

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F", NEW DELHI  
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

AND

SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA Nos. 688, 689, 690, 691 & 692/DEL/2012	
A.Yrs. : 1984-85, 1985-86, 1986-87, 1987-88 & 1989-90	
ASSTT. COMMISSIONER OF INCOME TAX, CIRCLE 23(1), NEW DELHI ROOM NO. 190, CR BUILDING, I.P. ESTATE, NEW DELHI	VS. SH. RAVI GOYAL, LEGAL HEIR OF SH. S.P. GOEL, S-347, GREATER KAILASH-II, NEW DELHI - 110 048 (PAN: AAGPG7134D)
<b>(APPELLANT)</b>	<b>(RESPONDENT)</b>

Department by : Sh. F.R. Meena, Sr. DR

Assessee by : None

**ORDER**

**PER H.S. SIDHU : JM**

The Revenue has filed these Appeals against the separate impugned Orders all dated 14.11.2011 passed by the Ld. CIT(A)-XXIII, New Delhi relevant to assessment years 1984-85, 1985-86, 1986-87, 1987-88 & 1989-90 respectively. Since the issues involved in these appeals are common and identical, hence, the appeals were heard together and are being disposed of by this common order for the sake of convenience, by dealing with assessment year 1984-85.

2. The grounds raised in all the Appeals are similar and common, except the difference in figures and GP Rate, hence, we are only

reproducing the grounds in respect of assessment year 1984-85 as under:-

- i) On the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 1,24,42,758/- on account of GP rate of 22.92% applied on suppressed production of Rs. 5,63,22,462/- on the basis of consumption of total weight of raw material as per seized Form A.
- ii) On the facts and on the circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 11,00,064/- on account of scrap at 8% of total consumption of raw material as per seized Form A.
- iii) On the facts and on the circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 84,600/- on account of interest relatable to interest free advance.
- iv) The appellant craves leave to add, alter or amend any of the grounds of appeal before or during the course of hearing of the appeal.

3. The brief facts of the case are that the assessee filed his return of income for the Assessment Year 1984-85 on 16.10.1985, disclosing a total income of Rs. 6,070/-. The Central Excise Department had

conducted a search on 23.06.1988 at the premises of the assessee, wherein it was found that the assessee had suppressed consumption of tin sheets during various assessment years. An assessment under section 147 r.w.S. 143(3) was completed by the then Dy. CIT, Special Range - I, Ghaziabad on 29.03.1996 at an income of Rs. 1,37,26,926/- Against this order, the assessee filed an appeal before the Ld. CIT(A), who vide his common order dated 30.03.1999 for Assessment Years 1984-85 to 1987-88, and Assessment Year 1989-90, set aside the assessment, directing that the records seized by the Excise Department be examined, including Form A submitted to the Director General of Foreign Trade (DGFT), RG-23 register and import register, and also the assessee's submissions regarding sale of agricultural' appliances. The set aside assessment was completed under section 144 r.w.s. 250 of the Act on 23.03.2001 at the same income of Rs. 1,37,26,926/-. The CIT(A)-XXIII, dismissed the appeal of the appellant, primarily on the ground that the assessee was adopting dilatory tactics in order to avoid the adjudication of the issues involved in the ground of appeal. The ITAT in a common order for the Assessment Years 1984-85 to 87-88, and 1989-90, dated 18.07.2008, set aside all the assessments to the file of the Assessing Officer for his fresh adjudication after taking into consideration all the evidences and materials on record and the contention raised by the assessee. The Assessing Officer, after calling for various details and considering the replies filed by the assessee, made the same additions to the returned income as had been made in the earlier order dated 23.03.2001. In the

order under section 143(3) r.w.s. 254, dated 24.12.2009, the following additions were made vide his order dated 28.12.2010 and assessment was completed at an income of Rs. 1,37,26,926/-.

i)	Gross profit of 22.092% applied on suppressed production of Rs. 56322462/- on basis of consumption of total weight of raw material as per Form A	Rs. 1,24,42,758/-
ii)	Value of scrap at 8% of total consumption of raw material as per Form A	Rs. 11,00,064/-
iii)	Disallowance of interest relatable to interest free advances	Rs. 84,600/-
iv)	Clubbing of income of Smt. R. Mani Goel	Rs. 93,434/-

4. Against the order of the AO, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 14.11.2011 has allowed the appeal of the assessee.

