2014 (RUD No. 35) was issued by the Deputy Commissioner of Customs, SUB (1), JNCH, Nhava Sheva, to the Directorate of Revenue Intelligence (DRI), Ahmedabad Zonal Unit, Ahmedabad, informing that the clearance of a consignment of watermelon seeds (11x20' containers) imported by M/s. Bishnoi Trading Corporation vide Bill of Entry No. 6328451, dated 04.08.2014, was kept on hold following the instruction of DRI, Ahmedabad.

ARREST OF SHRI OMPRAKASH KISHANLAL BISHNOI.

6. From the statements and documentary evidences available on record, it appeared that there were reasons to believe that Shri Omprakash Bishnoi, Authorised Person of M/s. Bishnoi Trading Corporation, Ahmedabad, had committed an offence punishable under Section 135 of the Customs Act, 1962, in as much as, he had knowingly indulged in the act of importing watermelon seeds from Sudan & Pakistan by resorting to undervaluation. It appeared that he had in this way imported around 4400 MTs of watermelon seeds by declaring the value as USD 300/350 Per MT before the Customs at the time of Import, whereas the actual price of which was in the range of USD 800 to 925 per MT. By the act of omission and commission on his part, he had indulged in the smuggling of imported goods which he knew or had reasons to believe that the said goods were liable to confiscation under Section III(m) of the Customs Act, 1962 and the goods so imported were to be treated as 'smuggled goods' as defined under Section 2(39) of the Customs Act, 1962. Therefore, Shri Omprakash Kishanlal Bishnoi was arrested on 01.10.2014 vide Arrest Memo dated 01.10.2014 (RUD No. 36) under the provisions of Section 104 of the Customs Act, 1962 and was produced in the Court of Hon'ble ACMM, Ahmedabad, on

02.10.2014 and was sent to Judicial Custody. Hon'ble ACMM, Ahmedabad and Hon'ble Sessions Court, Ahmedabad rejected Bail applications filed by Shri Omprakash K. Bishnoi. Thereafter, Shri Omprakash K. Bishnoi filed a Bail Application before Hon'ble High Court of Gujarat which was pleased to grant regular bail to Shri Omprakash K. Bishnoi vide its Order dated (RUD No. 37) on execution of a personal bond of Rs. 1,00,000/- (Rupees One Lac only) with two local sureties of Rs. 50,000/- each and subject to the condition that the applicant shall deposit an amount of Rs. 35,00,000/- on or before 23.11.2014 and other Rs. 25,00,000/- on or before 22.12.2014 and fulfillment of other conditions (a) to (h) as mentioned in the order.

SEIZURE OF CONSIGNMENT IMPORTED VIDE BILL OF ENTRY NO. 6328451. DATED 04.08.2014 AND ITS PROVISIONAL RELEASE.

7.1 During the course of statement dated 01.10.2014, Shri Omprakash K. Bishnoi, Authorised Person of M/s. Bishnoi trading Corporation, admitted that a consignment of watermelon seeds (total 11 containers) imported by M/s. Bishnoi Trading Corporation, Ahmedabad, was awaiting Customs clearance for which they had presented a Bill of Entry No. 6328451, dated 04.08.2014 before Customs, Nhava Sheva wherein they had declared the value before Customs as AED 1105.50 (equivalent to approx USD 300) whereas the actual transaction value of goods imported was 950 USD per MT. Thus, it appeared that the goods imported by M/s. Bishnoi Trading Corporation, Ahmedabad vide Bill of Entry No. 6328451, dated 04.08.2014, were in contravention to the provisions of Customs Act, 1962 and the said goods were liable for confiscation under provisions of Customs Act, 1962. Accordingly, a letter F. No. DRI/AZU/GI-02/ENQ-54(INT-19/14)/2014, dated 08.10.2014, (RUD No. 38) was issued to the Addl. Commissioner of Customs (Import), JNCH, Nhava Sheva, requesting to seize the consignment of watermelon seeds imported by M/s. Bishnoi Trading Corporation vide Bill of Entry No. 6328451, dated 04.08.2014.

7.1 Accordingly, the said consignment was put under seizure under Seizure Memo No. 15/2014, dated 13.10.2014, issued under F. No. SG/MISC-113/2014-15/SIIB (1) JNCH by the superintendent of Customs, SUB (I), JNCH, Sheva (RUD No. 39) Examination of the said goods were carried out under Panchnama on 13.10.2014 drawn at CWC Logistics Park - Hind, Terminal, Dronagiri Nod, Nhava Sheva, Raigad (RUD No. 40).

7.2 M/s. Bishnoi Trading Corporation, Ahmedabad, vide their letter dated 03.11.2014 (RUD No. 41) requested the Commissioner of Customs (Import), JNCH, Nhava Sheva, Raigad, for provisional release of the above said seized goods and a copy of the said letter was also endorsed to DRI, Ahmedabad.

7.3 A letter F. No. DRI/AZU/GI-02/ENQ-54(INT-19/14)/2014, dated 14.11.2014 (RUD No. 42) was issued by the Additional Director, DRI, Ahmedabad Zonal Unit to the Addl. Commissioner of Customs (Import), JNCH, Nhava Sheva, Raigad, inter alia, conveying that differential duty calculated on the seized consignment of 198 MT watermelon seeds imported by M/s. Bishnoi Trading Corporation, Ahmedabad, arrived at Rs. 28,57,969/- and provisional release of the said seized goods may be

considered subject to the conditions as the Addl. Commissioner of Customs (Import), JNCH, Nhava Sheva may deem fit including Furnishing of adequate Bank Guarantee/Security before the proper officer of Customs to safeguard revenue (including possible fine & penalty) as per Board's Circular 22/2004 - Cus., dated 03.03.2004 and also subject to clearance from other allied agencies like P.H.O. etc.

7.4 As per (icegate.gov.in) printout, the said Bill of Entry i.e. 6328451, dated 04.08.2014, has been assessed provisionally by the Customs, Nhava Sheva, on execution of Bond for Rs 1,16,61,596/- and Bank Guarantee of Rs 5,71,418/- (RUD No. 43). Accordingly, the said consignment is not covered in the instant Show Cause Notice and the same would be dealt with by the Customs Nhava Sheva separately.

8. Statement of Shri Sanjay Kishanlal Bishnoi, Proprietor of M/s.Bishnoi Trading Corporation, Ahmedabad - 380005 was recorded under Section 108 of the Customs Act, 1962 on 16.12.2014 (RUD No. 44) wherein he, inter alia, stated that he was the proprietor of M/s. Bishnoi Trading Corporation, 46, 2nd Floor, 4D Square Mall, Motera, Ahmedabad-380005. According to mutual understanding between him and his brothers, his eldest brother Shri Omprakash was looking after the activities related to import and export, Shri Mohan was looking after the activities of local trading and he was looking after the activity of unloading of goods i.e. wheat, millets etc. (at Gandhidham) that were sold by them to local persons for export purpose.

8.1M/s. Bishnoi Trading Corporation was owning a mortgaged office premises at 18, Satyamev Arcade, Chandkheda which was around 280 sq. feet carpet area; Besides that, the office premises of M/s. Bishnoi Trading Corporation at 46, 2nd Floor, 4D Square Mall, Motera, Ahmedabad, Gujarat - 380005 and a plot of land admeasuring around 1000 sq. yard in a scheme 'Swa Plots' Near Tapovan Circle, Motera-Gandhinagar Highway were jointly owned by them (three brothers); that those were also mortgaged properties.

8.2 Shri Mohan Bishnoi was authorized by M/s. Bishnoi Trading Corporation for the purpose of banking transactions whereas Shri Omprakash Bishnoi was authorized by M/s. Bishnoi Trading Corporation for effecting import- export related transactions; that they had authorized M/s. Palak Logistics, Mumbai for their activities at Nhava Sheva and M/s. Trinity Shipping, Gandhidham for their activities at Gandhidham; that the said authorizations were given by Shri Omprakash Bishnoi being authorized signatory of M/s. Bishnoi Trading Corporation;

8.3 His eldest brother Shri Omprakash Bishnoi was looking after all the activities like contacting, communicating, negotiating etc. with their overseas suppliers of watermelon seeds through their e-mail id. btcfeeds@yahoo.m and he was looking after the activities related to imports of watermelon seeds and its subsequent trading in local market, therefore, he was not in position to state in that matter; that after carefully going through the statements of Shri Omprakash Bishnoi dated 12.08.2014 and 01.10.2014, he believed that whatever was stated by Shri Omprakash Bishnoi would be true and correct and he agreed with the facts stated by Shri Omprakash Bishnoi in his statements dated 12.08.2014 and 01.10.2014 recorded before DRI, Ahmedabad; that since Shri Omprakash Bishnoi & Shri Mohan

Bishnoi were authorised by him and have carried out activities on behalf of M/s. Bishnoi Trading Corp, he was full responsible for the liability arising out of the activities /acts done by both of his brothers; that he was willing to pay the duty evaded on account of the acts done by his brothers Shri Omprakash and Shri Mohan.

MODUS OPERANDI ADOPTED FOR EVASION OF CUSTOMS DUTY.

9.1 In view of the evidences and facts discussed in the foregoing paras, it appears that Shri Omprakash Bishnoi, Authorised Signatory of M/s. Bishnoi Trading Corporation, Ahmedabad - a trader of watermelon seeds - started a firm in the name of M/s Bishnoi Trading Corporation, wherein his younger brother Shri Sanjay Bishnoi was made the proprietor. Shri Omprakash, thereafter, hatched a plan to import of watermelon seeds by resorting to undervaluation and declaring less value before the Customs, with an intention to evade payment of Customs duty. Shri Omprakash was interacting with the overseas suppliers with regard to negotiation of price and other import related activities, and the unit price and other terms & conditions of imports were finalised by Shri Omprakash only. After negotiation with the overseas suppliers regarding the actual price of the watermelon seeds, it was decided between them that a separate invoice would be made showing the transaction value as USD 300/350 approx, for the purpose of seeking clearance from Custom, which amount would be sent to the overseas supplier through banking channels, whereas the amount over and above the declared price would be sent through other channels like payment from Dubai or directly at Sudan or to the representative of the overseas supplier in India or through a person called Shri Paresh. Shri Omprakash then used to obtain the fabricated documents from the overseas supplier showing less value for the watermelon seeds and cause presentation of the same to Customs at the port of Import for Custom clearance. As per the understanding between the importer and the overseas suppliers, the overseas suppliers used to issue a proforma invoice/execute a sales contract of full negotiated value and apart from the other conditions, the proforma invoices/ sales contracts also contained conditions related to payment and amount to be shown in commercial invoices, which they raised on the importer once they had received the payment over and above such determined value of commercial invoices.

9.2 As per the modus adopted, payments against CAD were the only payments made by them through bank. The advance payments and payments of the remaining/balance amount was always remitted by the importer to the respective overseas suppliers in Dubai / Sudan, by way of channels other than normal banking channels or through Shri Paresh Seth (alias Paresh Kothari).

9.3 In the manner discussed herein above, Shri Omprakash Bishnoi, Authorised Signatory of M/s Bishnoi Trading Corporation, hatched a plan for evasion of the lawful revenue due to the Government Exchequer by way of importing watermelon seed from Pakistan and Sudan and clearing them through JNCH, Nhavasheva at grossly undervalued prices.

DISCUSSION OF THE EVIDENCES OF THE CASE.

