

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

**BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
and
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.2941/DEL/2023
(Assessment Year: 2017-18)**

Brugg Cables (India) P. Ltd.,
C/o Shri Kapil Goel, Advocate,
F-26/124, Sector 7,
Rohini,
New Delhi – 110 085.

vs.

ITO, Ward 1(3),
Gurgaon.

(PAN : AAFCB2037E)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Satyajeet Goel, Advocate
REVENUE BY : Shri Kanv Bali, Sr. DR

Date of Hearing : 01.08.2024
Date of Order : 04.10.2024

ORDER

PER S.RIFAUR RAHMAN,AM:

This appeal has been filed by the assessee against the order of Id. Commissioner of Income Tax (Appeals), Delhi ["Id. CIT(A)", for short] dated 21.08.2023 for the Assessment Year 2017-18.

2. Brief facts of the case are, assessee filed its return of income on 20.11.2017 and subsequently, revised it on 05.06.2018 declaring a loss of Rs.72,09,630/- for the AY 2017-18. The case was selected for limited scrutiny through CASS for the reason "Exports/Imports, claim of any other amount

allowable as deduction in Schedule BP”. Accordingly, notices under section 143(2) & 142(1) of the Income-tax Act, 1961 (for short ‘the Act’) were issued and served on the assessee along with questionnaire.

3. During the course of assessment proceedings, the assessee was asked to furnish details of import-export data summary. The assessee submitted the information on 16.12.2019. The Assessing Officer observed that assessee has furnished a chart in which it has shown the value of Rs.1,81,49,172/- of import-export data. Based on the above information, the Assessing Officer issued a notice dated 23.12.2019 to the assessee and in the above said show-cause notice, it was mentioned that the assessee has made export-import to the tune of Rs.2,84,94,248/- during the year. However, as per the chart submitted by the assessee, the value shown is only of Rs.1,81,49,172/-. Accordingly, the assessee was asked to reconcile the data with its books of account. Further, it was informed that why the difference amount may not be added to its returned income. In response, the assessee has submitted as under :-

"There are 4-5 kinds of duty and taxes in custom like (BCD, CVD, SAD, SVB, Cess etc) and every tax has its own assessable value. We have assessable value for BCD-Basic Custom duty of INR 24999774/- and related duty challans are almost matching with your duty amount. You mentioned 6 numbers of transactions in your summary sheet and we also mentioned 6 numbers of transactions as per our records.

There is difference in assessable value as per our calculation sheet and your details. It might be due to different base taken by the report you provided. Nevertheless it is relevant to note that duty challans are almost matching with the details you provided."

4. After considering the submissions of the assessee, the Assessing Officer was of the view that assessee has not substantiated the above difference with any documentary evidences and it failed to furnish the reconciliation chart with ITS statement. He observed that assessee has only stated that the assessable value for the BCD – Basic Custom Duty of Rs.2,49,99,774/-. However, as per the ITS statement, the assessable value is of Rs.2,93,86,084/-. Accordingly, he found that reply filed by the assessee is not acceptable to him and assessee has failed to reconcile the data with its ITR. Accordingly, he added the difference in invoice value of input as per export-import data and purchases as reported in ITR to the tune of Rs.1,03,45,076/-.

5. Aggrieved with the above order, assessee preferred an appeal before the Id. CIT (A) and filed detailed submissions. After considering the detailed submissions of the assessee, Id. CIT (A) decided the issue against the assessee with the following observations :-

“ I considered the facts of the case and submission filed by the appellant. The claim of the appellant that the ITS data was not shared by the AO is found to be incorrect statement, since the appellant in his reply submitted before AO has mentioned that number of transactions i.e. 6 and import duty paid was matching with the data with the AO but there was difference in value of the transactions. This clearly shows that the relevant data was shared with the appellant. It is also noted that the value of the import shown by the appellant is net of credit notes. However the appellant neither before nor before this office has explained the nature and amount of credit notes. It is also noted that the valuation made by the customs is not disputed by the appellant. The appellant could not explain the difference between the value of goods as ITS data and import bills before the AO during the course of assessment proceedings. Even during appellate

proceedings, the appellant has explained the difference with supporting evidences. From the above facts, it is noted that the appellant has made unexplained expenditure u/s 69C in the import of goods. Therefore the addition made by the AO is confirmed and grounds of appeal raised by the appellant are dismissed.”

6. Aggrieved with the above order, assessee is in appeal before us raising following grounds of appeal :-

“10.1 That impugned order of NFAC Delhi dismissing appeal of assessee and sustaining order of Ld AO (ITO Ward 1 (3) Gurgaon) are totally illegal, unlawful and contrary to mandate of 1961 Act being founded on non-speaking and inchoate reasons of limited scrutiny which is enlarged without taking approval from PCIT;

10.2 That Ld AO erred in passing assessment order without issue of any show cause notice in breach of CBDT Instruction NO.2012015 and so, assessment order passed making addition of Rs.1,03,45,076/- should be quashed for want of valid show cause notice.