5. Aggrieved with the aforesaid order of the Ld. CIT(A), Revenue is in appeal before the Tribunal.

6. Ld. DR relied upon the Order of the AO and reiterated the contentions raised in the grounds of appeal and stated that the Ld. CIT(A) has wrongly deleted the additions.

7. The present Appeal came up before the Bench many times and most of the times the case was adjourned on the request of the Ld. DR and lastly on 16.01.2017 the hearing was adjourned for 05.04.2017 on the written request of the Ld. DR and Bench has granted last opportunity to the Ld. DR in the presence of Sh. S.K. Chaturvedi, CA/A.R. of the assessee. But today i.e. on 05.04.2017 neither the Assessee nor his authorized representative appeared to prosecute the matter in dispute, nor filed any application for adjournment. Keeping in view the facts and circumstances of the present case and the issue involved in the present Appeal, we are of the view that no useful purpose would be served to

issue notice again and again, therefore, we are deciding the present appeal exparte qua assessee, after hearing the Ld. DR and perusing the records.

8. We have heard the Ld. DR and perused the relevant records available with us, especially the orders of the revenue authorities. We find that Ld. CIT(A) has elaborately discussed the Issue Nos. (i) to (iii) vide para no. 10 to 13.2 at pages no. 16 to 25 of the impugned order which reads as under:-

*"{10} I have carefully considered the appellant's submissions, the reports of the Assessing Officer and the appellate history of this case. The order in appeal, being the order under section 143(3) r.w.s. 254, dated 24.12.2009, is in sum and substance, identical to the order under section 143(3) r.w.s. 250 dated 29.03.1996, arriving at the same assessment of total income of Rs. 1,37,26,926/-. The Assessing Officer estimated the suppressed production of value of Rs. 5,63,22,462/- out of imported tin sheets consumed as per details in Form A submitted before the Jt. Chief Controller of Imports and Exports, and seized during the search by the Central Excise Department on 23.06.1988. A gross profit rate of 22.092% was applied on the suppressed production to arrive at income of Rs. 1,24,42,758/-. A separate addition of income of Rs. 11,00,064/- was made for value of scrap at 8%*

*of the total consumption of raw material as per the seized Form A. It is an undeniable fact that the seized Form A showing consumption of 20699 metric tonnes of tin sheets, is the primary evidence relied upon in the assessment orders of 29.03.1996 and 24.12.2009. No other supporting evidence of import of raw material or production of finished products in excess of that accounted for in the books is on record. Even during the subsequent search by the Income Tax Department on 14.09.1994, no evidence was found to prove that un-recorded purchases either of imported or indigenous tin sheets or the consequent production and sale of undisclosed goods was carried out in the assessment years 1984-85 to 1987-88 and 1989-90. The appellant has all along contended that the figures of consumption and production provided by it in Form A were inflated in order to obtain import licenses for higher quantity of raw material. In the assessment order, the Assessing Officer has contended that the additional production may have originated from high seas purchases, or purchases from the domestic market. However, no such evidence was found during the search. The order dated 20.10.1994 of the Addl. Director General of Foreign Trade, holding that the allegation of mis-utilization of imported material had been found to be un-substantiated, and that material imported*

*against the licenses was properly accounted for, cannot be brushed aside.*

*{11} Moreover, the Assessing Officer has obtained the copy of the seized Form A during the remand proceedings and also verified the actual quantity of import of raw material as per the licenses issued from the office of the DGFT during the period under consideration. As per the Form A, the raw material consumption between Assessment Year 1984-85 and 1987-88 was 20699 MT, whereas as per the order of the Addl. DG of FT, the quantity imported against the licenses was 9025 MT upto the Assessment Year 1992-93. In the appellant's books of accounts, the quantity imported by the appellant upto Assessment Year 1989-90 is disclosed at 8059.975 MT. The quantity actually imported by the appellant during this period was 8118.706 MT, as verified by the Assessing Officer from DGFT. Hence, the total difference worked out by the Assessing Officer works out to 1130.015 MT, if the license wise difference is considered, and 59.025 MT if set off is allowed. In the remand report of the Assessing Officer dated 30.03.2011, it is admitted that no independent documents are in the possession of the Department to prove that the appellant had actually imported the quantity of material mentioned in Form A. It is also admitted that the Assessing*

*Officer during the course of the assessment proceedings completed on 29.03.1996 had verified from DGFT the figures of actual import by the appellant, which was also mentioned in the assessment order. The quantities-of consumption adopted by the Assessing Officer in the assessment orders dated 29.03.1996 and 24.12.2009, and also taken by the Central Excise Department in their orders dated 4.11.1997 and 20.05.2009 are based entirely on the figures provided by the appellant in Form A, which is essentially an application for import license, in which the applicant declares details of previous import and consumption. In the order of the ITAT, Delhi, dated 18.07.2008, setting aside the earlier assessment proceedings of the five concerned assessment years, it was held that the Assessing Officer had determined the undisclosed production solely on the basis of the declaration given in Form A, stating the total consumption of raw material therein. The Central Excise Authorities had also determined the undisclosed production on the basis of particulars given in Form A, submitted before the Jt. Chief Controller of Exports and Imports for obtaining import quota. The Hon'ble ITAT, while setting aside the assessments, took note of the order dated 16.08.2007 passed by the CESTAT, directing re-adjudication of the issue with regard to undisclosed production. The Hon'ble CESTAT in the various orders passed*

*on 18.02.1997, 01.07.1999 and 10.09.2007, has taken adverse note of the failure of the Central Excise Department to consider the report of investigation carried out from the Customs and DGFT office in respect of actual import of raw material. The most recent order of the CESTAT, Principal Bench, New Delhi dated 30.09.2011, granting stay on recovery of amounts in dispute reads as under:-*

*"2. There is no running away from the fact that the assessee had presented a rosy picture of production of tin containers to import large quantity of raw material for the manufacture of their final product viz. tin sheets. When the demand was confirmed against them in April, 1991, the order was challenged and by Final Order No. A/323-326/97-NB dated 18.02.1997, the Tribunal accepted the contention of the assessee that the Commissioner had not granted opportunity of personal hearing although he had reserved the order on the aspect of verification of figures of quantity of tin sheets imported by the assessee and the contention of the appellant that the entire demand was based on application filed with the Director General of Foreign Trade for grant of import license for import of tin sheets. The Tribunal set aside the order of April, 1991 and sent the matter back for fresh adjudication after directing grant of personal hearing and putting the*

*appellants to notice as to what they had to say on the figures arrived at by the Collector after verification and investigation of figures.*

*3. A fresh adjudication order was passed confirming the demand which was again challenged before the Tribunal. The Tribunal vide Final Order No. A/455/97-NB dated 1.7.97 once again remanded the case, directing the Commissioner to re-adjudicate the case after furnishing a copy of report of Additional Director General of Foreign Trade and copy of report of investigation, as already directed by the Tribunal in its first remand order. Once again, demand was confirmed by the Commissioner vide his order dated 31.7.2002 necessitating fresh appeal to the Tribunal which by Final Order No. 478/07 dated 16.8.2007 remanded the case to the adjudicating authority after noting that the Commissioner had not decided on the merits of the case and had not complied with the direction given in the remand order.*

*4. Now we come to the present impugned order where the demand has been re-confirmed and direction of the Tribunal for furnishing copy of the investigation of figures of import and report of the Additional Director General of Foreign Trade has not been carried out. Since the adjudication order in this case continues to suffer from the vice of violation of principles*

*of natural justice and since the Tribunal's order regarding furnishing of copies of report therein above specified has not been implemented, we grant the prayer for waiver of pre-deposit and stay recovery of amounts of dispute during the pendency of the appeal."*

*{12} After careful consideration, I have come to the conclusion that the assessment order is based solely on the figures of consumption of raw material submitted by the appellant in Form A for obtaining import licenses, but is not supported by any other material evidence showing higher import/purchase/ production, than is available in the books of accounts. The DGFT order relied upon by the appellant categorically holds that the appellant was issued licenses during the period of July 1984 to 1991-92 for import of only 9025 MT as against 20699 MT claimed by the appellant in the seized Form A. The Assessing Officer has obtained the actual figures of import by the appellant from the DGFT, which stands at 8118.706 MT. The appellant was required to tally each license obtained from DGFT with each bill of entry recorded in its books of account in order to justify its stand that no excess import had taken place. After verification, it is found that the total import on the basis of licenses issued between 16.07.1984 and 25.08.1987 works out to 8115.772 MT as against 8118.706 MT as per the DGFT. The difference of 1130.015 MT worked out by the Assessing Officer pertains to license Nos. 3079530, 2240176, 2240923, 2241059, 2241060, 2246544 and 2247084. The actual imports, as verified from the bills of entry produced by the appellant are found to be as under:-*

License No.	Date of Issue	Quantity imported by assessee	Date of Import as per Bill of Entry	Quantity imported as per DGFT
2239923	16.07.84	248.433 99.905 50.000 198.020 38.916 78.000	04.01.1985 04.01.1985 18.01.1985 05.02.1985 06.04.1985 06.04.1985	713.274
		713.274		
3079530	27.09.84	224.850 20.620	16.01.1988 17.08.1991	245.114
		245.470		
2240176	15.10.84	79.345 88.860 36.847	18.11.87 17.03.87 11.09.91	208.072
		205.052		
2240240	06.12.84	99.170 21.583	08.05.85 02.09.85	120.753
		120.753		
2240272	18.12.84	222.010	21.11.85	222.010
2240274	19.12.84	119.00 44.000	21.01.85 08.05.85	163.000
		163.000		
2240333	30.12.84	272.736 35.270	06.09.85 04.10.85	308.006
		308.006		
2240411	29.01.85	199.436 246.000	19.09.86 25.09.86	445.436
		445.436		
2240460	15.02.85	446.000	12.07.85	445.900

2240620	11.04.85	50.000	08.06.85	222.997
		37.000	12.06.85	
		38.847	08.09.85	
		47.920	16.09.85	
		49.230	16.09.85	
		222.997		
2240923	08.11.85	197.842	06.05.86	559.510
		199.736	23.08.86	
		38.850	18.11.87	
		58.630	08.04.87	
		64.253	24.06.87	
		559.311		
2241058	27.12.85	0		0
2241059	27.12.85	71.020	05.08.87	71.020
2241060	27.12.85	69.979	05.08.87	69.979
2241061	27.12.85	113.000	16.05.86	1052.000
		60.053	11.06.86	
		199.600	18.07.86	
		39.879	26.09.86	
		123.990	03.04.87	
		197.506	15.04.87	
		73.473	05.04.87	
		98.785	24.06.87	
		145.713	19.05.87	

2246544	28.11.86	159.673	06.04.87	
		59.303	27.02.87	
		137.646	17.03.87	
		79.581	10.08.87	
		20.620	10.08.87	
		411.484	04.09.87	
		19.960	04.09.87	
		20.887	04.09.87	
		136.045	08.08.87	
		316.386	08.08.87	
		79.345	22.02.88	
		<u>170.750</u>	13.06.88	
		<b>1511.680</b>		<b>1511.680</b>
2247084	27.01.87	111.190	23.04.87	
		162.650	05.08.87	
		96.465	09.06.87	
		196.332	16.01.88	
		52.093	30.04.88	
		<b>618.730</b>		<b>618.730</b>
2253406	25.08.87	228.178	18.02.88	
		75.215	07.03.88	
		196.990	07.03.88	
		115.543	09.03.88	
		219.642	13.05.88	
		305.487	13.05.88	
		<b>1141.055</b>		<b>1141.045</b>
2482388	17.12.87	0		0
<b>Total</b>		<b>8115.772</b>		<b>8118.526</b>

*{12.1} Therefore, it is found that the actual shortage out of tin imported on the basis of licenses issued for 8118.706 MT works out to only 2.754 MT, which is undoubtedly negligible. The difference of 59.025 MT earlier arrived at is mainly relatable to the import of 20.620 MT on license no. 3079530, and of 36.847 MT on 11.09.1991 on license No. 2240176. After considering the import in 1991-92 of 57.467 MT, the figure of total import between Assessment Year 1984-85 and 1989-90 comes to 8058.283 MT, which is marginally less than the quantity of 8059.975 MT recorded in the appellant's books of accounts. The combined import of a total quantity of 8115.772 MT on the basis of licenses issued between 16.07.1984 and 17.12.1987, is supported by the bills of entry, as well as the order of the Addl. DG of Foreign Trade dated 20.10.1994. The addition made of unaccounted production and scrap out of alleged undisclosed imports, entirely on the basis of the seized Form A, is accordingly found to be without basis, and is deleted.*

*{13} At Ground of Appeal No.6, the appellant has contested disallowance of part of interest on the borrowings from the Bank of Maharashtra. It is contended that the borrowed funds have not been utilized for the purpose of making non-interest bearing advances. In this connection, it was submitted that:*