10.1 From the facts narrated in the foregoing paras and the material evidences available on record in the form of email correspondences, proforma invoices & sale contracts executed between Shri Omprakash Bishnoi, Authorised Signatory of M/s BTC and the overseas supplier depicting negotiated actual transaction value along with payment terms; correspondence between them regarding release of payments over and above the value declared before the Customs and the confessional statement of Shri Omprakash Bishnoi and Shri Sanjay Bishnoi, it appears that Shri Omprakash Bishnoi of M/s BTC, Ahmedabad had resorted to gross under valuation in the imports of Watermelon Seeds in connivance with the overseas suppliers with intent to evade payment of Customs duty in contravention of the Customs law. The gross undervaluation and mis-declaration of value, is evidenced from the following evidences on record:

10.2.1 Statements of Shri Omprakash Bishnoi dated 12.8.2014 & 1.10.2014, along with documents explained therein, wherein he admitted that he had imported watermelon seeds by resorting to undervaluation and also revealed and admitted the actual transaction value of each consignment of watermelon seeds imported by him in the name of M/s Bishnoi Trading Corporation, Ahmedabad. He also admitted to have paid the differential value, over and above the value declared before the Customs at the time of import, to the overseas supplier through Shri Paresh or by way of channels other than banking channels. Statement of Shri Sanjay Bishnoi dated 16.12.2014, wherein he had admitted that Shri Omprakash was the person who was dealing with the said goods right from negotiation with the overseas supplier till the payment of the differential amount and the import of watermelon seeds in India and also stated that the statement of Shri Omprakash with regard to the import of watermelon seeds would be correct in respect of the imports made in the name of his firm i.e. M/s. Bishnoi Trading Corporation. He also admitted that the said firm was opened by his brother Shri Omprakash in his name.

10.2.2 One of the e-mail correspondences between e-mail ID: alphaagriproduct@hotmail.com (Mr. Yassir of M/s. Alpha Agricultural Processing) with M/s BTC at their e-mail id: btcfeeds@yahoo.in on 18.04.2014, wherein the price for the 'watermelon seeds' was negotiated and final deal was confirmed at USD 840/PMT for 180 MT (10X20 FCL) FRUD No. 141: another email dated 9.1.2014 with the same supplier, wherein they had finalized the deal at USD 950/PMT for (5X20 FCL) on 09.01.2014; another email correspondence dated 14.2.2014 with M/s. Alpha Agricultural Processing, wherein they had finalized the deal at USD 925/PMT for 88 MT (5X20 FCL) on 14.02.2014 and the same consignment was imported vide Bill of Entry No. 4885733 dated 12.03.2014 at JNPT on undervalued rate at USD 300 PMT and the remaining amount USD 55000 (@USD 625 PMT X 88 MT) was paid through channels other than normal banking channel; another email correspondence dated 25.6.2014 with the same supplier, wherein Shri Omprakash had confirmed the transfer of their payment of 10X20 FCL i.e. Total payment of USD 890-300 = 590X180= USD 106200 on 25.06.2014 through channels other than normal banking channel (RUD No. 5).

10.2.3 One of the email correspondences between e-mail ID: info@3frk.orp-sd.com (Mr. Mohmmed Huron of M/s. Africorp - International Co., Ltd.) and M/s BTC at their

e-mail Id: btcfeeds@yahoo.in on 06.11.2012, wherein the price for the watermelon seeds was negotiated and final deal was confirmed at USD 875/PMT for 18 MT and the same consignment was imported vide Bill of Entry No. 8469665 dated 12.11.2012 at JNPT on undervalued rate at USD 350 PMT (RUD No. 8).

10.2.4 An e-mail correspondence between e-mail ID: amanpsheth@gmail.com (Mr. Paresh Seth of M/s. Aagam Import and Export) and M/s. BTC at their e-mail Id: btcfeeds@yahoo.in on 07.05.2014, wherein the price for the 'watermelon seeds' was negotiated and final deal was confirmed at USD 910/PMT for 108 MT (6X20), (RUD No. 13).

10.2.5 One of the Proforma Invoice No. ATR/PI/22/2014, dated 04.02.2014, of M/s Alpha Agriculture Processing Co, Sudan, for 180 MTS of Watermelon seeds which were negotiated with them @ USD 850 Per MT C&F, Nhava Sheva (RUD No 6). The Commercial Invoice prepared by them was @ 300 USD per MT and a quantity of 176 MTS of watermelon seeds was imported by them, vide bill of Entry No. 4972295 dated 21.3.2014 against the said Proforma invoice by declaring the value as USD 300 per MT before the Customs, whereas the actual negotiated value was USD 850 per MT.

10.2.6 An email conversation with Shri Naresh Dadia, who was a broker and dealt with the agricultural Products (RUD No. 11). In the said conversation Shri Omprakash had requested for the price of the watermelon seeds and also negotiated the price of the watermelon seeds for 20 container (108 MTS) @910 USD per MT during July, 2012 and Shri Naresh Daida had confirmed the deal with payment condition as "Invoice payment 350/MT will be paid by bank (CAD) and other payment will be paid against copy of B/L and phytosanitary certificate....." Also clarification was asked for making one invoice of the actual value and another with price of USD 350 per MT. The price of the watermelon seeds was finalized at the actual rates however a separate invoice was prepared showing the value of USD 300-350/MT for presenting the same before Customs and the differential amount was sent to the overseas supplier either through Shri Paresh of Sudan or by any other non-banking channels.

10.2.7 An email conversation of Shri Omprakash Bishnoi of M/s Bishnoi Trading Corporation with Shri Paresh, a broker of watermelon seeds (RUD No. 13): Through the said conversation they had confirmed the price for import of 108 MTS of watermelon seeds through Shri Paresh @ USD 910/MT CNF Nhava Sheva during May, 2014. Shri Omprakash in his statement dated 1.10.2014 has categorically admitted that the said price was the price of the watermelon seeds prevalent at the material time.

10.2.8 One of the email conversation with Shri Vinesh H Mehta (RUD No. 15) wherein Shri Omprakash had informed Shri Vinesh that they had just talked to Shri Divyesh Harilal Mehta (i.e. brother of Shri Vinesh Harilal Mehta) and he had confirmed the deal of watermelon seeds for home consumption for qty 3 x 20' fcl 54MT with price of 885 /MT CNF Nhava Sheva. It was also informed to Shri Vinesh that USD 310 / MT would be made by CAD (Cash against Document) through any reliable bank and the

payment of USD 575/MT X 54 MT = USD 31050 would be made in Dubai and had requested Shri Vinesh to send the Pl. Shri Vinesh Mehta vide his email conversation had also informed them that they can supply watermelon seeds to India and agreed to their targeted price of USD 885 per MT CNF Nhava Sheva. Shri Omprakash in his statement has confirmed that they had imported 54 MTS of water melon seeds from Divyesh Harilal Mehta @ USD 885 per MT and that the said price was the price of the watermelon seeds prevalent at the material time. He also accepted that the said consignment was imported by them vide Bill of Entry No. 3952175, dated 01.07.2011, through Nhava Sheva

10.2.9 An email conversations with a company called M/s. Lafia Co, Sudan (RUD No. 18), who had offered to sell watermelon seeds to them. In the said conversation, Shri Omprakash had narrated the practice that they were following with various buyers like M/s. Alborakawi International, M/s Alpha Agriculture Processing, M/s Aagam Export Import, M/s Africorp International, wherein the invoice would be made by USD 300/MT CNF and payment of which would be made as transfer against original document by bank to bank and the other payment i.e. USD 700/MT CNF would be transfer to the overseas supplier against receipt of original shipping documents, Shri Omprakash in his statement also confirmed that once they received the original shipping documents their person would give them the payment either in Sudan or in Dubai in USD or Dirham or in Sudanese pound or any other arrangement as per their convenience. Shri Omprakash also admitted that this was the practice that they had followed in respect of the consignments of watermelon imported by them in the name of M/s Bishnoi Trading Corporation.

10.2.10 One of the email conversations with Shri Mohamad Badwai Ibrahim Osman of Emeco Group, (RUD No. 20) wherein M/s. BTC had negotiated and finalized the purchase of watermelon seeds @ USD 865/MT and initially they had ordered for 2 containers and thereafter the purchase/import from them continued in the name of their firm M/s. Osman Ahmed Musaad Enterprise. Shri Omprakash in his statement dated 1.10.2014 accepted that the deal was done in March, 2011 and that it was the actual price of watermelon seeds prevailing at the material time.

10.2.11 One of the contracts made by M/s BTC with M/s Alpha Agriculture Processing, Sudan for import of 180 MTS of watermelon seeds at USD 890 Per MT in May, 2014 (RUD No. 22). Shri Omprakash accepted that the said 180 MTS of watermelon seeds were imported by them from M/s Alpha Agriculture Processing vide Bill of Entry No. 6056750, dated 08.07.2014 and that USD 890 was the actual transaction value of the 180 MTS of watermelon seeds imported by them vide Bill of Entry No. 6056750 dated 08.07.2014. He also admitted that the said price was the price of the watermelon seeds prevalent at the material time.

10.2.12 A purchase contract made by M/s. BTC with M/s. Lafia Investment Co Ltd, Sudan (a broker of watermelon seeds), for import of 126 MTS of watermelon seeds at USD 1000 Per MT CNF Nhava Sheva in July, 2014 (RUD No. 23). In the said contract the terms of payment is clearly mentioned "against copy of B/L" & "CAD". The CAD amount is the amount that was declared before the Customs and the amount mentioned against copy of B/L is the amount over and above the declared price that

had to be paid to the supplier on receipt of copy of B/L. Shri Omprakash in his statement has admitted that he had negotiated and finalized a deal for import of 126 MTS of watermelon seeds at USD 1000 and that the said price was the price of the watermelon seeds prevalent at the material time.

10.2.13 An Email conversation with Shri El Sayed of M/s Albarakawi of Sudan (RUD No. 29).wherein they had finalized a price of USD 870 CNF Nhava Sheva, for 3 containers of watermelon seeds in June, 2011 and Shri Omprakash had requested Shri El Sayed of M/s Albarakawi to provide him with the proforma Invoice and the Contract letter. Shri Omprakash has accepted that the said price was the price of the watermelon seeds prevalent at the material time.

10.2.14 An email conversation with Shri Niraj Mehta of M/s Aknan International, Sudan (RUD No. 31), wherein Shri Omprakash had provided them with the calculation wherein he had exported guar gum to them and he had to receive the payment against the same; that he wanted to adjust the said payment against the differential payment that he had to make in respect of import of watermelon seeds i.e. he had to pay USD 45450 as the differential amount @ USD 505 which was over and above the declared price, whereas he was to receive payment of Rs 10,84,800/- from them. The balance was to be sent to them for which their agent had provided him with an exchange rate of USD=56.70 INR. This evidences that the differential value in respect of watermelon seeds imported by them was sent to the overseas supplier either by way of cash in Sudan or adjusted against export payment or sent to them from Dubai.

10.2.15 The admission by Shri Omprakash in his statement that the said imported watermelon seeds were sold in the local market at around Rs 60 to Rs 72 per kg, whereas the sale invoice was prepared in the range of Rs 25/- to Rs 32/- also corroborates that the said goods were undervalued at the time of import.