10.3 That impugned order passed by NF A C Delhi 'dismissing appeal of assessee are passed on incorrect assumption regarding furnishing complete transaction wise data which is never supplied and sans supply of complete data, no adverse inference and addition could have been made in the assessment order which is in violation of section 142 of the Act;

10.4 That NFAC erred in supplanting the order passed by the assessing officer by inducting section 69C into the additions made in assessment order for first time without any prior intimation or notice and thus the order passed by the NFAC is illegal and invalid;

10.5 That NFAC erred in confirming hypothetical addition of Rs.1,03,45,076/- on surmises and conjectures while placing impossible negative burden on the appellant without giving any iota or breakup of the mysterious figure of imports pushed to appellant without any evidence of payment by the appellant.”

7. At the time of hearing, ld. AR for the assessee brought to our notice page 2 of the assessment order and narrated the findings in the assessment order and he brought to our notice page 5 of the paper book which is the summary data of export-import collected from CBEC and the Assessing Officer has relied the same. He also brought to our notice page 11 of the paper book which is the details of import during the year and contained the details of import value recorded in the books of account and the payment of customs duty. He submitted that no doubt, the customs assessable value was Rs.2.84 crores, however the assessee has recorded the same by reducing the credit notes and the actual import cost to the assessee. He also brought to our notice page 100 of the paper book which is the schedule forming part of the balance sheet in which assessee has recorded only the actual import value in its books of account. He submitted that the Assessing Officer has relied on the general statement collected from the customs and also it is only a screen shot from customs. In this regard, he brought to our notice pages 71 to 83 of the paper book which contained the details of imports as well as adjustment of credit notes submitted before the customs authorities. Further, he submitted a chart invoice-wise with the explanation before us. For the sake of clarity, it is reproduced below :-

S.No.	Import Transaction	Invoice Amount	Amount recorded in the books of account (Amount in Rs.)	Amount as per Bill of entry (Assessable value for Custom duty) (Amount in Rs.)	Custom Duty as per Bill of entry (Amount in Rs.)	Paperbook page

1.	Purchase of Fixed Asset Less : Credit Note	1,10,94,519 (28,35,664)	82,58,855	1,14,67,324	31,09,931	12 – 24 67 – 68
2.	Purchase of Fixed Asset	3,82,449	3,82,449	4,29,200	1,29,305	25 – 30
3.	Purchase of Fixed Asset Less : Credit Note	1,14,76,968 (28,35,664)	86,41,304	1,18,83,844	32,30,508	31 – 43 69 – 70
4.	Purchase of trading material	CHF 11,688	7,64,084	7,95,708	2,16,333	44 – 53
5.	Purchase of consumables	CHF 1,520	1,01,582	1,06,910	31,475	54 – 59
6.	Import of tools on temporary basis and to re-export	USD 4500	It was not a purchase of company. The tools were imported on behalf of vendor and the goods were Revenue-exported after use.	3,06,788	12,162	60 – 66
	Total (in Rs.)	2,41,27,289	1,81,49,173	2,49,99,774	67,29,714	

1. As per the above table, the value of imports made by the assessee during the year as recorded in the books of account is Rs.1,81,49,173/- and as per the bill of entry is Rs.2,49,99,774/-. The total invoice value of the goods imported by the assessee is Rs.2,41,27,289/- and the figure of imports (invoice value) appearing in ITS statement is Rs. 2,84,94,248/- (PB Pg 5).

2. The fact of import to the extent of Rs.2,41,27,289/- by the assessee is supported from invoices, bill of entry, details appearing on ICEGATE Portal and audited Balance Sheet of the assessee. (PB Pg 11 - 100)

3. The assessing officer has not given any break-up or basis of figure of import aggregating to Rs. 2,84,94,248/- as appearing in the ITS statement. The data contained in ITS statement is raw data which requires further verification as it may contain duplicate entries and factual errors.

4. Further, the assessing officer did not undertake any verification in respect of data mentioned in the ITS statement and considered the addition of Rs. 1,03,45,076/- (Rs.2,84,94,248 - Rs.1,81,49,173) being difference between the imports recorded in the books and as

appearing in the ITS statement on mechanical basis. (RTI reply PB Pg 1)

5. In the absence of bill-wise bifurcation of the figure of import appearing in ITS statement, it is virtually impossible for the assessee to furnish any reconciliation and as such the general information appearing in ITS statement is not actionable as held by Hon'ble ITAT in the case of S.S. International v. PCIT (ITAT Rajkot) (ITA No.154/Rjt/2022) (16/06/2023)

6. It is worth mentioning that the imports are necessarily made through banking channel and in absence of any adverse material, no addition could be made on the alleged ground of unexplained expenditure u/s 69C.”