*"The Learned ACIT Circle 23(1) has erred both on facts and in law in making addition of Rs. 84,600/- on account of deemed interest @12% on advances given to Mr. Ravi Goyal for Rs.7,05,000/-. The Learned ACIT Circle 23(1) has not tried to appreciate the assessee's submission that the above advances has not been given from interest bearing fund rather from internal generated fund. It is further submitted that in the balance sheet there is a debit balance of Rs. 7,05,000/- to Mr. Ravi Goyal with a corresponding Credit balance of Rs.3,00,000/-. Hence the net interest free advance is Rs. 4,05,000/- only which has been financed by Capital of Mr. S.P.Goyal and internal accrual. It is clear from the balance sheet. Hence addition of Rs.84,600/- on account of deemed interest on advances given to Ravi Goyal is bad in law and likely to be deleted.*

*The same view has been given by your predecessor in the case of the assessee for A.Y. 1992-93.*

*Reliance may also placed in the case of Commissioner of Income Tax and Others vs Radico Khaitan Ltd. (2004) 274 ITR 354. In which The Allahabad High Court has held that "the assessee company has sufficient funds other than the borrowed money for giving the amount in question as loan to its sister concern, which finding has not been specifically*

*challenged in the present appeal, we are of the considered opinion that the conditions of section 36 (1) (iii) of the Act have been complied with and, therefore the assessee company was entitled to full allowance of the amount of interest paid by it on borrowed capital" Reliance may also be placed upon the following cases:*

*CIT Vs Bombay Samachar Limited 74 ITR 723*

*CIT Vs. Sridev Enterprises 192 ITR 165*

*Dail Investments Ltd. Vs. Deputy Commissioner Of Income Tax 73 TTJ 22"*

*{13.1} It is seen that this issue was the subject of appeal in Assessment Years 1991-92 and 1992-93. In the order for the Assessment Year 1992-93 of the CIT (A) XXIII dated 31.03.2011, this issue was held in favour of the appellant, after considering the order of the ITAT, Delhi for the Assessment Year 1991-92, wherein it was held:-*

*"9.3 We have heard the learned representative of the parties, also gone through the relevant record and perused the paper book. While the assessee is showing interest income of Rs. 22,98,869/-, he claimed an expenditure of Rs. 17,87,839/-, out of which a sum of Rs. 17,05,334/- is entirely on loans raised from bank of Maharashtra including brought forward*

*loss of Rs. 2,08,53,626/-. The assessee is also having interest free funds far exceeding the amount advanced to the parties alleged as non-business advances as per details on page 128 already referred to above. This being the position, it cannot be held that the assessee had advanced interest bearing borrowing to the parties involved. We, therefore, are of the view that no addition on this account was called for. Thus, ground No. 14 is allowed."*

*{13.2} The appellant has shown that as against the interest free advance of Rs. 7,05,000/- to Shri Ravi Goyal, the balance sheet shows a credit balance of Rs. 3,00,000/- in the name of Shri Ravi Goyal. Hence, the interest free advance is only Rs. 4,05,000/-, which is out of capital of Rs.6,53,883/- as well as internal accrual. The balance sheet indicates that the appellant had sufficient funds from which the interest free advance could have been advanced. The Assessing Officer has not proven the utilization of the interest bearing funds in making the interest free advances. In the body of the order, the disallowance of interest is stated to be 'as discussed in Assessment Year 1993-94 at page No. 14 to is'. Hence, the observation of the Assessing Officer cannot be said to be based on facts or on verification of the utilization of borrowed funds. No disallowance of interest paid to the bank is justified*

*without rebuttal of the appellant's contention that the advances had been given from his own capital and internally generated funds. Hence, the addition made of Rs. 84,600/- on this account is deleted."*

8.1 On perusing the above finding of the Id. CIT(A), with regard to ground no. 2 & 3 are concerned, we find that the Assessing Officer estimated the suppressed production of value of Rs. 5,63,22,462/- out of imported tin sheets consumed as per details in Form A submitted before the Jt. Chief Controller of Imports and Exports, and seized during the search by the Central Excise Department on 23.06.1988. A gross profit rate of 22.092% was applied on the suppressed production to arrive at income of Rs. 1,24,42,758/-. A separate addition of income of Rs.11,00,064/- was made for value of scrap at 8% of the total consumption of raw material as per the seized Form A. It is an undeniable fact that the seized Form A showing consumption of 20699 metric tonnes of tin sheets, is the primary evidence relied upon in the assessment orders of 29.03.1996 and 24.12.2009. No other supporting evidence of import of raw material or production of finished products in excess of that accounted for in the books is on record. Even during the subsequent search by the Income Tax Department on 14.09.1994, no evidence was found to prove that un-recorded purchases either of imported or indigenous tin sheets or the consequent production and sale of undisclosed goods was carried out in the assessment years 1984-85 to