11. From the facts discussed in the foregoing paras and material evidences available on record, it transpires that M/s. BTC had imported watermelon seeds from various overseas suppliers, and had resorted to undervaluation, by suppressing the actual transaction value in the invoices and the documents filed before the Customs Authority at the time of Imports, with an intent to evade payment of appropriate customs duty leviable thereon. The price declared by the importer before the Customs Authority for clearance of the said imported consignments of watermelon seeds was only part amount paid by M/s. BTC to various overseas suppliers for the imported consignments of watermelon seeds and it is evident from the records that there were excess payments to the overseas suppliers against the import of impugned watermelon seeds, which was not declared before the customs though the same was part of the transaction value. Thus, the value declared by the importer before the Customs authorities as mentioned in the invoices and in the import documents cannot be treated as correct transaction value in terms of the provisions of Section 14 of the Customs Act 1962 read with Rule 3 of the Customs Valuation (Determination of value of the imported goods) Rules, 2007. In terms of the provisions of the Section 14 read with Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the transaction value of the

imported goods is the total amount actually paid or payable for the said imported goods. Thus, in cases where total amount paid or payable can be ascertained, the correct transaction value shall be a sum total of all such amounts and the same will be determined under Rule 3(1) ibid. In terms of the provisions of Rule 11 of the Customs Valuation (Determination of value of the imported goods) Rules 2007, the importer is required to furnish a declaration disclosing full & accurate details relating to the value of the imported goods along with other documents & information including the invoice in respect of the actual transaction price. However, in the instant case, the importer had furnished wrong declarations, statement & documents to the Customs while filing of Bills of Entry thereby suppressing the actual transaction value with an intention to evade Customs duty leviable thereon, by adopting the modus as detailed hereinabove. The fact of undervaluation has been categorically admitted by Shri Omprakash Bishnoi, Authorised Signatory of M/s. Bishnoi Trading Corporation, Ahmedabad in his statements recorded under Section 108 of the Customs Act, 1962 which is duly corroborated with the documentary evidences discussed herein above and also confirmed in the statement of Shri Sanjay Bishnoi, Prop, of M/s. BTC. Thus, there is a reasonable doubt regarding the truth & accuracy of the values declared by the importer and the actual transaction value of such imported goods can be gathered from the evidences discussed herein above. Thus, the declared value in respect of the said imported consignments of watermelon seeds merits rejection under Section 14 of the Customs Act, 1962 read with Rule 12 of the Customs valuation (Determination of value of the imported goods) Rules 2007. In the instant case, evidences available, as discussed hereinabove, indicate that the invoices produced by the importer before the Customs Authority at the time of clearance of the imported goods, did not indicate the true and correct transaction value of the said goods and there are various evidences, as discussed herein above, indicating the true, correct and actual transaction value of all the consignments imported from various overseas suppliers by the importer, and cleared under the various Bills of Entry filed by the importer (RUD No. 45) as mentioned in Annexure 'A' to this SCN,

12. It appears that the invoices raised by overseas suppliers on M/s. Bishnoi Trading Corporation, Ahmedabad, which were submitted before Indian Customs in respect of the goods imported by them, did not indicate the true and correct value of the said goods in as much as the same were much lower than the actual transaction value as detailed above. The evidences regarding undervaluation of said imported goods recovered during the course of investigation and the actual transaction prices admitted by Shri Omprakash Bishnoi in his statements dated 12.8.2014 & 01.10.2014, further appear to corroborate the undervaluation in the said imports. The same is also corroborated by the fact of remitting of the differential amount over and above the declared price to the overseas suppliers through channels other than banking channels as discussed hereinabove which was not included in the value declared before the Customs. In respect of the said consignments which were admittedly undervalued, the declared value by the importer before the designated authority of Customs cannot be treated as true transaction value as per Section 14 of the Customs Act, 1962 read with Rule 3(1) of the Customs Valuation Rules 2007. Since the price paid or payable is available in the instant case on the basis of actual

proforma invoice or email correspondence or as stated by Shri Omprakash in his statement and the chart prepared by him as discussed herein above, recourse is taken to the provisions of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) of the Customs Valuation Rules, 2007 as applicable for re-determining the value of the said consignments cleared vide Bills of Entry filed by the importer as mentioned in Annexure -'A' to this SCN.

13. From the above, it appears that the importer in connivance with the overseas supplier had willfully mis-declared the value of the watermelon seeds before the Customs authority at the time of import with a view to evading the applicable customs duty. The correct and actual transaction value of the watermelon seeds imported by them was also suppressed at the time of filing of Bill of Entry by presenting an invoice of a much lower value than the actual value of the imported watermelon seed. Thus, it appears that the applicable customs duty liability had not been discharged by the importer by way of wilful misstatement and suppression of facts and therefore, the differential customs duty is liable to be recovered by invoking the provisions of the extended period of limitation under Section 28(4) of the Customs Act, 1962 (erstwhile proviso to Section 28(1) of the Customs Act, 1962).

14. In view of the facts discussed in foregoing paras and material evidence available on record, it transpires that the importer had declared the total assessable value of imported watermelon seeds/assessed by the customs authority as Rs. 8,27,07,841/- only (as detailed in Annexure-'A' to this notice) at the time of seeking of clearance of the goods in the corresponding Bills of Entry, as against the actual transaction value (assessable value) of Rs. 21,30,68,444/- and suppressed the value amounting to Rs. 13,03,60,603/- from the Customs, resulting in evasion of Customs duty amounting to Rs. 4,71,06,107/-, as detailed in Annexure- 'A' to this notice. Therefore, the above declared/assessed value is required to be redetermined as mentioned in Annexure-'A' to this SCN, under Section 14 of the Customs Act, 1962 on the basis of price paid or payable in accordance with Rule 3(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

15. In view of the facts discussed in the foregoing paras and material evidences available on record and the deposition of Shri Omprakash Bishnoi, Authorised Signatory Of M/s. Bishnoi Trading Corporation, Ahmedabad & Sanjay Bishnoi, Proprietor of M/s Bishnoi Trading Corporation, Ahmedabad, it appears that the importer has contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they intentionally mis-declared the value of the Watermelon Seeds imported by them by suppressing the true and actual transaction value while filing the declaration seeking clearance at the time of the importation of the impugned goods. This act on the part of importer had rendered the goods, as detailed in Annexure-'A' to this SCN liable for confiscation under the provisions of Section III(m) of the Customs Act, 1962.

16. It also appears that M/s. Bishnoi Trading Corporation had deliberately mis-declared the value of goods by willful mis-statement and suppression of the facts in contravention of various provisions of the Customs Act, 1962 and Rules made there under as discussed above with intent to evade payment of Customs duty. Therefore,

the differential Customs duty amounting to Rs. 4,71,06,107/- as shown in Annexure-'A' to this notice, lawfully payable on the watermelon seeds imported by them is liable to be recovered from the importer M/s Bishnoi Trading Corporation, Ahmedabad (Gujarat) under Section 28(4) of the Customs Act, 1962 (erstwhile proviso to Section 28(1) of the Customs Act 1962) along with applicable interest under Section 28AA of the Customs Act, 1962 (erstwhile Section 28 AB of the Customs Act 1962). The said acts of omission and commission on the part of the M/s. Bishnoi Trading Corporation have rendered themselves liable for penalty under the provisions of Section 114A/112(a) & 114AA of the Customs Act, 1962. The said goods, as detailed in Annexure-'A' to this SCN and which is not physically available for seizure is required to be held liable for confiscation under the provisions of Section III(m) of the Customs Act, 1962.

17. In view of the discussion in foregoing paras, it further appears that Shri Omprakash Bishnoi, Authorised Signatory of M/s. Bishnoi Trading Corporation had actively involved himself in the conspiracy of mis-declaring the value of the watermelon seeds imported by them in the name of M/s. Bishnoi Trading Corporation, Ahmedabad with the aid of Shri Sanjay Bishnoi, Proprietor of M/s. Bishnoi Trading Corporation and the overseas suppliers. Shri Omprakash was instrumental in opening a firm in the name of his brother and engaged in importing the goods that he had reason to believe were liable to confiscation. Shri Omprakash was also instrumental in manipulation/fabrication of information, documents presented before the Customs authorities with an intent to evade payment of Customs duty lawfully leviable on the actual transaction value. Shri Omprakash in connivance with other co-noticees and the overseas supplier imported watermelon seeds at grossly undervalued price knowingly & deliberately as detailed in preceding paras for his personal enrichment. He was also responsible for transmitting the differential value of the impugned imported goods, over and above the declared value, directly to the suppliers either at Dubai/Sudan or to the representative of the overseas supplier in India, and in this way he had settled the clandestine/illicit account of the importer with overseas suppliers. This fact has been corroborated by the evidences as detailed in preceding paras. He had full knowledge about the mis-declaration of the value of the goods at the time of their importation and had knowingly and consciously failed to declare the correct and actual value before the Customs authorities at the time of import with the sole intention to evade payment of customs duty. Shri Omprakash had indulged in the activities relating to undervaluation and mis-declaration in the imports of watermelon seeds by M/s. Bishnoi Trading Corporation, Ahmedabad which resulted in evasion of huge amount of Customs duty. Further, during the course of investigation, it was revealed that Shri Omprakash was the main beneficiary of the profit earned in the sales of said imported watermelon seeds. All the aforesaid acts of omission and commission on the part of Shri Omprakash and Shri Sanjay have rendered the impugned imported goods liable for confiscation under Section III(m) of the Customs Act, 1962. Further, Shri Omprakash had consciously dealt with the said goods which he knew or had reasons to believe, were liable to confiscation under the Customs Act, 1962. Thus, Shri Omprakash Bishnoi and Shri Sanjay Bishnoi have rendered themselves liable for penalty under Section 112(b) & 112(a) of the Customs Act, 1962 respectively. Shri

Omprakash and Shri Sanjay have knowingly and intentionally made, signed and fabricated documents as discussed in detail hereinabove, which were presented to the Customs authorities which they knew were false and incorrect in respect of the value of the imported goods. Hence, the said acts on the part of Shri Omprakash and Shri Sanjay have rendered them liable for penalty under Section 114AA of the Customs Act, 1962 also. However, since M/s. Bishnoi Trading Corporation is a Proprietorship concern, no separate penalty is proposed on Shri Sanjay Bishnoi.

PAYMENT OF DUTY/DIFFERENTIAL DUTY:

18. As per the directions of the Hon'ble High Court of Gujarat vide its Order dated 18.11.2014, M/s Bishnoi Trading Corporation has made a payment of Rs. 35,00,000/- vide challan No. 3292, dated 24.11.2014 and another payment of Rs 25,00,000/- vide challan No. 2982, dated 19.12.2014 towards the differential duty on account of the undervaluation in the import of watermelon seeds. (RUD No. 46).

19. Now, therefore, M/s. Bishnoi Trading Corporation (IEC No. 3708002261), 46, 2nd Floor, 4D square Mall, Motera, Ahmedabad, is hereby called upon to show cause to the Principal Commissioner/Commissioner of Customs (Imports), JNCH, Nhavasheva-1, having his office at Jawaharlal Nehru Custom House, Nhavasheva, Taluka- Uran, District - Raigad, Maharashtra - 400 707-as to why:-

i. The assessable value of Rs. 8,27,07,841/- declared by them at the time of clearance of goods in respect of 4403.02 MTs of Watermelon Seeds', imported by them under Bills of Entry mentioned in the Annexure-'A' to this show cause notice should not be rejected and re-determined as Rs. 21,30,68,444/- (Rupees Twenty One Crores Twenty Five Lacs Sixty Five Thousand Sixteen Only), as detailed in Annexure- 'A' to this show cause notice, under subsection (1) of Section 14 of the Customs Act, 1962 read with the Rule 3(1) and Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, as applicable.

ii. 4403.02 MT watermelon Seeds, with redetermined value of Rs. 21,30,68,444/- as detailed in Annexure-'A' to this show cause notice which have been cleared and not available for seizure should not be held liable for confiscation under the provisions of Section III(m) of the Customs Act, 1962;

iii. Differential Customs Duty amounting to Rs. 4,71,06,107/- (Rupees Four Crore Seventy One Lac Six Thousand One Hundred and Seven Only), on 4403.2 MT watermelon Seeds with re-determined value of Rs. 21,30,68,444/-, covered under the Bills of Entry mentioned in Annexure-'A' to this show cause notice, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 [Erstwhile proviso to Section 28(1)] along with applicable interest under Section 28AA (erstwhile Section 28AB) ibid;

iv. An amount of Rs. 60,00,000/- (Rupees Sixty Lac only) already paid by them towards the differential duty liability, (as detailed under preceding paras) should not be adjusted against their differential duty liability as mentioned in para (illi) above.

v. Penalty should not be imposed on them under Section 114A/112(a) of the Customs Act, 1962 for their acts of commission and omission discussed hereinabove;

vi. penalty should not be imposed on them under Section 114AA of the Customs Act, 1962 for their acts of commission and omission discussed hereinabove;

The documents relied upon in the present Show Cause Notice are as listed at Annexure-Z' and a Compact Disk (CD) containing scanned copies thereof are attached with this Show Cause Notice."

4.2 Thus based upon above, the AO concluded that the assessee was actively involved in under-valuation of watermelon seeds imported from abroad , and the payments over and above the purchase price declared to the custom authorities was paid to overseas suppliers through different modes other than banking channel which has been duly established during the investigation by DRI as well as by critical examination of various documents and email conversation of the assessee. The AO also analyzed the documents received from DRI office as well details furnished by the assessee. The AO issued show cause notice dated 05.12.2016 to the assessee , which is reproduced hereunder:-

"In this connection, it is to state that the undersigned is in possession of Information and material received from the Directorate of Revenue Intelligence, A'Bad along with a detailed report and the show-cause notice dtd. 18/02/15 issued by the DRI, A'Bad. The above information, Report, Material etc. have been forwarded by the DRI due to search operations carried out by the DRI.