8. Further, he relied on the decision of ITAT, Rajkot Bench in the case of M/s. S.S. International vs. Pr.CIT-1, Rajkot in ITA No.154/RJT/2022 order dated 16.06.2023 wherein similar issue was adjudicated.

9. On the other hand, ld. DR for the Revenue relied on the decisions of lower authorities and further he submitted that if the Bench concedes it appropriate, this issue may be sent back to Assessing Officer for proper verification.

10. Considered the rival submissions and material placed on record. We observed that the assessee has imported trading goods, consumables, tools and other assets. The Assessing Officer by relying on the export-import summary data from CBEC noticed that during the year, assessee has imported invoice value of Rs.2.85 crores and paid the customs duty of Rs.68,80,000/- whereas as per the information submitted before us, the assessee has recorded the value of imports in its books of account after adjusting the credit notes which is actual

cost to the assessee. At the same time, we also observed that customs duty paid by the assessee of the value recorded in export-import summary data is more or less matching. Since the Assessing Officer observed that there is a difference in the export-import data and the import value recorded in the books of account, he has added the difference as income of the assessee. After considering the detailed chart submitted before us, we observed that the information contained in the export-import summary data is only a gross assessable value and it also contained the details of duty paid by the assessee on the basis of assessable value declared by the assessee in the Bill of Lading. From the chart submitted by the assessee, we observed that the assessee has recorded all the imports in its books of account and the difference observed by the Assessing Officer without considering the credit notes. The Assessing Officer presumed that assessee has not declared the value of import as per the export-import summary data and he failed to recognise that the information contained in the data is only imports. Since the value of duty paid by the assessee is perfectly matching and the difference in gross value of invoice mentioned in CBEC which is only a gross assessable value. What is relevant is the actual cost to the assessee which has to be recognised in its books of account.

11. Further, we observed that merely relying on the export-import summary data, the Assessing Officer has made the addition without proper verification and rejected explanation submitted by the assessee at the face value. After

considering the detailed submission of the assessee, we do not see any reason to sustain the addition made by the Assessing Officer. Assessing Officer has not substantiated how recording of imports in the books of account will lead to under valuation and suppression of income of the assessee. We noticed that similar issue was considered by the ITAT, Rajkot Bench in the case of M/s. S.S. International (supra). The ITAT, Rajkot Bench in the said case has considered the similar issue of reconciliation of ITS data and value of export sales declared by the assessee and decided the issue in favour of the assessee with the following observation :-

“7. Considering the same, we hold that the entire exercise of the ld. Pr.CIT in holding the assessment order as erroneous proceeded on a premise which did not exist and was totally unjustified. In the absence of break up, bill wise, of the exports of the assessee reflected in the ITS data, any explanation or reconciliation of the difference in the said exports from that reflected in the Books of the assessee was virtually impossible. The ITS data giving no breakup of export sales, therefore, we hold, had not been rightly considered by the AO during assessment proceedings for seeking any explanation from the assessee for difference from the export sales reflected in the books of the assessee. This being the only information with the Ld. PCIT, we hold, that there was no error in the order of the AO for not seeking any explanation on account of the information in ITS data.

Further even as per the ld. Pr.CIT, the issue was restored back to the AO for verification of this aspect of export sales, for which purposes revisionary powers u/s 263 of the Act cannot be exercised. There has to be a finding of error in the order of the AO causing prejudice to the Revenue for exercising revisionary jurisdiction u/ s 263 of the Act. A direction for verification of an issue, means there is no prima facie finding of error. Thus the exercise of revisionary powers u/s 263 of the Act in the present case we hold, is not in accordance with law for this reason also.

For the above reasons, we hold that the order of the ld. Pr.CIT passed u/s 263 of the Act is not sustainable in law and is accordingly directed to be set aside.”

12. In view of the above decision, the issue addressed by the ITAT Bench relating to export sales. In that case, the allegation was that assessee has not disclosed total exports which were not matching with ITS data, however in the present case, the issue is relating to reconciliation of imports. Therefore, in the present case, even though there may be some difference in the reconciliation of gross assessable value, this will not lead to non-disclosure of income involved. Therefore, we are inclined to decide the issue in favour of the assessee as there is no involvement of undisclosed income.

13. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on this 4th day of October, 2024.

**Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT**

**sd/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Dated: 04.10.2024
TS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI