

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH 'C', KOLKATA  
(Before Shri M. Balaganesh, A.M. & Shri S.S.Viswanethra Ravi, J.M.)**

**ITA No. 415/Kol/2013 : Asstt. Year : 2007-2008**

M/s. Skynit Textile Pvt. Ltd. (PAN: AADCS 8949L)	Vs	I.T.O., Ward-1(2), Kolkata
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

**Appellant by : Shri P.K. Sanghai, FCA**

**Respondent by : Shri Nongothung Jungio, JCIT**

<b>Date of Hearing : 06.01.2016</b>	<b>Date of Pronouncement : 23-03-2016</b>
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**ORDER**

**Per Shri S.S.Viswanethra Ravi, J.M.**

This appeal is filed by the Revenue against the order dated 02.01.2013 passed by the CIT(Appeals)-XX, Kolkata in Appeal No. 137/CIT(A)-XX/Wd-1(1)/2011-12/Kol. for the assessment year 2007-08 framed under section 143(3) of the I.T. Act.

2. By this appeal, the assessee has raised the following grounds:-

*“1. That in the facts and circumstances of the case, the Ld. CIT(A) was wrong in dismissing the grounds of appeal against treating sale of the appellant company amounting to Rs.3,50,000/- as cash credit and thereby he erred in confirming the action of the ld.AO who added this amount to the total income u/s 68 of the I.T. Act 1961.*

*2. That in the facts and circumstances of the case, the Ld. CIT(A) was wrong in dismissing the grounds of appeal against treating sale of the appellant amounting to Rs.43,74,210/- as cash credit and thereby he erred in confirming the action of the ld.AO who added this amount to the total income u/s 68 of the I.T. Act 1961.*

*3. That in the facts and circumstances of the case, the Ld. CIT(A) erred in restricting the estimated disallowance of general expenses to the extent of Rs.10% and thereby he was wrong in*

*confirming such estimated disallowances by ld. AO purely on guess and without looking into the true facts of the case.*

*4. That the appellant craves leave to add or put any additional ground or alter the existing ground on or before the date of hearing.”*

3. The brief facts of the case are that the appellant assessee is a private limited company, having engaged in the business of manufacturing of fabrics. The assessee filed its return of income declaring total income of Rs.2,24,880/-, but, under scrutiny, the AO determined the total income of the assessee at Rs.67,56,460/-. Thereby, the AO added Rs.65,31,586/- as against the returned income of Rs.2,24,880/-.

4. During the assessment proceedings, regarding the addition under section 68 of the Act, the assessee said to have been received the same from M/s. Shreeji Traders out of a sales transaction. The AO could not find any sales transaction with the said M/s. Shreeji Traders from the details submitted by the assessee. An inquiry was conducted by the Director of Income Tax (Investigation) to find out the source of transferors who were found to be not traceable. Thereby, on failure to establish the whereabouts of transferor of said amount, the AO considered such amount earned from undisclosed sources and added to the income of the assessee.

5. The CIT(A), in first appellate proceedings, was of the view that the assessee could not give any proper explanation and treated the submission made before the CIT(A) as general in nature and confirmed the same addition made by the AO.

6. Before us, the A/R of the assessee contended that the AO examined the books of accounts and they are not rejected. The assessee produced every details of sales to the AO. The AO and CIT(A) examined and verified the details of sales and purchases. But both the authorities below did not reject assessee's accounts,

sales and purchases. The assessee received the said amount through account payee cheque and referred to the page 14 of paper book. The ld. DR submitted that the assessee did not properly explain the cash credits of the said amount and relied on AO's and CIT(A)'s order.