On examination of the detailed report, SCN and other materials provided by the DRI, it is noticed that you have imported watermelon seeds from Sudan and Pakistan. It is also seen that you have undervalued the imports of watermelon. This fact has also emerged from the detailed investigation carried out by the DRI. The details of undervaluation of imports of watermelon seeds are mentioned as per chart for F.Y. 2013-14 i.e. A.Y. 2014-15.

Sr. No.	Bill of Entry No.	Bill of Entry date	Name of supplier	Quantity (in MT)	Declared unit price per MT (in USD/AED / EURO)	Total declared Invoice value (In USD/ AED/ EURO)	Declared assessable value (RS.)	Actual unit price per MT (in USD)	Total actual transacted value (in USD)	Exchange rate (for USD)	Insurance	assessable value
1	4261108	03.01.14	ALPHA AGRICULTURAL PROCESSING	52.8	350	18480	1176842	925	48840	62.35	34258.208	3110226.53
2	4807111	4/3/2014	AAGAM IMPORT AND EXPORT	18	350	6300	405057	915	16470	62.95	11663.848	1058934.85
3	4807114	4/3/2014	AAGAM IMPORT AND EXPORT	18	300	5400	347192	915	16470	62.95	11663.848	1058934.85
4	4807115	4/3/2014	AAGAM IMPORT AND EXPORT	18	300	5400	347192	915	16470	62.95	11663.848	1058934.85
5	4807157	4/3/2014	AAGAM IMPORT AND EXPORT	36	300	10800	694384	930	33480	62.95	23710.118	2152588.88
6	4825898	6/3/2014	AAGAM IMPORT AND EXPORT	18	300	5400	347192	930	16740	62.95	11855.059	1076294.44
7	4885733	12/3/2014	ALPHA AGRICULTURAL PROCESSING	88	300	26400	1671766	925	81400	62	56776.5	5154612.27
8	4972295	21/03/2014	ALPHA AGRICULTURAL PROCESSING	176	350	61600	3885059	850	149600	61.75	103925.25	9435142.5
9	4977569	22/03/2014	AAGAM IMPORT AND EXPORT	90	350	31500	1986678	850	76500	61.75	53143.594	4824788.78
			TOTAL	514.8	2900	171280	10861362	8155	455970	562.6	318660.1	25820230

The fact that you were engaged in undervaluation of import purchases of watermelon seeds have been duly accepted and acknowledged by you categorically during the inquiries/investigations carried out by the DRI.

In view of the above you are hereby required to show-cause why the undervaluation of watermelon seeds as worked out above, which comes to Rs. 1,49,58,868/- should not be added to your total income for A.Y. 2014-15 trading the same as unaccounted.

3. On examining the details, material, SCN, it is quite evident that you have been involved in the undervaluation of your imports. The modus operandi adopted by you was such that with the understanding with the overseas suppliers a commercial invoice of lesser purchase value was sent by the overseas parties, which was presented

before the customs authority for custom- clearance. Another proforma Invoice for the full and agreed value of imports was sent by the overseas suppliers which was as per the negotiations with them. It is also noticed that the amount of imports declared before the customs authority would be sent to the suppliers through Banking channels and the amount of money over and above the declared value was sent to the overseas supplier either directly or from Dubai or adjusted against export or handed over to the representatives of the overseas supplier in India.

The DRI also had given it's observations and finding in it's SCN dtd 18.02.2015. The relevant portion of the SCN is a reproduced as under for ready reference.

"Shri Omprakash Bishnoi when confronted with above evidences admitted that he was the Authorised signatory of M/s. Bishnoi Trading Corporation and that he was negotiating with the overseas supplier for import of watermelon seeds through telephone and also through emails even though he was not the proprietor. He also admitted that the actual transaction values of the Watermelon Seeds imported by him in the name of M/s. Bishnoi Trading Corporation, were as per the proforma invoice/email conversation, sales contract etc. which were retrieved during the course of the search at their office premise. He also revealed that after negotiation for the price of watermelon seeds, the overseas supplier was requested to send a proforma invoice for the full value. A separate commercial invoice for USD 300-350 along with the import documents, would be sent by the overseas supplier at the time of import and the same would be presented to the Customs for assessment. He admitted that the amount which was declared to the customs at the time of Import would be sent to the overseas supplier through banking channels and the value over and above the declared value was sent to the overseas supplier either directly or from Dubai or adjusted against the export of some other product or handed over to the representative of the overseas supplier in India. He also admitted that they have imported watermelon seeds by declaring the value as USD 300-350 PMT, whereas the actual transaction value of the watermelon seeds during the relevant period was ranging between USD 800-900 PMT.

In view of the evidences and facts discussed in the foregoing paras, it appears that Shri Omprakash Bishnoi, Authorised Signatory of M/s. Bishnoi Trading Corporation, Ahmedabad -a trader of watermelon seeds started a firm in the name of M/s. Bishnoi Trading Corporation, wherein his younger brother Shri Sanjay Bishnoi was made the proprietor. Shri Omprakash, thereafter, hatched a plan to import of watermelon seeds by resorting to undervaluation and declaring less value before the Customs, with an intention to evade payment of customs duty. Shri Omprakash was interacting with the overseas suppliers with regard to negotiation of price and other import related activities, and the unit price and other terms & conditions of imports were finalised by Shri Omprakash only. After negotiation with the overseas suppliers regarding the actual price of the watermelon seeds, it was decided between them that a separate invoice would be made showing the transaction value as USD 300/350

approx. for the purpose of seeking clearance from Custom, which amount would be sent to the overseas supplier through banking channels, whereas the amount over and above the declared price would be sent through other channels like payment from Dubai or directly at Sudan or to the representative of the overseas supplier in India or through a person called Shri Paresh. Shri Omprakash then used to obtain the fabricated documents from the overseas supplier showing less value for the watermelon seeds and cause presentation of the same to Customs at the port of Import for Custom clearance. As per the understanding between the importer and the overseas suppliers, the overseas suppliers used to issue a proforma invoice/execute a sales contract of full negotiated value and apart from the other conditions, the proforma invoices/sales contracts also contained conditions related to payment and amount to be shown in commercial invoices, which they raised on the importer once they had received the payment over and above such determined value of commercial invoices.

From the facts narrated in the foregoing paras and the material evidences available on record in the form of email correspondences, proforma invoices & sale contracts executed between Shri Omprakash Bishnoi, Authorised Signatory of M/s. BTC and the overseas supplier depicting negotiated actual transaction value along with payment terms; correspondence between them regarding release of payments over and above the value declared before the Customs and the confessional statement of Shri Omprakash Bishnoi and Shri Sanjay Bishnoi, it appears that Shri Omprakash Bishnoi of M/s. BTC, Ahmedabad had resorted to gross under valuation in the imports of Watermelon Seeds in connivance with the overseas suppliers with intent to evade payment of Customs duty in contravention of the Customs law. The gross undervaluation and mis-declaration of value, is evidenced from the following evidences on record:"

From the above finding and examination of documents provided by the DRI – it is amply clear that the undervalued amount of imports of watermelon seeds i.e. The amount over and above the declared value, paid by you was unaccounted and from undisclosed sources. Such unaccounted payment is worked out at Rs. 1,49,58,868/- (Pl. refer the chart above).

You are requested to show-cause why the amount of Rs. 1,49,58,868/- should not be treated as unaccounted, undisclosed and unexplained investment and added to your total income u/s. 69C of the I.T. ACT.

On verification of details furnished by you during the course of assessment proceedings it is noticed that you have shown imports of 712 MT. of watermelon seeds during the F.Y. 2013-14. However during the investigations/search carried out by the DRI in your case it is revealed that you have imported 514.8 MT. of watermelon seeds from the overseas suppliers. You are requested to explain the discrepancy in respect of quality of watermelon seeds imported by you.

On further verification of monthwise sales furnished by you it is seen that the average sale price of watermelon seeds has been shown at Rs. 30/- Kg. However during the investigation and statements recorded by the DRI, you have accepted that you were selling the watermelon seeds in domestic market for sale price ranging from Rs. 60/-kg. to Rs. 72/-kg.

To sum-up, it is observed that you were indulged in undervaluation of the imports, making payments to the overseas suppliers the value of purchases not declared before the customs authority by way of adjustments, through Dubai or to the representative of such suppliers in India as brought out by the DRI in their SCN. As stated above, it is also noticed that you have also under-reported the sale-price of watermelon in your Profit & Loss Account.

All these defects clearly indicate that your books of Accounts are not reliable and acceptable. The accounts maintained by you are found to be incorrect and incomplete.

In view of the defects as stated above, it is proposed to reject the Books of Accounts, Books results and estimate the Gross Profit ratio at 2% as against the GP. Of 0.34% declared by you."

4.3 The assessee submitted its reply before AO wherein the major contention of the assessee was in the nature of denial to the SCN issued by DRI, wherein the assessee had contended that he was not engaged in such types of activities and that the case made by DRI was totally on false ground and without any basis. The AO rejected the contentions of the assessee, by holding as under:-

"4. The submission made by the assessee is not acceptable since the finding given by the DRI are based on clinching evidences in the form of various documents and email conversations noticed during the search. Further there seems no force in the assessee's contentions that the show-cause notice issued by this office is totally on the basis of show-cause notice issued by the DRI. In fact, as stated earlier various documents including e-mail conversations were collected from the DRI and the same were duly examined during the course of assessment proceedings. On verification of these details indeed it is clearly evident that the assessee was actively involved in the practices of undervaluation of goods imported. The e-mail conversations are also clinching and credible evidences to establish that the assessee used to make payment of agreed purchase-price which was much more than the Invoice presented before the customs authority, through various means as has been mentioned in this office's show-cause notice. In the statements recorded by the DRI pursuant to the search proceedings, Shri Omprakash Bishnoi (the authorized person of Bishnoi Trading Corp.) and Shri Sanjay K. Bishnoi, (Prop.) have categorically stated and accepted that the assessee had

adopted the modus operandi of undervaluation of imports. The assessee had not controverted nor could produce anything contrary to what has been stated in statement recorded under the customs Act.

4.1. It is also informed by the DRI that as per the direction of Hon'ble High Court of Gujarat, the assessee had also paid Rs. 60 lac towards differential duty on account of undervaluation of import of watermelon seeds.

4.2. In view of the above discussion and facts of the case the assessee's arguments and contentions made in his reply dtd. 13/12/2016 is not found to be acceptable at all. The assessee had failed to produce any evidence in support of his arguments and had failed to bring on record anything contrary to the issues raised in the show-cause notice. Accordingly the assessment is finalized considering the material available and on merits of the case.

4.3. As brought out in the show-cause notice dtd. 05.12.2016 after detailed analysis of examination of material available, the assessee had imported watermelon seeds from abroad. It is also seen that the assessee had undervalued the import of watermelon seeds. The details of undervaluation has been worked out as under.