1987-88 and 1989-90. The assessee has all along contended that the figures of consumption and production provided by it in Form A were inflated in order to obtain import licenses for higher quantity of raw material. In the assessment order, the Assessing Officer has contended that the additional production may have originated from high seas purchases, or purchases from the domestic market. However, no such evidence was found during the search. The order dated 20.10.1994 of the Addl. Director General of Foreign Trade, holding that the allegation of mis-utilization of imported material had been found to be unsubstantiated, and that material imported against the licenses was properly accounted for, cannot be brushed aside. Moreover, the Assessing Officer has obtained the copy of the seized Form A during the remand proceedings and also verified the actual quantity of import of raw material as per the licenses issued from the office of the DGFT during the period under consideration. As per the Form A, the raw material consumption between Assessment Year 1984-85 and 1987-88 was 20699 MT, whereas as per the order of the Addl. DG of FT, the quantity imported against the licenses was 9025 MT upto the Assessment Year 1992-93. In the assessee's books of accounts, the quantity imported by the appellant upto Assessment Year 1989-90 is disclosed at 8059.975 MT. The quantity actually imported by the appellant during this period was 8118.706 MT, as verified by the Assessing Officer from DGFT. Hence, the total difference worked out by the Assessing Officer works out to 1130.015 MT, if the license wise difference is considered, and 59.025 MT if set off is allowed.

In the remand report of the Assessing Officer dated 30.03.2011, it is admitted that no independent documents are in the possession of the Department to prove that the appellant had actually imported the quantity of material mentioned in Form A. It is also admitted that the Assessing Officer during the course of the assessment proceedings completed on 29.03.1996 had verified from DGFT the figures of actual import by the appellant, which was also mentioned in the assessment order. The quantities-of consumption adopted by the Assessing Officer in the assessment orders dated 29.03.1996 and 24.12.2009, and also taken by the Central Excise Department in their orders dated 4.11.1997 and 20.05.2009 are based entirely on the figures provided by the appellant in Form A, which is essentially an application for import license, in which the applicant declares details of previous import and consumption. In the order of the ITAT, Delhi, dated 18.07.2008, setting aside the earlier assessment proceedings of the five concerned assessment years, it was held that the Assessing Officer had determined the undisclosed production solely on the basis of the declaration given in Form A, stating the total consumption of raw material therein. The Central Excise Authorities had also determined the undisclosed production on the basis of particulars given in Form A, submitted before the Jt. Chief Controller of Exports and Imports for obtaining import quota. The ITAT, while setting aside the assessments, took note of the order dated 16.08.2007 passed by the CESTAT, directing re-adjudication of the issue with regard to undisclosed production. The Hon'ble CESTAT in the various orders passed on

18.02.1997, 01.07.1999 and 10.09.2007, has taken adverse note of the failure of the Central Excise Department to consider the report of investigation carried out from the Customs and DGFT office in respect of actual import of raw material. The most recent order of the CESTAT, Principal Bench, New Delhi dated 30.09.2011, granting stay on recovery of amounts in dispute reads as under:-

*"2. There is no running away from the fact that the assessee had presented a rosy picture of production of tin containers to import large quantity of raw material for the manufacture of their final product viz. tin sheets. When the demand was confirmed against them in April, 1991, the order was challenged and by Final Order No. A/323-326/97-NB dated 18.02.1997, the Tribunal accepted the contention of the assessee that the Commissioner had not granted opportunity of personal hearing although he had reserved the order on the aspect of verification of figures of quantity of tin sheets imported by the assessee and the contention of the appellant that the entire demand was based on application filed with the Director General of Foreign Trade for grant of import license for import of tin sheets. The Tribunal set aside the order of April, 1991 and sent the matter back for fresh adjudication after directing grant of personal hearing and putting the appellants to notice as to what they had to say on the figures*