7. Heard both representatives and perused the material available on record. The case made out by the AO in respect of addition of Rs.3,50,000/- that no sales transaction found with M/s. Sreeji Traders. The contention of the assessee before the AO, as well as before the CIT(A) that the assessee does its business in local market by way of a direct sale and through broker and agent. The said sales were effected through Shreeji Traders details of invoices which placed at page 10 to 12 clearly show that the assessee raised such invoice on 26.01.2007 regarding the goods of fabric work Rs.72,346/- in favour of said M/s. Shreeji Traders, likewise, the other invoices at pages 11 and 12 shows to establish the same. Regarding the payment of said amount to the assessee on 13.10.2006 by way of a cheque are placed at pages 13 and 14 of paper book. Regarding the identity of the purchaser i.e. the broker for said M/s. Shreeji Traders, produced PAN Card and Election Commission card before the AO and CIT(A). Having the particulars of bank details and identity proof, the AO could not verify the details of bank account and identity of the said broker under notice.

8. As per the provision contemplated under section 68 of the Act, in order to invoke the same, the main ingredient involved therein where assessee offers no explanation about the nature and source thereof. In our opinion, the assessee offered its explanation by giving information regarding its mode of business, the details of bank statements and identity of the broker through whom goods of fabric said to have been sold to M/s. Sreeji Traders. The AO having all the details and without examining the same and adding the addition is not justified. Therefore, the addition made by the AO which was confirmed by the CIT(A) is set aside and ground raised by the assessee on this issue is allowed.

9. Regarding the addition under section 68 of the Act as raised in the ground no.2, the AO was of the view that the assessee failed to produce the proprietor of M/s. Asia Trading for examination, on such failure, treating the sale transaction had with M/s. Asia trading as bogus and under show cause, added the amount of Rs.43,74,210/- to the income of the assessee.

10. The Id. CIT(A) was of the view, as he expressed in respect of ground no.1 that the assessee failed to give any reasonable explanation to the cash credits involved in the ground no.2, thereby, confirmed the AO's order.

11. Heard both representatives and perused the material available on record. The contention of the assessee before the AO, as well as before the CIT(A) that the assessee does its business in local market by way of a direct sale and through broker and agent. The said sales were effected through M/s.Asia Trading, details of invoices and confirmation of accounts which were placed at page 17 to 21 clearly show that the assessee raised such invoice on various dates regarding the sales transaction in favour of said M/s. Asia Trading, and the other confirmation of accounts and bank statement at pages 22 and 35 shows to establish the same. Regarding the identity of the purchaser i.e. the broker for said M/s. Asia Trading produced PAN Card and Election Commission card at pages 36 and 37 before the AO and CIT(A). Having the particulars of bank details and identity proof, the AO could not verify the details of bank account and identity of the said broker under notice. The ITAT, Delhi "C" bench in its decision in the case of DCIT-vs- Eland international (P) Ltd. in ITA No.3424/Del/2007 dismissed the ground of the Revenue on this issue by observing as follows:-

*"We have considered, the facts of the case and rival submissions. From the submissions made before us, it is clear that the transactions of purchase and sale were recorded in the books of account and these transactions led to profit to the assessee, which was brought to tax, If sales have been effected out of purchases made from these parties, then, it cannot be said that the purchases*

*were bogus. The finding of bogus sale can only lead to the inference that the corresponding amount should be deleted from the turnover of the assessee. The AO has also not rejected the books of account to estimate profit on these transactions in case it was a firm finding that purchases and sales were bogus. The facts of the case of La Medica (supra) are different in the sense that detailed enquiries were made into the purchases made by the assessee, which were held to be bogus by the AO. It was found that the purchase consideration got deposited in a bank account of an employee in Calcutta, which was opened with the introduction of the assessee. No such enquiry was made in this case. In the case of La Medica (supra), it was also not the case that sales were effected from the purchases made and, thus, the purchases could not be out-rightly termed as bogus. Therefore, we are of the view that the facts of the two cases are distinguishable. In absence of displacing the finding of the learned CIT(A) and the fact that the assessee showed profit from these transactions, it is held that there is no such error in the order of the learned CIT(A) which requires correction from us. Thus, this ground is dismissed.”*