Sr. No.	Bill of Entry No.	Bill of Entry date	Name of supplier	Quantity (in MT)	Declared unit price per MT (in USD/AED / EURO)	Total declared invoice value (In USD/ AED/ EURO)	Declared assessable value (RS.)	Actual unit price per MT (in USD)	Total actual transacted value (in USD)	Exchange rate (for USD)	Insurance	assessable value
1	4261108	03.01.14	ALPHA AGRICULTURAL PROCESSING	52.8	350	18480	1176842	925	48840	62.35	34258.208	3110226.53
2	4807111	4/3/2014	AAGAM IMPORT AND EXPORT	18	350	6300	405057	915	16470	62.95	11663.848	1058934.85
3	4807114	4/3/2014	AAGAM IMPORT AND EXPORT	18	300	5400	347192	915	16470	62.95	11663.848	1058934.85
4	4807115	4/3/2014	AAGAM IMPORT AND EXPORT	18	300	5400	347192	915	16470	62.95	11663.848	1058934.85
5	4807157	4/3/2014	AAGAM IMPORT AND EXPORT	36	300	10800	694384	930	33480	62.95	23710.118	2152588.88
6	4825898	6/3/2014	AAGAM IMPORT AND EXPORT	18	300	5400	347192	930	16740	62.95	11855.059	1076294.44
7	4885733	12/3/2014	ALPHA AGRICULTURAL PROCESSING	88	300	26400	1671766	925	81400	62	56776.5	5154612.27
8	4972295	21/03/2014	ALPHA AGRICULTURAL PROCESSING	176	350	61600	3885059	850	149600	61.75	103925.25	9435142.5
9	4977569	22/03/2014	AAGAM IMPORT AND EXPORT	90	350	31500	1986678	850	76500	61.75	53143.594	4824788.78
			TOTAL	514.8	2900	171280	10861362	8155	455970	562.6	318660.1	28930457*

**Due to mathematical & technical error, the difference between declared value and assessable value was wrongly taken at Rs. 1,49,58,686/- in the show-cause notice dtd. 05/12/2016. The same is rectified now the difference is worked out at Rs. 1,80,69,065/-. However the nature of addition remains the same.*

4.4 In the lights of documents & material gathered from the DRI and in view of the discussions in the foregoing paras it is held that the assessee had undervalued the imports of watermelon seeds to tune of Rs. 1,80,69,095/- During the F.Y. 2013-14 i.e. A.Y. 2014-15 and accordingly Rs. 1,80,69,095/- is added to the total income of the assessee. Penalty proceedings are also initiated u/s. 271(1)(c) of the I.T. Act for furnishing inaccurate particulars of income.

(Addition of Rs. 1,80,69,095/-)"

4.4 The AO on examination of the details, material, SCN , concluded that the assessee was involved in the undervaluation of imports. The assessee was having understanding with the supplier wherein a commercial invoice of the lesser purchase value was sent by the overseas parties , which was presented before custom authorities for custom clearance. Another proforma invoice was sent by the overseas for the full and agreed value of imports. The amount of imports declared before the custom authorities were sent to the suppliers through banking channels, and the amount of moneys over and above the declared value was sent to the overseas supplier either directly or from Dubai or adjusted against export or handed over to the representatives of the overseas supplier in India. The AO, thus, made further addition of Rs. 1,80,69,095/- by holding that the amount paid over and above the declared value paid by the assessee was unaccounted and from undisclosed sources which was worked out at Rs. 1,80,69,095/- and was treated as unaccounted and unexplained payments which were added by the AO as income of the assessee under section 69C of the Act.

4.5 The AO further made addition of G.P. by estimating G.P. ratio at 2% of the total turnover of the assessee as against G.P ratio of 0.34% declared by the assessee by rejecting books of accounts of the assessee, wherein addition of Rs. 3,72,73,680/- was made by the AO , by holding as under:-

“6. On verification of details furnished by the assessee during the course of assessment proceedings it is noticed that the assessee has shown imports of 712 M.T. of watermelon seeds during the F.Y. 2013-14. However during the investigations/search carried out by the DRI in this case it is revealed that the assessee had imported 514.8 MT. of watermelon seeds from the overseas suppliers.

6.1 On further verification of monthwise sales furnished by you it is seen that the average sale price of watermelon seeds has been shown at Rs. 30/- Kg. However during the investigation and statements recorded by the DRI, you

have accepted that you were selling the watermelon seeds in domestic market for sale price ranging from Rs. 60/- kg. to Rs. 72/-kg.

6.3 As discussed above in the above paras, it is noticed that the assessee has undervalued his goods/stock. Such undervaluation clearly indicates that the affairs of the business are such that it is not possible to workout the correct profits of the business with due diligence.

6.4 To sum-up, it is observed that the assessee was indulged in undervaluation of the imports, making payments to the overseas suppliers the value of purchases not declared before the customs authority by way of adjustments, through Dubai or to the representative of such suppliers in India as brought out by the DRI in their SCN. As stated above, it is also noticed that the assessee had also under-reported the sale-price of watermelon in his Profit & Loss Account.

6.5. All these defects clearly indicate that assessee's books of Accounts were not reliable and acceptable. The accounts maintained by the assessee was found to be incorrect and incomplete. It is not possible to workout correct and true profits with due diligence.

*6.6. In view of the defects as stated above, it is proposed to reject the Books of Accounts, Books results and estimate the Gross Profit ratio at 2% as against the G.P. of 0.34% declared by the assessee. The G.P. ratio adopted at 2% is comparable with other persons engaged in similar trade (**Ref:- (i) Kunjuml P. Manchhani (ii) Maheshkumar M. Rathi**). Therefore it would be justifiable to adopt G.P. rate at 2%. Accordingly at 2% the G.P. is worked out at Rs. 4,48,81,564/-. Since the assessee had already declared G.P. of Rs. 76,07,884/- the balance is accordingly worked out at Rs. 3,72,73,680/- and the same is added to the Total Income. Penalty proceedings are also initiated for furnishing inaccurate particulars of Income.*

(Addition of Rs. 3,72,73,680/-)"

4.6. Thus, the AO framed assessment by assessing income at Rs. 7,74,52,072/- as against returned income of Rs. 40,40,202/-, vide assessment order dated 29.12.2016 passed by AO u/s 143(3) of the 1961 Act.

5. Aggrieved by the assessment framed by the AO, the assessee filed first appeal with ld. CIT(A). Vide appellate order dated 13.08.2021, the ld. CIT(A) granted part relief to the assessee, which is summarized as under:

1. The G.P. Rate of 2% was upheld to be applied by ld. CIT(A) on the turnover of water-melon seeds instead of total turnover as was applied by the AO. While applying the aforesaid rate of GP of 2% on turnover of water-melon seeds, the ld.

CIT(A) observed that the AO himself has applied the GP rate of 2% on turnover of water-melon seeds instead of total turnover in other years and not on the total turnover of the assessee which included the other commodities. Thus, ld. CIT(A) confirmed the additions to the tune of Rs. 5,64,015/- (subject to verification by the AO) during the impugned assessment year on account of application of GP rate of 2% on turnover of watermelon seeds , as against the addition of Rs. 3,72,73,680/- made by the AO.

ii) The ld. CIT(A) deleted two separate additions of Rs. 1,80,69,095/- each in assessment year 2014-15 , by holding as under:

"11. The AO has made two separate additions of Rs. 1,80,69,095/- each in assessment in AY 2014-15 in a different manner as made by the AO himself in other assessment years of the same assessee. In the other assessment years, the AO has made the additions on account of GP rate and deficit of the peak balance and these issues are decided in this appellate order, therefore, both additions of Rs. 1,80,69,095/- made in AY 2014-15 are deleted as the other additions on account of GP rate is already discussed and decided by partly confirming the same in the preceding paras of this order.

12. With regard to the ground of appeal No.7, I have considered the facts of the case and the submission made by the appellant. The AO has made the addition of Rs.22,88,953/- as unexplained expenditure u/s. 69C of the I.T. Act being the peak of the deficit of the purchase price and sales proceeds made on 24.3.2011 during the year under consideration. The AO has discussed this issue in para No.6.1 of the assessment order. He has extracted the cash flow statement submitted by the appellant in the course of assessment proceedings whereby the date wise purchase/imports and sales proceeds have been presented to arrive at the status of the surplus/deficit of the cash, having considered the actual price of the purchases and sales made by the appellant.

12.1 On going through the same, it was noticed by the AO that the appellant has made the peak of the cash payment of Rs.22,88,953/- on 24.3.2011 being deficit of the cash over the available cash which was utilized for making the payment of import towards the under value of import price. Since the source of such deficit of cash remained unexplained, therefore, the AO has rightly made the addition of the said amount.

It is worth here to mention that the AO has made this addition in all the assessment years on the basis of the cash flow statement without granting the carry forward of the closing cash balance at the year end to the opening balance of either subsequent year. In other words, the AO has taken the peak of the deficit of cash in each year on stand alone basis. The AO's approach in this regard is not correct for the reasons that when in the first year, the peak as deficit is brought to tax, then the same has to be

considered while working out the deficit of the peak of cash in subsequent year for the reason that such cash deficit once is taxed in the first year, then the appellant has the funds to that extent in the subsequent years. Therefore, the working of the peak deficit in each year has to be taken in a consolidated way.

12.2 The cash flow statement submitted by the appellant for the years under consideration is extracted as under:

BISHNOI TRADING CORPORATION
CASH FLOW STATEMENT F.Y 2010-11

Date	Particular	Qty(MT)	Sales Qty	outflow	Rate as per invoice	rate according to assessee	inflow	Net investment
19-01-2011	IMPORT B.NO 670128	48.91		1139086.79				
24-01-2011	Sales B.NO 1272		18.945	0	23.6	66	803268	-1139087
24-01-2011	Sales B.NO 1273		14.982	0	23.6	66	635236.8	-335819
24-01-2011	Sales B.NO 1274		14.985	0	23.6	66	635364	299418
11-02-2011	import b.no 712441	15.05		335002.324			0	934782
25-02-2011	import b.no 735730	15.48		345088.101			0	599780
26-02-2011	import b.no 738275	15.975		337379.93			0	254692
01-03-2011	Sales B.NO 1647		15.02		23.15	66	643607	-82688
11-03-2011	Sales B.NO 1648		16		22.6	66	694400	560919
16-03-2011	import b.no 765810	54		1096425.5			0	1255319
16-03-2011	Sales B.NO 1649		16		22.6	66	694400	158893
24-03-2011	import b.no 780617	36		873779.71			0	853293
24-03-2011	import b.no 779746	108		2268466.54			0	-20487
26-03-2011	Sales B.NO 1650		21.2		22.5	66	922200	-2288953
26-03-2011	Sales B.NO 1651		16.25		22.5	66	706875	-1366753
26-03-2011	Sales B.NO 1652		16.51		22.5	66	718185	-659878
	Total	293.415	149.892	6395228.895	206.65	594	6453535.8	58307

CASH FLOW STATEMENT F.Y 2011-12

Date	Particular	Qty(MT)	Sales Qty	outflow	Rate as per invoice	rate according to assessee	inflow	Net investment
01-04-2011	Opening Balance							58307
07-04-2011	Sales B.NO IMP/001		24.9		23.5	66	1058250	1116557
07-04-2011	Sales B.NO IMP/002		25.2		23.5	66	1071000	2187557
07-04-2011	Sales B.NO IMP/003		15.9		23.5	66	675750	2863307
07-04-2011	Sales B.NO IMP/004		24.6		23.5	66	1045500	3908807
07-04-2011	Sales B.NO IMP/005		21.1		23.5	66	896750	4805557
07-04-2011	Sales B.NO IMP/006		16		23.5	66	680000	5485557
07-04-2011	Sales B.NO IMP/007		16.1		23.5	66	684250	6169807
14-04-2011	IMPORT B.NO 3210530	90		1807381.65			0	4362425
01-05-2011	Sales B.NO IMP/008		15.66		23.5	66	665550	5027975
01-05-2011	Sales B.NO IMP/009		15.71		23.5	66	667675	5695650
01-05-2011	Sales B.NO IMP/010		21.48		23.5	66	912900	6608550
01-05-2011	Sales B.NO IMP/011		19.37		23.5	66	823225	7431775
01-05-2011	Sales B.NO IMP/012		15.69		23.5	66	666825	8098600
11-05-2011	IMPORT B.NO 3466978	90		2150989.43			0	5947611
21-05-2011	IMPORT B.NO 3571198	72		1886252.27			0	4061359
21-05-2011	Sales B.NO IMP/013		20.15		21.0	66	906750	4968109
21-05-2011	Sales B.NO IMP/014		20.15		21.0	66	906750	5874859
21-05-2011	Sales B.NO IMP/015		20.66		21.0	66	929700	6804559
21-05-2011	Sales B.NO IMP/016		16		21.0	66	720000	7524559
21-05-2011	Sales B.NO IMP/017		13.31		21.0	66	598950	8123509
31-05-2011	Sales B.NO IMP/018		20.27		21.0	66	912150	9035659
31-05-2011	Sales B.NO IMP/019		16.15		21.0	66	726750	9762409
31-05-2011	Sales B.NO IMP/020		21.28		21.0	66	957600	10720009
31-05-2011	Sales B.NO IMP/021		15.12		21.0	66	680400	11400409
31-05-2011	Sales B.NO IMP/022		18.7		21.0	66	841500	12241909
31-05-2011	Sales B.NO IMP/023		21.3		21.0	66	958500	13200409
31-05-2011	Sales B.NO IMP/024		17.3		21.0	66	778500	13978909
31-05-2011	Sales B.NO IMP/025		17.3		21.0	66	778500	14757409
02-06-2011	IMPORT B.NO 3689834	74		1774206.96			0	12983202
01-07-2011	IMPORT B.NO 3952175	54		1438267.35			0	11544934
16-07-2011	Sales B.NO IMP/026		22.5		23.5	66	956250	12501184
16-07-2011	Sales B.NO IMP/027		16.34		23.5	66	694450	13195634
16-07-2011	Sales B.NO IMP/028		15.9		23.5	66	675750	13871384
17-08-2011	IMPORT B.NO 4379318	53.8		1400053.27			0	12471331