*arrived at by the Collector after verification and investigation of figures.*

*3. A fresh adjudication order was passed confirming the demand which was again challenged before the Tribunal. The Tribunal vide Final Order No. A/455/97-NB dated 1.7.97 once again remanded the case, directing the Commissioner to re-adjudicate the case after furnishing a copy of report of Additional Director General of Foreign Trade and copy of report of investigation, as already directed by the Tribunal in its first remand order. Once again, demand was confirmed by the Commissioner vide his order dated 31.7.2002 necessitating fresh appeal to the Tribunal which by Final Order No. 478/07 dated 16.8.2007 remanded the case to the adjudicating authority after noting that the Commissioner had not decided on the merits of the case and had not complied with the direction given in the remand order.*

*4. Now we come to the present impugned order where the demand has been re-confirmed and direction of the Tribunal for furnishing copy of the investigation of figures of import and report of the Additional Director General of Foreign Trade has not been carried out. Since the adjudication order in this case continues to suffer from the vice of violation of principles of natural justice and since the Tribunal's order regarding*

*furnishing of copies of report therein above specified has not been implemented, we grant the prayer for waiver of pre-deposit and stay recovery of amounts of dispute during the pendency of the appeal."*

8.2 We further note that the assessment order is based solely on the figures of consumption of raw material submitted by the assessee in Form A for obtaining import licenses, but is not supported by any other material evidence showing higher import/purchase/ production, than is available in the books of accounts. The DGFT order relied upon by the assessee categorically holds that the appellant was issued licenses during the period of July 1984 to 1991-92 for import of only 9025 MT as against 20699 MT claimed by the appellant in the seized Form A. The Assessing Officer has obtained the actual figures of import by the assessee from the DGFT, which stands at 8118.706 MT. The assessee was required to tally each license obtained from DGFT with each bill of entry recorded in its books of account in order to justify its stand that no excess import had taken place. After verification, it is found that the total import on the basis of licenses issued between 16.07.1984 and 25.08.1987 works out to 8115.772 MT as against 8118.706 MT as per the DGFT. The difference of 1130.015 MT worked out by the Assessing Officer pertains to license Nos. 3079530, 2240176, 2240923, 2241059, 2241060, 2246544 and 2247084. The actual imports, as verified from the bills of entry produced by the assessee were reproduced in the impugned order in the tabulation

form. Therefore, it was found that the actual shortage out of tin imported on the basis of licenses issued for 8118.706 MT works out to only 2.754 MT, which is undoubtedly negligible. The difference of 59.025 MT earlier arrived at is mainly relatable to the import of 20.620 MT on license no. 3079530, and of 36.847 MT on 11.09.1991 on license No. 2240176. After considering the import in 1991-92 of 57.467 MT, the figure of total import between Assessment Year 1984-85 and 1989-90 comes to 8058.283 MT, which is marginally less than the quantity of 8059.975 MT recorded in the appellant's books of accounts. The combined import of a total quantity of 8115.772 MT on the basis of licenses issued between 16.07.1984 and 17.12.1987, is supported by the bills of entry, as well as the order of the Addl. DG of Foreign Trade dated 20.10.1994. Therefore, the addition made of unaccounted production and scrap out of alleged undisclosed imports, entirely on the basis of the seized Form A, was accordingly found to be without basis, and was rightly deleted by the Ld. CIT(A), which does not need any interference on our part, hence, we uphold the order of the Ld. CIT(A) on the issues in dispute and accordingly, we dismiss the ground nos. (i) & (ii) raised by the Revenue.

8.3 With regard to ground no. (iii) relating to addition of Rs. 84,600/- on account of interest relatable to interest free advance is concerned, we find that the assessee has contested disallowance of part of interest on the borrowings from the Bank of Maharashtra. As per the Assessee the borrowed funds have not been utilized for the purpose of making non-

