

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH : COCHIN  
(By Virtual hearing)**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No.524/Coch/2023
Assessment Year: 2018-19

Ushadevi Purushothaman Proprietor: Bell Foods (Marine Division) 18/1555 Pallichal Road Thoppumpady Kochi 682 005 Kerala  <b>PAN NO : ACIPP7594A</b>	<b>Vs.</b>	ITO Non Corp Ward-2(5) Kochi
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Lukose Joseph, A.R.
<b>Respondent by</b>	:	Smt. Jamuna Devi, Sr. D.R.

<b>Date of Hearing</b>	:	15.05.2024
<b>Date of Pronouncement</b>	:	28.05.2024

**O R D E R**

**PER SOUNDARARAJAN K., JUDICIAL MEMBER:**

This appeal by assessee filed against the order of NFAC passed u/s 250 of the Income Tax Act, 1961 (in short "The Act") for the assessment year 2018-19 dated 15.5.2023. The assessee has raised the following grounds of appeal:

- i. *"The order of the Learned Authority below is against law, fact and weight of evidence.*
- ii. *The Learned Authority below has erred in assessing the value of alleged import of Rs.1,97,06,755/- as appellant's income, which was in fact return of exports made on behalf of third parties. The goods were returned on technical issues and the goods so returned were re-exported later. Proof of documents including shipping documents and bonds executed with customs department for re-export of returned goods are readily available with the appellant. The bill of entries clearly mentions that the goods are return of exported goods.*

- iii. *Without prejudice to above, the Learned Authority below is not justified in issuing order adding entire amount of exported goods returned and re-exported as income of the appellant without assigning any reasons.*
- iv. *Without prejudice to (ii) and (iii) above there is no justification for: adding value of goods returned which belonging to third party exporters as income of the appellant.*
- v. *The order of the Learned Authority below showing entire value of return of exports amounting to Rs.1,97, 06,755/- as tax /penalty /fine / interest in first page of order is not correct.*
- vi. *The. Learned Authority below is not justified in addition of Rs.8,99,627/- (Sl No.28 (ii)) of the Assessment Order by the Learned Assessing Officer on account of tax on deemed income chargeable under section 115 BBE without stating the reasons, that is no speaking order issued.”*

**2.** The brief facts of the case are that the assessee is the owner of Seafood processing plant and doing the export of processed goods on behalf of the third-party exporters. During the assessment year 2018-19, the assessee reported an income of Rs.9,18,290/- and later on the case was selected for scrutiny assessment on the issue of exports/imports and duty draw backs. Notices were issued by the ld. AO for which the assessee filed the replies and the ld. AO, based on the data collected from the Director General of Foreign Trade, had alleged that the assessee has not reported the imports of Rs.1,97,06,759/- and assessed the value of imports as income of the appellant.

**2.1** The assessee submitted before the ld. NaFAC that they have not imported any goods from foreign countries and in fact the assessee is doing only processing of the seafoods and exported the same to other countries on behalf of the third party exporters. The assessee's case is that out of the exports, 3 consignments were returned by the foreign buyers for doing reprocessing and therefore, the consignments were kept in the Customs bonded Warehouse and after executing the bond, the goods were taken back and reprocessed and the same was reexported to Turkey and therefore, there is no

actual import of any goods by the assessee. The ld. AO rejected the contention of the assessee and made the assessment treating the export returns as imports as if it relates to the assessee. Against the orders of the ld. NaFAC, the assessee filed an appeal before the NFAC and contended that there is no import of any goods by the assessee but it is only an export return of the third party exporters and also filed a detailed written submissions along with documents such as invoice copies, shipping bill and bill of entry and prayed to allow the appeal.

**2.2** The NFAC had dismissed the appeal on the ground that the assessee had not filed any fresh evidences/documents, other than the ones submitted before the ld. AO. Therefore, the present appeal has been filed before this Tribunal by the assessee with the grounds mentioned above.

**2.3** The ld. A.R. submitted that all the details were furnished to the NaFAC and NFAC but they have not considered the same and also the assessee could not be able to explain the issue in detail before the authorities since both the authorities are under the faceless scheme. The ld. A.R. filed a paper book containing 104 pages enclosing documents relating to the export and reexport and also filed the statement of facts and written submissions. The ld. AR contended that the bill of entry clearly mentions that the goods are return of exported goods. The ld. AR further contended that all the documents would show about the details of the export and also reveals the fact that the customs duty was not assessed for the reason that the same is only a reexport. The ld. AR further contended that there was a regulatory change in the labelling system at the Port of Turkey and therefore the 3 consignments were brought to India and after changing the labels the 3 consignments were reexported. The ld. A.R. also made an alternative submission that the authorities below is not justified in making the assessment order adding the

entire value of the exported goods returned and re-exported as income of the assessee without assigning any valid reasons.

**3.** The Id. D.R. relied on the orders of the lower authorities and prayed to dismiss the appeal.

**4.** We have heard the rival submissions and perused all the relevant materials available on record. As seen from the documents filed by the Id. A.R., in the paper book, it is a fact that the assessee is acting only as a processor doing the process on behalf of third-party exporters and exported the same to various countries. Further, it is seen that the three consignments were returned by the foreign buyers for rectifying some defects in the goods and therefore, the assessee had again reprocessed the same and sent it to the other country buyers. In the paper book submitted by the Id.AR. apart from the documents submitted before the NaFAC, the assessee submitted more documents to prove that there is no separate import of goods but only the exported materials were returned back and re-exported. The documents such as the bill of entry, and the shipping bills would support the case of the assessee that there is no import of any goods but only the export returns were re-exported. We find that the assessment as well as appeal are faceless proceedings and therefore, the assessee was not able to explain the facts before the authorities and convince them that the assessment is not based on the facts. In fact, in page 4 of the assessment order, the Faceless Assessment Centre observed as follows:

*“The reply of the assessee was gone through carefully, but it’s hard to reconcile the data available in our systems which shows import of value Rs.1,97,06,759/- as provided by DGFT and the claim by the assessee which it is claiming it to be zero that is, it has not done any sort of importing activity.”*

**4.1** We find from the above findings of NaFAC, it is clear that they are unable to reconcile the data with the documents filed by the assessee and therefore, treated the same as import of goods by the assessee. We, therefore, find that the orders of the lower authorities

are not in accordance with law and also against the facts of the case and therefore, in the interest of justice, we set aside the orders of the NaFAC and NFAC and remit the entire issue to the file of Id. Jurisdictional AO to verify all the documents submitted by the assessee in support of her case and decide the issue afresh after granting an opportunity of being heard to the assessee. Since we have set aside the assessment order as well as the appeal order, no finding has been given in respect of the other grounds raised by the assessee.

**5.** In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 28<sup>th</sup> May, 2024

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

**Sd/-**  
**(Soundararajan K.)**  
**Judicial Member**

Bangalore,  
Dated 28<sup>th</sup> May, 2024.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Cochin.
5. Guard file

By order

**Asst. Registrar,**  
**ITAT, Bangalore.**