27-08-2011	IMPORT B.NO 4480704	34		854267.59			0	11617063
30-08-2011	Sales B.NO IMP/029		15.5		23.5	66	658750	12275813
30-08-2011	Sales B.NO IMP/030		17.1		23.5	66	726750	13002563
30-08-2011	Sales B.NO IMP/031		21		23.5	66	892500	13895063
30-09-2011	IMPORT B.NO 4799921	17		294496.597			0	13600567
07-10-2011	IMPORT B.NO 4858370	36		1005780.6			0	12594786
26-10-2011	Sales B.NO IMP/032		15.85		23.5	66	673625	13268411
26-10-2011	Sales B.NO IMP/033		20.15		23.5	66	856375	14124786
18-11-2011	Sales B.NO IMP/034		13.8		23.5	66	586500	14711286
18-11-2011	Sales B.NO IMP/035		19.3		23.5	66	820250	15531536
20-11-2011	Sales B.NO IMP/036		18		23.5	66	765000	16296536
	Total	520.8	664.84	12611695.72	813.5	2376	28849925	

BISHNOI TRADING CORPORATION
 CASH FLOW STATEMENT F.Y 2012-13

Date	Particular	Qty(MT)	Sales Qty	outflow	Rate as per invoice	rate according to assessee	inflow	Net investment
04-01-2012	Opening Balance							
29-04-2012	IMPORT B.NO 6676735	36		994143.19				16296536
18-05-2012	Sales B.NO IMP/001		20		23.5	66	850000	15302393
18-05-2012	Sales B.NO IMP/002		16		23.5	66	680000	16152393
06-06-2012	IMPORT B.NO 7032171	144		3908733.86			0	16832393
26-06-2012	Sales B.NO IMP/003		17		23.5	66	722500	12923659
26-06-2012	Sales B.NO IMP/004		22.93		23.5	66	974525	13646159
26-06-2012	Sales B.NO IMP/005		22.93		23.5	66	974525	14620684
26-06-2012	Sales B.NO IMP/006		20.5		23.5	66	974525	15595209
26-06-2012	Sales B.NO IMP/007		16.77		23.5	66	871250	16466459
26-06-2012	Sales B.NO IMP/008		21.25		23.5	66	712725	17179184
26-06-2012	Sales B.NO IMP/009		22.87		23.5	66	903125	18082309
04-07-2012	IMPORT B.NO 7298832	54		1553951.98			0	19054284
12-07-2012	IMPORT B.NO 7374331	90		2237304.77			0	17500332
21-07-2012	Sales B.NO IMP/010		15.8		23.5	66	671500	15263027
21-07-2012	Sales B.NO IMP/011		16.1		23.5	66	684250	15934527
21-07-2012	Sales B.NO IMP/012		22.1		23.5	66	939250	16618777
24-07-2013	Sales B.NO IMP/013		20.25		23.5	66	860625	17558027
24-07-2013	Sales B.NO IMP/014		17.45		23.5	66	741625	18418652
24-07-2013	Sales B.NO IMP/015		16.2		23.5	66	688500	19160277
								19848777

24-07-2013	Sales B.NO IMP/016			16.6					
24-07-2013	Sales B.NO IMP/017			13.75		23.5	66	705500	20554277
24-07-2013	Sales B.NO IMP/018			6.55		23.5	66	584375	21138652
11-09-2012	IMPORT B.NO 7916695	270			7981549.6	23.5	66	278375	21417027
20-09-2012	IMPORT B.NO 7992394	72			2066420.04			0	13435478
20-09-2012	IMPORT B.NO 7988710	36			1033310.31			0	11369058
04-10-2012	Sales B.NO IMP/020			17.8				0	10335747
04-10-2012	Sales B.NO IMP/021			18.45		23.5	66	756500	11092247
18-10-2012	Sales B.NO IMP/022			18		23.5	66	784125	11876372
18-10-2012	Sales B.NO IMP/023			20.5		23.5	66	765000	12641372
18-10-2012	Sales B.NO IMP/024			20.35		23.5	66	871250	13512622
18-10-2012	Sales B.NO IMP/025			20.2		23.5	66	864875	14377497
18-10-2012	Sales B.NO IMP/026			17.5		23.5	66	858500	15235997
18-10-2012	Sales B.NO IMP/027			20.3		23.5	66	743750	15979747
18-10-2012	Sales B.NO IMP/028			17.35		23.5	66	862750	16842497
18-10-2012	Sales B.NO IMP/029			16.6		23.5	66	737375	17579872
18-10-2012	Sales B.NO IMP/030			23.45		23.5	66	705500	18285372
18-10-2012	Sales B.NO IMP/031			23.45		23.5	66	996625	19281997
18-10-2012	Sales B.NO IMP/032			20.4		23.5	66	996625	20278622
18-10-2012	Sales B.NO IMP/033			17.4		23.5	66	867000	21145622
20-10-2012	Sales B.NO IMP/034			16.1		23.5	66	739500	21885122
20-10-2012	Sales B.NO IMP/035			16.25		23.5	66	684250	22569372
20-10-2012	Sales B.NO IMP/036			20.3		23.5	66	690625	23259997
20-10-2012	Sales B.NO IMP/037			20.2		23.5	66	862750	24122747
20-10-2012	Sales B.NO IMP/038			25.2		23.5	66	858500	24981247
20-10-2012	Sales B.NO IMP/039			11		23.5	66	1071000	26052247
01-11-2012	IMPORT B.NO 8382556	54			1511097.64			0	25008650
12-11-2012	IMPORT B.NO 8469665	18			526509.819			0	24482140
21-11-2012	IMPORT B.NO 8550345	54			1576427.06			0	22905713
01-12-2012	Sales B.NO IMP/040			20.1		23.5	66	854250	23759963
01-12-2012	Sales B.NO IMP/041			16.3		23.5	66	692750	24452713
04-12-2012	Sales B.NO IMP/042			16.3		23.5	66	692750	25145463
04-12-2012	Sales B.NO IMP/043			20.2		23.5	66	858500	26003963
14-12-2012	Sales B.NO IMP/044			17.1		23.5	66	726750	26730713
14-12-2012	Sales B.NO IMP/045			21.35		23.5	66	907375	27638088
14-12-2012	Sales B.NO IMP/046			16.4		23.5	66	697000	28335088
20-12-2012	IMPORT B.NO 8822080	54			1562225.01			0	26772863
03-01-2013	Sales B.NO IMP/047			17.4		23.5	66	739500	27512363
03-01-2013	Sales B.NO IMP/048			16.4		23.5	66	697000	28209363

03-01-2013	Sales B.NO IMP/049		21.2		23.5	66	901000	29110363
08-01-2013	IMPORT B.NO 8968151	50		1470570.49			0	27639792
08-01-2013	IMPORT B.NO 8973351	90		2881912.18			0	24757880
08-01-2013	IMPORT B.NO 8970325	54		1588216.13			0	23169664
24-01-2013	IMPORT B.NO 9115587	54		1569326.03			0	21600338
28-01-2013	Sales B.NO IMP/050		20.3		33	66	669900	22270238
28-01-2013	Sales B.NO IMP/051		16.35		33	66	539550	22809788
28-01-2013	Sales B.NO IMP/052		16.35		35	66	506850	23316638
28-01-2013	Sales B.NO IMP/053		20.25		35	66	627750	23944388
28-01-2013	Sales B.NO IMP/054		20.25		35	66	627750	24572138
30-01-2013	Sales B.NO IMP/055		19.2		34	66	614400	25186538
30-01-2013	Sales B.NO IMP/056		20.27		34	66	648640	25835178
30-01-2013	Sales B.NO IMP/057		18.4		34	66	588800	26423978
30-01-2013	Sales B.NO IMP/058		16.2		34	66	518400	26942378
30-01-2013	Sales B.NO IMP/059		16.2		34	66	518400	27460778
30-01-2013	Sales B.NO IMP/060		11.75		34	66	376000	27836778
09-02-2013	Sales B.NO IMP/061		16.83		34	66	538560	28375338
09-02-2013	Sales B.NO IMP/062		17		34	66	544000	28919338
09-02-2013	Sales B.NO IMP/063		21.29		26	66	851600	29770938
11-02-2013	IMPORT B.NO 9284050	54		1519618.88	33	66	0	28251319
02-03-2013	Sales B.NO IMP/064		17		33	66	561000	28812319
02-03-2013	Sales B.NO IMP/065		16.9		33	66	557700	29370019
02-03-2013	Sales B.NO IMP/066		21.22		33	66	700260	30070279
	Total	1184	1194.36	33981316.99	1729	4356	47755060	

BISHNOI TRADING CORPORATION
 CASH FLOW STATEMENT F.Y 2013-14

Date	Particular	Qty(MT)	Sales Qty	outflow	Rate as per invoice	rate according to assessee	Inflow	Net investment
04-01-2013	Opening Balance							30070279
03-01-2014	import B.No 4261108	52.8		1933384.06				28136895
04-02-2014	sales B.No IMP/13-14/001		16.15		34	66	516800	28653695
04-02-2014	sales B.No IMP/13-14/002		17		34	66	544000	29197695
04-02-2014	sales B.No IMP/13-14/003		20		34	66	640000	29837695
04-02-2014	import B.No 4807111	18		653877.8				29183817

04-03-2014	import B.No 4807115	18							
04-03-2014	import B.No 4807157	36		711743.1					
04-03-2014	import B.No 4807114	18		1458205.37					28472074
06-03-2014	import B.No 4825898	18		711743.1					27013869
12-03-2014	import B.No 4885733	18		729102.69					26302126
22-03-2014	sales B.No IMP/13-14/004	88		3482846.13					25573023
22-03-2014	sales B.No IMP/13-14/005		20.2			30	66	727200	22817377
22-03-2014	sales B.No IMP/13-14/006		15.85			30	66	570600	23387977
22-03-2014	sales B.No IMP/13-14/007		16.6			30	66	597600	23985577
22-03-2014	sales B.No IMP/13-14/008		20			30	66	720000	24705577
22-03-2014	sales B.No IMP/13-14/009		16.7			30	66	601200	25306777
22-03-2014	sales B.No IMP/13-14/010		10.1			30	66	363600	25670377
22-03-2014	sales B.No IMP/13-14/011		7			30	66	252000	25922377
22-03-2014	import B.No 4977569	90		2838111.05		30	66	99900	26022277
29-03-2014	sales B.No IMP/13-14/012		17.8			30	66	640800	23184166
29-03-2014	sales B.No IMP/13-14/013		16.29			30	66	586440	24411406
29-03-2014	sales B.No IMP/13-14/014		20			30	66	720000	25131406
29-03-2014	sales B.No IMP/13-14/015		16.54			30	66	595440	25726846
30-03-2014	sales B.No IMP/13-14/016		17.75			30	66	639000	26365846
31-03-2014	sales B.No IMP/13-14/017		21.2			30	66	763200	27129046
31-03-2014	sales B.No IMP/13-14/018		16.7			30	66	601200	27730246
31-03-2014	sales B.No IMP/13-14/019		19.15			30	66	689400	28419646
31-03-2014	sales B.No IMP/13-14/020		2.5			30	66	90000	28509646
31-03-2014	sales B.No IMP/13-14/021		12.55			30	66	451800	28961446
31-03-2014	sales B.No IMP/13-14/022		4.1			30	66	147600	29109046
31-03-2014	sales B.No IMP/13-14/023		16.595			30	66	597420	29706466
31-03-2014	import B.No 4972295	176		5550083.82					
	Total	514.8	343.55	18069097.12		702	1518	12155200	24156382



Date	Particular	Qty(MT)	Sales Qty	outflow	Rate as per invoice	Rate according to assessee	inflow	Net investment
04-01-2014	Opening Balance							24156382
10-04-2014	Import B.no S161336	198		6112394.95			0	18043987
26-04-2014	Import B.no 5319779	126		3912226.92			0	14131760
26-04-2014	Import B.no 5319500	162		5030006.04			0	9101754
03-05-2014	Import B.no 5387896	180		5593491.73			0	3508262
06-05-2014	Import B.no 5412418	180		5593491.73			0	-2085229
14-05-2014	Sales B.NO IMP/047		21		30	66	756000	-1329229
14-05-2014	Sales B.NO IMP/048		20.8		30	66	748800	-580429
14-05-2014	Sales B.NO IMP/049		20.85		30	66	750600	170171
14-05-2014	Sales B.NO IMP/050		20.8		30	66	748800	918971
14-05-2014	Sales B.NO IMP/051		16.1		30	66	579600	1498571
14-05-2014	Sales B.NO IMP/052		5		30	66	180000	1678571
14-05-2014	Sales B.NO IMP/053		20.5		30	66	738000	2416571
16-05-2014	Sales B.NO IMP/054		19.6		30	66	705600	3122171
16-05-2014	Sales B.NO IMP/055		19.4		30	66	698400	3820571
16-05-2014	Sales B.NO IMP/056		19.4		30	66	698400	4518971
16-05-2014	Sales B.NO IMP/057		19.4		30	66	698400	5217371
16-05-2014	Sales B.NO IMP/058		19.25		30	66	693000	5910371
16-05-2014	Sales B.NO IMP/059		16.3		30	66	586800	6497171
16-05-2014	Sales B.NO IMP/060		16.29		30	66	586440	7083611
16-05-2014	Sales B.NO IMP/061		16.4		30	66	590400	7674011
16-05-2014	Sales B.NO IMP/062		16.35		30	66	588600	8262611
20-05-2014	Sales B.NO IMP/063		20.2		30	66	727200	8989811
20-05-2014	Sales B.NO IMP/064		20.25		30	66	729000	9718811
20-05-2014	Sales B.NO IMP/065		20.4		30	66	734400	10453211
20-05-2014	Sales B.NO IMP/066		19.6		30	66	705600	11158811
20-05-2014	Sales B.NO IMP/067		20.6		30	66	741600	11900411
20-05-2014	Sales B.NO IMP/068		20.2		30	66	727200	12627611
20-05-2014	Sales B.NO IMP/069		20.25		30	66	729000	13356611
20-05-2014	Sales B.NO IMP/070		20.25		30	66	729000	14085611
20-05-2014	Sales B.NO IMP/071		20.4		30	66	734400	14820011
21-05-2014	Import B.no 5558689	162		4972094.79			0	9847916
22-05-2014	Sales B.NO IMP/072		20.4		30	66	734400	10582316
22-05-2014	Sales B.NO IMP/073		16.6		30	66	597600	11179916
22-05-2014	Sales B.NO IMP/074		21.25		30	66	765000	11944916
22-05-2014	Sales B.NO IMP/075		20.25		30	66	729000	12673916
22-05-2014	Sales B.NO IMP/076		20.5		30	66	738000	13411916

22-05-2014	Sales B.NO IMP/077		16.2					
22-05-2014	Sales B.NO IMP/078		4.4		30	66	583200	13995116
22-05-2014	Sales B.NO IMP/079		12.46		30	66	158400	14153516
22-05-2014	Sales B.NO IMP/080		8.125		30	66	448560	14602076
22-05-2014	Sales B.NO IMP/081		3.96		30	66	292500	14894576
22-05-2014	Sales B.NO IMP/082		16.25		30	66	142560	15037136
22-05-2014	Sales B.NO IMP/083		20.55		30	66	585000	15622136
28-05-2014	Import B.no 5636032	90		2486047.81		66	739800	16361936
04-06-2014	Import B.no 5707210	180		5296305.89			0	13875888
05-06-2014	Import B.no 5709801	108		3873876.8			0	8579582
08-06-2014	Sales B.NO IMP/084		16.2		30	66	583200	5288905
08-06-2014	Sales B.NO IMP/085		20		30	66	720000	6008905
08-06-2014	Sales B.NO IMP/086		19		30	66	684000	6692905
08-06-2014	Sales B.NO IMP/087		20.1		30	66	723600	7416505
08-06-2014	Sales B.NO IMP/088		16.15		30	66	581400	7997905
08-06-2014	Sales B.NO IMP/089		16.1		30	66	579600	8577505
08-06-2014	Sales B.NO IMP/090		19		30	66	684000	9261505
10-06-2014	Sales B.NO IMP/091		9.1		30	66	327600	9589105
10-06-2014	Sales B.NO IMP/092		11.1		30	66	399600	9988705
10-06-2014	Sales B.NO IMP/093		18.2		30	66	655200	10643905
19-06-2014	Sales B.NO IMP/094		20.2		30	66	727200	11371105
19-06-2014	Sales B.NO IMP/095		20.15		30	66	725400	12096505
19-06-2014	Sales B.NO IMP/096		20.15		30	66	725400	12821905
19-06-2014	Sales B.NO IMP/098		20.3		30	66	730800	13552705
19-06-2014	Sales B.NO IMP/099		20		30	66	720000	14272705
19-06-2014	Sales B.NO IMP/100		20.1		30	66	723600	14996305
19-06-2014	Sales B.NO IMP/101		20.1		30	66	723600	15719905
19-06-2014	Sales B.NO IMP/102		19.86		30	66	714960	16434865
19-06-2014	Sales B.NO IMP/103		7.96		30	66	286560	16721425
19-06-2014	Sales B.NO IMP/104		12.095		30	66	435420	17156845
25-06-2014	Import B.no 5922623	198		6159534.7			0	10997311
25-06-2014	Sales B.NO IMP/105		16.21		30	66	583560	11580871
25-06-2014	Sales B.NO IMP/106		15.13		30	66	544680	12125551
25-06-2014	Sales B.NO IMP/107		19.75		30	66	711000	12836551
25-06-2014	Sales B.NO IMP/108		19.8		30	66	712800	13549351
25-06-2014	Sales B.NO IMP/109		19.8		30	66	712800	14262151
25-06-2014	Sales B.NO IMP/110		15.3		30	66	550800	14812951
25-06-2014	Sales B.NO IMP/111		20.35		30	66	732600	15545551
25-06-2014	Sales B.NO IMP/112		20.4		30	66	734400	16279951

					30	66	730800	17010751
25-06-2014	Sales B.NO IMP/113		20.3		30	66	579600	17590351
25-06-2014	Sales B.NO IMP/114		16.1		30	66	590400	18180751
25-06-2014	Sales B.NO IMP/115		16.4				0	14363828
08-07-2014	Import B.no 6056360	126		3816922.24			0	7907367
08-07-2014	Import B.no 6056750	180		6456461.34				
08-07-2014	Sales B.NO IMP/116		16.55		30	66	595800	8503167
08-07-2014	Sales B.NO IMP/117		18.6		30	66	669600	9172767
08-07-2014	Sales B.NO IMP/118		2.6		30	66	93600	9266367
08-07-2014	Sales B.NO IMP/119		20.15		30	66	725400	9991767
08-07-2014	Sales B.NO IMP/120		20.15		30	66	725400	10717167
08-07-2014	Sales B.NO IMP/121		16.85		30	66	606600	11323767
08-07-2014	Sales B.NO IMP/122		3.5		30	66	126000	11449767
08-07-2014	Sales B.NO IMP/123		21.15		30	66	761400	12211167
08-07-2014	Sales B.NO IMP/124		21.15		30	66	761400	12972567
08-07-2014	Sales B.NO IMP/125		21.15		30	66	761400	13733967
08-07-2014	Sales B.NO IMP/126		16.45		30	66	592200	14326167
08-07-2014	Sales B.NO IMP/127		21.2		30	66	763200	15089367
22-07-2014	Sales B.NO IMP/128		20.15		30	66	725400	15814767
22-07-2014	Sales B.NO IMP/129		20.25		30	66	729000	16543767
22-07-2014	Sales B.NO IMP/130		20.2		30	66	727200	17270967
22-07-2014	Sales B.NO IMP/131		21.35		30	66	768600	18039567
22-07-2014	Sales B.NO IMP/132		21.2		30	66	763200	18802767
22-07-2014	Sales B.NO IMP/133		21.35		30	66	768600	19571367
22-07-2014	Sales B.NO IMP/134		21.3		30	66	766800	20338167
22-07-2014	Sales B.NO IMP/135		20.3		30	66	730800	21068967
22-07-2014	Sales B.NO IMP/136		16.3		30	66	586800	21655767
24-07-2014	Sales B.NO IMP/137		21.41		30	66	770760	22426527
24-07-2014	Sales B.NO IMP/138		20.8		30	66	748800	23175327
24-07-2014	Sales B.NO IMP/139		21.25		30	66	765000	23940327
24-07-2014	Sales B.NO IMP/140		21.45		30	66	772200	24712527
24-07-2014	Sales B.NO IMP/141		21.3		30	66	766800	25479327
24-07-2014	Sales B.NO IMP/142		21.27		30	66	765720	26245047
01-01-2015	Sales B.NO IMP/143		16		35	66	496000	26741047
01-01-2015	Sales B.NO IMP/144		20.15		35	66	624650	27365697
01-01-2015	Sales B.NO IMP/145		20.13		35	66	624030	27989727
01-01-2015	Sales B.NO IMP/146		16.1		35	66	499100	28488827
01-01-2015	Sales B.NO IMP/147		20.2		35	66	626200	29115027
01-01-2015	Sales B.NO IMP/148		20.2		35	66	626200	29741227
01-01-2015	Sales B.NO IMP/149		20.19		35	66	625890	30367117
01-01-2015	Sales B.NO IMP/150		16.15		35	66	500650	30867767
01-01-2015	Sales B.NO IMP/151		16.12		35	66	499720	31367487
01-01-2015	Sales B.NO IMP/152		20		35	66	620000	31987487
01-01-2015	Sales B.NO IMP/153		8.1		35	66	251100	32238587
01-01-2015	Sales B.NO IMP/154		7.9		35	66	244900	32483487
	Total	1890	1906.56	59302854.94	3270	7062	67629960	

Since in the year under consideration, the peak cash deficit worked out as above is at Rs.22,88,953/- which has been rightly considered for addition by the AO, hence the addition of the above amount is confirmed in the year under consideration.

In the result, the ground of appeal is dismissed."

7. Aggrieved by the appellate order passed by Id. CIT(A), Revenue has filed an appeal with the Tribunal, and Id. DR opened argument before the Bench and submitted that the assessee is dealing in import of seeds of watermelon as well other agro products. He drew our attention to the assessment order passed by the AO and also the appellate order passed by Id. CIT(A). It was submitted that the assessee is engaged in import of watermelon seeds , and also dealing in other agro products which are locally procured. The assessee was searched by DRI and it transpired that the assessee is undervaluing import of watermelon seeds while declaring the value at customs to evade import duty. The custom declared value is remitted to the supplier by banking channel , while the excess amount being differential of the actual purchase price and declared price to the customs was sent through clandestine means. Large number of evidences were recovered which proves that the assessee is engaged in undervaluing import of water melon seeds at the time of declaration with customs and filing of bill of entry. The AO rejected books of accounts and applied GP rate of 2% on total turnover, while Id. CIT(A) applied GP rate of 2% on the total turnover of water-melon seeds during the year. It was submitted that the AO also made additions towards the differential of declared value of import of water melon seeds and the actual value of import of water melon seeds, as the said sum of money was clandestinely remitted/adjusted by the assessee. It was submitted that cash flow statement as is referred to in Id. CIT(A) order was never submitted before the AO while different cash flow was submitted which was additional evidence , and the Id. CIT(A) applied peak cash deficit without forwarding additional evidence to the AO for calling remand report , and Rule 46A of the Income-tax Rules, 1962 is breached , as these additional evidences have not stood the test of verification by the AO.