interest bearing advances. We observed that it was the contention before the Ld. CIT(A) that ACIT Circle 23(1) has erred both on facts and in law in making addition of Rs. 84,600/- on account of deemed interest @12% on advances given to Mr. Ravi Goyal for Rs.7,05,000/-. It was also submitted that the ACIT Circle 23(1) has not tried to appreciate the assessee's submission that the above advances has not been given from interest bearing fund rather from internal generated fund. Also in the balance sheet there is a debit balance of Rs. 7,05,000/- to Mr. Ravi Goyal with a corresponding Credit balance of Rs.3,00,000/-. Hence the net interest free advance was Rs. 4,05,000/- only which has been financed by Capital of Mr. S.P.Goyal and internal accrual. Thus it is clear from the balance sheet. Hence addition of Rs.84,600/- on account of deemed interest on advances given to Ravi Goyal is bad in law and likely to be deleted. We further note that the same view has been given by the then Ld. CIT(A) in the case of the assessee for A.Y. 1992-93. Reliance was also placed in the case of Commissioner of Income Tax and Others vs Radico Khaitan Ltd. (2004) 274 ITR 354 in which the Allahabad High Court has held that "the assessee company has sufficient funds other than the borrowed money for giving the amount in question as loan to its sister concern, which finding has not been specifically challenged in the present appeal, we are of the considered opinion that the conditions of section 36(1)(iii) of the Act have been complied with and, therefore the assessee company was entitled to full allowance of the amount of interest paid by it on borrowed capital". Reliance was also placed upon the following cases:

CIT Vs Bombay Samachar Limited 74 ITR 723

CIT Vs. Sridev Enterprises 192 ITR 165

Dail Investments Ltd. Vs. Deputy Commissioner Of Income  
Tax 73 TTJ 22"

8.3.1 We further note that the present issue was the subject of appeal in Assessment Years 1991-92 and 1992-93. In the order for the Assessment Year 1992-93 of the CIT(A)-XXIII dated 31.03.2011, this issue was held in favour of the assessee, after considering the order of the ITAT, Delhi for the Assessment Year 1991-92, wherein it was held:-

*"9.3 We have heard the learned representative of the parties, also gone through the relevant record and perused the paper book. While the assessee is showing interest income of Rs. 22,98,869/-, he claimed an expenditure of Rs. 17,87,839/-, out of which a sum of Rs. 17,05,334/- is entirely on loans raised from bank of Maharashtra including brought forward loss of Rs. 2,08,53,626/-. The assessee is also having interest free funds far exceeding the amount advanced to the parties alleged as non-business advances as per details on page 128 already referred to above. This being the position, it cannot be held that the assessee had advanced interest bearing borrowing to the parties involved. We, therefore, are of the*

*view that no addition on this account was called for. Thus, ground No. 14 is allowed."*

8.3.2 We further observed that the assessee has shown that as against the interest free advance of Rs. 7,05,000/- to Shri Ravi Goyal, the balance sheet shows a credit balance of Rs. 3,00,000/- in the name of Shri Ravi Goyal. Hence, the interest free advance is only Rs. 4,05,000/-, which is out of capital of Rs.6,53,883/- as well as internal accrual. The balance sheet indicates that the assessee had sufficient funds from which the interest free advance could have been advanced. The Assessing Officer has not proven the utilization of the interest bearing funds in making the interest free advances. In the body of the order, the disallowance of interest is stated to be as discussed in Assessment Year 1993-94 at page No. 14 to 15. Hence, the observation of the Assessing Officer cannot be said to be based on facts or on verification of the utilization of borrowed funds. No disallowance of interest paid to the bank is justified without rebuttal of the assessee's contention that the advances had been given from his own capital and internally generated funds. Hence, the addition made of Rs. 84,600/- on this account was rightly deleted, which does not need any interference on our part, hence, we uphold the order of the Ld. CIT(A) on the issue in dispute and accordingly, the ground no. (iii) is dismissed.

9. Following the consistent view as taken in the assessment year 1984-85 in Appeal No. 688/Del/2012), as aforesaid, vide para no.

8.1 to 8.3.2 of this order, as aforesaid, we uphold the orders of the Ld. CIT(A) on the common and identical issues involved in Appeal No. 689 to 692/Del/2012 (A.Yrs. 1985-86, 1986-87, 1987-88 & 1989-90) and accordingly, dismiss the ground no. (i) to (iii) raised in these Appeals.

10. In the result, all the 05 Appeals filed by the Revenue stand dismissed.

Order pronounced in the Open Court on 07/04/2017.

**SD/-**

**[PRASHANT MAHARISHI]  
ACCOUNTANT MEMBER**

**SD/-**

**[H.S. SIDHU]  
JUDICIAL MEMBER**

*Date 07/04/2017*

**"SRBHATNAGAR"**

**Copy forwarded to: -**

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

TRUE COPY

By Order,

Assistant Registrar,  
ITAT, Delhi Benches