

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
&
SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
I.T.A. No. 5297/Mum/2024
Assessment Year: 2015-16

M/s. Shradha Harshit Saiya 40, 3 rd Floor Moreshwar Building Lakhamshi Napoo Road Matunga - 400019 [PAN: AFPPD6268P]	Vs	Income Tax Officer, Circle- 27(3)(3), Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

I.T.A. No. 5327/Mum/2024
Assessment Year: 2015-16

DCIT, 42(3)(1), Mumbai	Vs	M/s. Shradha Harshit Saiya 40, 3 rd Floor Moreshwar Building Lakhamshi Napoo Road Matunga - 400019 [PAN: AFPPD6268P]
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Nishit Gandhi - Advocate & Aadnya Bhandari - Advocate, A/Rs
Revenue by :	Shri Bhangapatil Pushkaraj Ramesh, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 22/01/2025

घोषणा की तारीख /Date of Pronouncement: 29/01/2025

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

I.T.A. No. 5297/Mum/2024 & I.T.A. No. 5327/Mum/2024, are cross-appeals by the assessee and the revenue preferred against the order dated 29/08/2024 by NFAC Delhi [hereinafter 'the Id. CIT(A)'], pertaining to AY 2015-16.

2. Both these appeals were heard together and are disposed off by this common order for the sake of convenience and brevity.

ITA No. 5327/Mum/2024; AY 2015-16

3. Briefly stated the facts of the case are that the assessee filed her return of income on 28/08/2015, declaring total income at Rs.8,77,950/-. The return was processed u/s 143(1) of the Act and subsequently selected for scrutiny assessment and accordingly statutory notices were issued and served upon the assessee.

4. While scrutinising the return of income, the AO noticed that the assessee has done large value of imports amounting to Rs.5,14,06,752/-. The AO found that the assessee has not shown any income from business even though she has imported various items of Rs.5,14,06,752/- under proprietorship concern M/s. Shradha Industries and further found that the assessee has deposited cash of Rs.53,89,000/- for payment of demurrage charge for importing commodities by RR Traders.

4.1. The assessee was asked to furnish the details of imports and the cash deposited in The Greater Bombay Co-operative Bank. On receiving no plausible reply, insofar as the cash deposits were concerned, the AO made addition of the entire cash deposit of Rs. 53,89,000/- u/s 68 of the Act.

4.2. Insofar as the large value of imports of Rs.5,14,06,752/- is concerned, the AO observed that the assessee has not shown any income

from business though she has imported substantial amount of goods and paid custom duty of Rs.1,45,04,888/-. The assessee was asked to submit details along with invoices, bill of entry, bill of lading and challans of payment of custom duty. The assessee did not furnish any profit and loss account, bills/vouchers of imports and any income derived from these transactions. The assessee explained that she is doing job in CITIUS IT Solution Pvt. Ltd. and her father is looking after the business in her name by virtue of a general power of attorney and imported various items using her IEC code. The AO further observed that the AIR information could not be reconciled with any documentary evidence. The AO was left with no choice but to make the addition of Rs. 6,59,11,640/- being import of Rs.5,14,06,752/- plus custom duty of Rs.1,45,04,888/- u/s 69C of the Act.

5. The assessee challenged the addition before the Id. CIT(A) and reiterated that no import was done and no custom duty was paid though the same has been done using IEC code of the assessee by some unscrupulous brokers. It was brought to the notice of the Id. CIT(A) that a complain has been filed with the police authorities and also with the Commissioner of Customs. The details of such complaints were provided. In order to verify this contention of the assessee, the Id. CIT(A) called for the comments of the AO several times on 19/10/2022, 05/02/2024, 14/05/2024 and 10/06/2024 and on receiving no plausible reply/comments from the AO and simply quoting that no such entries

were found in the bank account of the assessee, the ld. CIT(A) deleted the addition of Rs.6,59,11,640/-.

5.1. Insofar as the addition on account of cash deposit is concerned, the same was upheld by the ld. CIT(A) for which the assessee is in appeal.

6. Before us, the ld. Counsel for the assessee reiterated what has been stated before the ld. CIT(A).

6.1. The ld. D/R strongly contended that the police complaints and the complaint with the Customs Authorities have been furnished for the first time before the ld. CIT(A) and the ld. CIT(A) deleted the addition merely on the strength of the submissions made by the assessee without any verification.

7. We have given a thoughtful consideration to the orders of the authorities below. It is true that letters of complaints were furnished for the first time before the ld. CIT(A) but it is equally true that the ld. CIT(A) called for comments of the ld. AO on four occasions and on not receiving the reply, the ld. CIT(A) went ahead in deleting the impugned addition. We are of the considered view that there was no pressure of the appeal getting time barred by limitation before the ld. CIT(A). Therefore, the ld. CIT(A) ought to have waited for the report of the AO. The ld. CIT(A) could himself have verified the veracity of the documents filed by the assessee as his powers are co-terminus to that of the AO. In our

considered opinion, this issue needs verification by the AO. Therefore, in the interest of justice, we restore this issue to the file of the AO. The assessee is directed to justify her claim that her IEC code was exercised by some unscrupulous brokers and demonstrate that she has never imported the impugned goods nor paid the impugned customs duty. The AO is also directed to verify from the Custom Department as to who has actually made the payment of the customs duty and from which bank account the payments were made and after examining the same, decide the issue afresh after affording a reasonable and proper opportunity of being heard to the assessee.

8. Coming to the appeal of the assessee in ITA No. 5297/Mum/2024; AY 2015-16, the ld. Counsel drew our attention to the profit and loss account exhibited at page 22 of the paper book and pointed out that the assessee had sales of Rs.56.59 Lakhs. It is the say of the ld. Counsel that such sale should have been assessed u/s 44AD of the Act. 8% being the net profit and the same treatment should be given to the cash deposit found in The Greater Bombay Co-operative Bank.

8.1. Per contra, the ld. D/R stated that the assessee in her return of income has nowhere mentioned any income from business. Therefore, this claim of presumptive tax of 8% is an afterthought as the profit and loss account was never submitted before the AO and the AO has rightly made the addition of Rs.53.89 Lakhs and rightly confirmed by the ld. CIT(A).

9. We have carefully perused the orders of the authorities below. A perusal of the computation of income shows that the assessee has not show any profits or gains from business though the profit and loss account placed at page 22 shows the business of the assessee which was never furnished before the AO. Therefore, we restore this issue to the file of the AO. The assessee is directed to justify its sales and the P&L account furnished before us and demonstrate that the impugned cash deposit of Rs.53.89 Lakhs is out of the sales recorded in her books of account which is subjected to presumptive tax u/s 44AD of the Act. The AO is directed to verify such details and decide the issue afresh after affording reasonable and adequate opportunity of being heard to the assessee.

10. In the result, the appeals of the assessee and the revenue are allowed for statistical purposes.

Order pronounced in the Court on 29th January, 2025 at Mumbai.

Sd/-
(SAKTIJIT DEY)
VICE-PRESIDENT

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 29/01/2025

SC S.P.

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai