

  
**HIGH COURT OF JUDICATURE FOR RAJASTHAN**  
**BENCH AT JAIPUR**

D.B. Income Tax Appeal No. 20/2024

Principal Commissioner Of Income Tax, Jaipur-II, At New Central Revenue Building, Statue Circle, Jaipur (Raj.)-302005.

----Appellant

Versus

Smt. Sonal Jain, C-6 Indrapuri Colony Lal Kothi Jaipur-302015 (Rajasthan).

----Respondent

Connected With

D.B. Income Tax Appeal No. 24/2024

Principal Commissioner Of Income Tax, Jaipur-II, At New Central Revenue Building, Statue Circle, Jaipur (Raj.)-302005.

----Appellant

Versus

Smt. Sonal Jain, C-6, Indrapuri Colony Lal Kothi Jaipur-302015 (Rajasthan)

----Respondent

D.B. Income Tax Appeal No. 25/2024

Principal Commissioner Of Income Tax, Jaipur- II At New Central Revenue Building, Statue Circle, Jaipur (Raj.)-302005.

----Appellant

Versus

Smt. Sonal Jain, C- 6 Indrapuri Colony Lal Kothi, Jaipur-302015 (Rajasthan).

----Respondent

D.B. Income Tax Appeal No. 26/2024

Principal Commissioner Of Income Tax, Jaipur-II, At New Central Revenue Building, Statue Circle, Jaipur (Raj.)-302005.

----Appellant

Versus

Smt. Sonal Jain, C-6 Indrapuri Colony Lal Kothi Jaipur-302015 (Rajasthan.)

----Respondent

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For Appellant(s) : Mr. Sandeep Pathak with  
Mr. Palash Gupta  
For Respondent(s) : Mr. Siddharth Ranka with  
Ms. Satwika Jha

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**HON'BLE MR. JUSTICE AVNEESH JHINGAN**  
**HON'BLE MR. JUSTICE ASHUTOSH KUMAR**

**Order**

**06/08/2024**

1. These four appeals are being decided by this common order as the facts and issues involved are similar. For convenience, the facts are being taken from D.B. Income Tax Appeal No.20/2024.
2. This appeal is filed aggrieved of order dated 28.03.2023 passed by the Income Tax Appellate Tribunal, Jaipur (for short 'Tribunal').
3. The brief facts are that for Assessment Year 2016-2017, the respondent filed returns. On receiving of an information from the Directorate of Revenue Intelligence (for short 'DRI') regarding evasion of custom duty by undervaluing the Paper Cup Machines imported from China, the proceedings under Section 148 of the Income Tax Act, 1961 (for short 'the Act') were initiated. On the basis of the order passed by the Adjudicating Officer (for brevity 'A.O.') determining the valuation of import, the proceedings under Section 148 of the Act culminated in additions being made. The respondent succeeded before the Commissioner, Income Tax (Appeal) and the appeal was allowed vide order dated 24.11.2022. On dismissal of revenue appeal by Tribunal, the present appeal is filed.

4. Learned counsel for the appellant submits that the Appellate Authorities ought to have decided the matter on merits rather than relying upon the fact that the Customs, Excise and Service Tax Appellate Tribunal (for short 'CESTAT'), had allowed the appeal and deleted the additions under the Customs Act, 1962. Contention is that the Tribunal erred in recording that revenue is in appeal before this Court whereas, appeal of the Customs Authorities is pending.

5. Learned counsel for the respondent defends the impugned order. Submission is that the addition was on the basis of the valuation of import made by the A.O. and that order no longer exists, after acceptance of appeal of the respondent by CESTAT. It is argued that the Tribunal safeguarded the interest of the revenue and granted liberty to decide the matter afresh, in case of acceptance of custom appeal.

6. Following substantial questions of law have been proposed in the appeal:-

**"SUBSTANTIAL QUESTIONS OF LAW:-**

1. Whether in the facts and circumstances of the case and in law, Ld. ITAT was justified in dismissing the appeal of Revenue when there is no technical error for lack of jurisdiction in the Assessment Order passed by AO?
2. Whether in the facts and circumstances of the case and in law, Ld. ITAT was justified in dismissing the appeal of Revenue by merely relying upon the order of Ld. CESTAT and without going into merits of the case and also by ignoring the fact that the order passes by Ld. CESTAT was challenged by way of the appeal by the Customs Department before Hon'ble High Court?
3. Whether in the facts and circumstances of the case and in law, Ld. ITAT was justified in granting liberty to Revenue that 'if the appeal filed by the

Customs Department challenging order passed by Ld. CESTAT before Rajasthan High Court succeeds, then in such eventuality fresh order would be passed by AO considering the judgment of the Hon'ble High Court and after providing opportunity of hearing to the Assessee'; when no such appeal has been filed by Income Tax Department?

4. Whether in the facts and circumstances of the case and in law, Ld. ITAT has erred by passing the impugned order without recording independent findings on fact of the present case?"

7. The proceedings under Section 148 of the Act were initiated on the basis of the information received from DRI. The additions were made solely relying upon the order passed by the A.O. determining the value of the goods imported. It is an undisputed fact that the order passed by the A.O. was quashed by the CESTAT.

8. The contention of learned counsel for the appellant that the appellate authorities should have decided the matter independently on merits, is noted to be rejected, as the additions under Section 147 of the Act were made on the basis of value of imports determined by the A.O. The Income Tax Department had not done any investigation or held an inquiry. There was no other material except the value determined by the A.O., consequently, setting aside the order of the A.O. had ramification on the proceedings initiated under the Act.

9. The Tribunal considering the pendency of customs appeal before this Court, granted liberty to the appellant for passing fresh order, in case of acceptance of custom appeal.

10. The relevant part of the order of the Tribunal is quoted below:-

*"4.0 It is also pertinent to mention that in these appeals the liberty is granted to the Revenue in case*

*they succeed in the appeals filed by them before Hon'ble Rajasthan High Court against the order of CESTAT and then in that eventuality afresh order would be passed by the AO considering the Hon'ble High Court judgment after providing opportunity of hearing to the assessee."*

11. No question of law much less substantial question of law is involved, the appeals are dismissed.

(ASHUTOSH KUMAR),J

(AVNEESH JHINGAN),J

Simple/Aarzo0/21-24

Whether Reportable : **YES**