7.2 The learned counsel for the assessee submitted that the appellate order passed by the ld. CIT(A) is a common order for assessment years 2011-12 to 2015-16 , and that the Revenue has challenged the ld. CIT(A) order for A.Y. 2014-15 and 2015-16. It was submitted that in these two assessment years ,the assessment orders were passed under section 143(3) while for the other years, the assessment orders were passed under section 147 read with Section 143(3). It was submitted that the consistency has to be followed as the department has not challenged the appellate orders passed by ld. CIT(A) for other assessment years viz. assessment years 2011-12 to 2013-14, and it was submitted that the appeals for these two years viz. assessment years 2014-15 and 2015-16 are also not maintainable . The ld. Counsel for the assessee has also placed on record assessment orders passed by the AO for assessment year 2012-13 and 2013-14.

7.3 The ld. DR at this point submitted that the other assessment years were not challenged by Revenue because of low tax effect , and thus the assessee cannot claim that these two assessment years viz. ay:2014-15 and 2015-16 appeals are also not maintainable with ITAT, keeping in view that the Revenue has not filed appeals with ITAT for other assessment years.

7.4 The ld. Counsel for the assessee submitted that the AO has made the additions for other years by applying G.P. rate on turnover of watermelon seeds, while in these two assessment years, the additions on account of GP were made keeping in view total turnover. It was submitted that additions be confirmed based on application of GP rate on turnover of watermelon seeds. It was submitted that the assessee was importing water melon seeds only while the rest of the turnover was local items. Regarding other additions made by the AO, the ld. Counsel for the assessee submitted that the peak credit is to be applied . The Ld. Counsel for the assessee submitted that section 69C is not attracted as the assessee is into reasale business. Principle of consistency is to be followed keeping in view preceding years. The ld. Counsel for the assessee relied upon the judgment of Hon'ble Supreme Court

in the case of CIT v. J.K. Charitable Trust (2008) 175 taxman 251 (SC) and judgment of Hon'ble Rajasthan High Court in the case of Malpani House of Stones v. CIT, reported in 2016(10) TMI 1068-Raj. HC(395 ITR 385)

7.5 Similar contentions were raised by both parties for assessment year 2015-16, except that in the assessment year 2015-16, the AO made additions of Rs. 2,62,41,611/- u/s 69C by adopting peak cash deficit instead of differential being excess of value of water melon seed and the declared value of imports with customs made during assessment year 2014-15. There was similar additions of G P Rate of 2% applied on total turnover by AO , while ld. CIT(A) reduced the same by applying G P rate of 2% applied to turnover of water melon seeds. The ld. CIT(A) has granted relief by considering by giving benefit of opening cash balance/deficit wherein the assessee submitted different cash flow before ld. CIT(A) wherein it is claimed that opening balance/deficit of cash was reflected , than what was submitted before the AO which was claimed to be submitted without reflecting opening cash balance/deficit .No remand report was called for by ld. CIT(A) from the AO during appellate proceedings.

8. We have considered rival contentions and perused the material on record. We have enumerated the facts in details in the preceding para's of this order and they are not repeated again. The Revenue has come in appeal with ITAT being aggrieved by the appellate order passed by ld. CIT(A), while no appeal/C.O. has been filed by the assessee. Thus, the assessee has accepted the decision/findings of ld. CIT(A). Proceeding further, Briefly stated , the assessee is engaged in the business of import of water-melon seeds as well trading in other agro products. The assessee was searched on 12.08.2014 by DRI based on the information , inquiries and investigations made by DRI that the assessee is engaged in undervaluing declared value of imports with customs in order to evade custom duty. Large number of incriminating material was seized by DRI during search and statements were also recorded, which are enumerated above in this order, which reflected that the

assessee is declaring lower value of import of water melon seeds while filing bill of entry with custom department, in order to evade custom duties. The payments of the declared value before customs authorities were remitted by the assessee through banking channel, while the excess being differential of actual value less declared value of water melon seeds were remitted/adjusted by assessee to overseas suppliers through clandestine means. The AO while framing assessment rejected books of accounts and applied Gross Profit rate of 2% on total turnover of the assessee(after taking into account the average sale value of water melon seed instead of suppressed value of sales declared with custom department of import value of water melon seeds) . The AO referred to comparative assessments of the two tax-payers in the similar trade to arrive at the G P Rate of 2% which could be applied in the case of the assessee. The Id. CIT(A) applied G P rate of 2% on the turnover of water melon seeds (after taking into account the average sale value of water melon seed instead of suppressed value of sales declared with custom department of import value of water melon seeds) and not on the total turnover of the assessee. So far as this proposition of Id. CIT(A) is concerned , we are agreeable that G P Rate is to be applied to turnover of water melon seeds (after taking into account the average sale value of water melon seed instead of corresponding suppressed value of sales based on declaration with custom department of import value of water melon seeds) and not to the total turnover , as there are no incriminating material so far as dealing of the assessee in other agro products are concerned. The AO itself applied GP Ratio of 2% on turnover of water melon seed (after taking into account the average sale value of water melon seed instead of corresponding suppressed value of sales based on declaration with custom department of import value of water melon seeds)for assessment year 2012-13 and 2013-14, relying on the assessments of two other tax-payer in similar trade. We do not find any error in the appellate order passed by Id. CIT(A).We uphold the appellate order passed by Id. CIT(A). While passing the appellate order the Id. CIT(A) gave directions to the AO to verify the calculations while applying G P Ratio

of 2% of the turnover of water melon seeds(after taking into account the average sale value of water melon seed instead of corresponding suppressed value of sales based on declaration with custom department of import value of water melon seeds) instead of G P declared on suppressed sale of imported water melon . We agree with ld. CIT(A) and the AO is directed to verify the calculations/computation to arrive at the income chargeable to tax. We order accordingly.

8.2 So far as two other additions of Rs. 1,80,69,095/- each as were being made by the AO being differential/excess amount of actual value of imports of water melon seed and the value declared by the assessee with custom authorities is concerned, we have observed that ld. CIT(A) has given relief to the assessee by holding that the assessment made by the AO in other assessment years were differently made and there is no basis of making these additions in this assessment year. The ld. CIT(A) held that in other years , the AO has made additions on account of GP rate and also additions by applying deficit of peak cash, and thus no additions u/s 69C being differential/excess amount of actual value of imports of water melon seed and the value declared by the assessee with custom authorities can be made by the AO. We are afraid that we are unable to agree with ld. CIT(A). The principles of res judicate are not applicable to income-tax proceedings, although consistency is to be maintained. The ld. CIT(A) ought to have decided the additions on merits , but merely because the similar additions were not made in other years is no basis to claim that the said additions cannot be made in this year. The order of ld. CIT(A) is also suffering from perversity as it is stated by ld. CIT(A) that the AO made additions of Rs. 22,88,953/- as unexplained expenditure u/s 69C by adopting peak cash credit. No such additions were made by the AO for assessment year 2014-15. The assessee filed before ld. CIT(A) cash flow statements which reflected the opening cash balance/deficit , which were not filed before the AO. These were additional evidences filed by the assessee before ld. CIT(A) . The ld. CIT(A) did not call for the remand report from the AO, and there is a breach of Rule 46A of the 1962 Rules.

Rule 46A is not empty formality. In any case, during the assessment year 2014-15, the AO never considered cash flow statements to bring to tax peak cash deficit, and principles of natural justice demanded when ld. CIT(A) is passing appellate order in which there is a change in the manner additions were to be confirmed/upheld vis-à-vis the additions as were made by the AO, that ld. CIT(A) ought to have issued notice of hearing to the AO and also called for the comments/remand report from the AO before changing the manner in which additions are sustained. It prima-facie appears that the AO has made double additions of Rs. 1,80,69,095 each, and in our view double additions on the same issue is not sustainable, and it requires verification by ld. CIT(A). This entire issue is set aside and restored back to the file of ld. CIT(A) for fresh adjudication, after giving opportunity of being heard to both the AO as well the assessee. The ld. CIT(A) shall comply with Rule 46A of the 1962 Rules. Thus, these two issues of additions of Rs. 1,80,69,095/- as well application of peak cash deficit are set aside and restored to the file of ld. CIT(A) for fresh adjudication. The appeal of the Revenue is allowed for statistical purposes on this issue. We order accordingly. We order accordingly.

8.3 It is contended by the ld. Counsel for the assessee that since the Revenue has not come in appeal before ITAT for other years, and hence the Revenue is precluded from filing appeal for assessment year 2014-15 and 2015-16. The ld. DR has submitted that the Revenue did not file appeal for other years, keeping in view low tax effect and the Revenue appeals being covered by circular issued by CBDT debarring Revenue to file appeal with ITAT if it is within threshold limit of tax effect of Rs. 50 lacs. Reference is drawn to Para 7 of the Circular No. 3/2018 dated 11.07.2018, which circular was later modified vide circular 17 of 2019, dated 08.08.2019. Thus, if the appeal is not filed by Revenue in any assessment year owing to low tax effect, it shall not preclude department from filing appeal for subsequent year and there is no acquiescence on the issue covered by the appeal. There is no merit in the contention of the assessee. Reference is also drawn to the judgment and

order of Hon'ble Supreme Court in the case of CIT v. Goodwill Theaters Pvt Ltd. In Civil Appeal No. 19944/2017 dated 29.09.2017.

8.4 The assessee has raised contentions that once books of accounts are rejected and G P ratio is applied, then no other additions can be made. We are afraid , this contentions also lacked merit. Reference is drawn to three judge bench decision of Hon'ble Supreme Court in the case of CIT v. Devi Prasad Vishwanath reported in (1969) 72 ITR 194(SC), wherein Hon'ble Apex Court held as under:

“There is nothing in law which prevents the Income-tax Officer in an appropriate case in taxing both the cash credit, the source and nature of which is not satisfactorily explained, and the business income estimated by him under section 13 of the Income-tax Act, after rejecting the books of account of the assessee as unreliable. This was so decided in Kale Khan Mohammad Hanif v. Commissioner of Income-tax [1963] 50 ITR 1 (SC). Whether in a given case the Income-tax Officer may tax the cash credit entered in the books of account of the business, and at the same time estimate the profit must, however, depend upon the facts of each case.”

Thus, this contention of the assessee lacks merit and stood rejected.

9. The appeal of the Revenue for assessment year 2014-15 is partly allowed for statistical purposes.

10. Our decision for assessment year 2014-15 shall apply mutatis mutandis to assessment year 2015-16 as facts are almost similar , except that the AO adopted peak cash deficit in ay:2015-16.The assessee filed cash flow statement before Id. CIT(A) incorporating opening cash balance/ deficit, which was not submitted before the AO. No remand report was called by the Id. CIT(A) , and there was a breach of Rule 46A of the 1962 Rules. The cash flow submitted before Id. CIT(A) has not stood the verification by the AO. Rule 46A is not empty formality. Thus, the matter is restored to the file of Id. CIT(A) for fresh adjudication after giving opportunity of being heard to both the assessee and the AO. We order accordingly.

11. The appeal of the Revenue for assessment year 2015-16 is allowed for statistical purposes.

Order pronounced on 10/04/2024 in Open Court at Ahmedabad, Gujarat.

Sd/-

[SUCHITRA KAMBLE]
JUDICIAL MEMBER

Sd/-

[RAMIT KOCHAR]
ACCOUNTANT MEMBER

DATED: 10/04/2024

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Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT DR , ITAT,
4. CIT,
5. The CIT(A)