11.1 After considering the necessary vouchers, confirmation of accounts, bank statements and the above decision of the ITAT, Delhi bench, we are of the opinion that addition of Rs.43,74,210/- by the AO and confirmed by the CIT(A) is not justified. The AO without making any enquiry and exercising its power vested under the law, simply treated the sales as not genuine and bogus and added to the income effecting into treating the said sum of sales twice to income account once as sales and secondly as other income. Sales was already treated as income by the assessee company and again treating the said sum as income was not correct in facts and circumstances of the case. It is observed that the sale of Rs.43,74,210/- has been made to M/s. Asia Trading. The details of payment by cheques, bank a/c. Address, etc. were already furnished to the AO by the assessee. In the facts and circumstances of the case, we are of the view that the addition made by the AO and confirmed by the CIT(A) is improper and unjustified. Accordingly, we delete the aforesaid addition of Rs.43,74,210/-.

12. Ground no.3 involves a claim of Rs.1,62,743/- as general charges. The case of the assessee is that it incurred such expenses for conducting business and wholly for the purpose of business affairs. For non-production of proper bills and vouchers, the AO disallowed @20% to an extent of Rs.32,550/- on the basis of estimation.

13. While dealing with issue in first appeal, the Id. CIT(A) disallowed 10% as against 20% made by the AO.

14. Before this Tribunal, the Id. A.R. contended that the assessee produced all the details indicating expenses incurred during the course of business. The AO did not give any consideration to the vouchers submitted by it, without giving any reasons, on estimation added Rs.32,550/- @ 20% as Id. CIT(A) restricted the same at 10%. The Id. DR submitted that all the details produced by the assessee are self-made vouchers and the assessee did not maintain external evidence to claim such expenses and relied on the order of the AO.

15. Heard and perused the relevant record. General observation of the A.O. is that the vouchers are self-made. In our view, it cannot be a basis for addition on estimation. At best, it can be a starting point for enquiry but if the vouchers were defective, the Assessing Officer should have pointed out the defects and should have asked the assessee for a reasonable explanation, which is missing in current case, hence addition, is not justified. It is observed that no defect whatsoever was pointed out by the Assessing Officer in the vouchers produced by the assessee in support of its claim disallowed by him merely on the ground that the vouchers produced by the assessee were only self made vouchers. Keeping in view the nature of the business of the assessee as well as the nature of general expenses incurred during the course of business , we are of the view that the claim of the assessee on account of general expenses, which were duly supported by self-made vouchers as well as other details, ought to have been examined properly and there was no justification on the part of the authorities below to make a

disallowance on account of general expenses incurred during the course of business without pointing out any material or specific defect in the self-made vouchers and other details produced by the assessee in support of its claim. ITAT Lucknow bench in the case of M/s Vijay Infrastructure Limited vs. ACIT 2015 (12) TMI 897, ITAT Lucknow held that on the basis of general observations, without pointing out even a single specific defect in the vouchers or books of accounts, disallowance on estimation made by Assessing Officer is not justifiable. The general expenses were incurred wholly for the purpose of business and there is no basis for *ad hoc* disallowance. In that view of the matter, we delete the disallowance made by the Assessing Officer on account of general expenses and confirmed by the Id. CIT(Appeals) and allow this ground of the assessee's appeal.

16. In the result the appeal filed by the assessee is allowed.

Order Pronounced in the Open Court on 23<sup>rd</sup> March, 2016.

**Sd/-**  
(M. Balaganesh)  
ACCOUNTANT MEMBER

**Sd/-**  
(S.S.Viswanethra Ravi)  
JUDICIAL MEMBER

**Dated 23 /03/2016**

Talukdar/Sr.PS

**Copy of order forwarded to:**

- 1 M/s. Skynit Textile Pvt. Ltd., Dharsa Dakhin Para, P.O. Balti Kuri,  
P.S. Jagacha, Dist- Howrah- 711 113.
- 2 I.T.O., Ward-1(1), Kolkata
- 3 The CIT(A),
- 4 CIT,
- 5 D.R.

True Copy,

By order,

Asstt. Registrar, ITAT, Kolkata