

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'SMC' BENCH, KOLKATA**

Before Shri P.M. Jagtap, Accountant Member

**I.T.A. No. 945/KOL/ 2016
Assessment Year: 2008-2009**

M/s. D. Bimala Enterprises,.....Appellant
1st Floor, Opp. C.D. House,
123, Mathuradas Mill Compound,
M.M. Joshi Marg, Lower Parel (West),
Mumbai-400 013
[PAN: AACFD 2155 M]

-Vs.-

Deputy Commissioner of Income Tax,.....Respondent
Circle-43, Kolkata,
3, Government Place (West),
Kolkata-700 001

Appearances by:

Shri Ashok Mehta, C.A., for the assessee
Shri Arup Chatterjee, JCIT, D.R., for the Department

Date of concluding the hearing : February 02, 2017

Date of pronouncing the order : February 03, 2017

O R D E R

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-21, Kolkata dated 01.03.2016 and the solitary issue involved therein relates to the addition of Rs.19,24,020/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of proportionate freight expenses to the value of closing stock.

2. The assessee in the present case is a partnership firm, which is engaged in the business of manufacturing and export of garments. The return of income for the year under consideration was filed by it on 04.10.2008 declaring total income of Rs.13,95,230/-. During the course of appellate proceedings, it was noticed by the Assessing Officer that the assessee has not included the proportionate amount of expenditure incurred on freight and carriage in the value of closing stock. By relying

on the decision of the Hon'ble Supreme Court in the case of CIT -vs.- British Paints Limited [188 ITR 44], he increased the valuation of closing stock as shown by the assessee by Rs.19,24,020/- being proportionate freight and carriage expenses as allegedly attributed to the closing stock and made addition to that extent to the total income of the assessee in the assessment completed under section 143(3) vide an order dated 24.11.2010.

3. Against the order passed by the Assessing Officer under section 143(3), an appeal was preferred by the assessee before the Id. CIT(Appeals) disputing the addition of Rs.19,24,020/- made by the Assessing Officer on account of the alleged under-valuation of closing stock and since there was no compliance on the part of the assessee to the notices issued by the Id. CIT(Appeals) fixing the said appeal for hearing from time to time, the Id. CIT(Appeals) dismissed the same by his appellate order dated 01.06.2013 passed ex-parte which is impugned by the assessee in the present appeal filed before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. The Id. counsel for the assessee at the time of hearing before the Tribunal has filed the relevant details of freight and carriage expenses along with supporting bills and vouchers to support and substantiate the assessee's case that the freight and carriage expenditure claimed by the assessee were not at all attributable to the closing stock. He has also filed an application seeking admission of the said documentary evidence filed for the first time before the Tribunal as additional evidence. In the said application, he has given reasons for non-filing of the said documentary evidence before the Assessing Officer during the course of assessment proceedings and has also given reasons for the non-compliance on the part of the assessee to the notices issued by the Id. CIT(Appeals) fixing the appeal of the assessee for hearing from time to time during the course of appellate proceedings. Keeping in view the said reasons given by the assessee, I am satisfied that there was a

sufficient cause for the failure on the part of the assessee to comply with the notices issued by the Id. CIT(Appals) fixing the appeal of the assessee for hearing from time to time. I am also satisfied that the assessee was not given proper and sufficient opportunity by the Assessing Officer to file the said documents which are now filed by the assessee as additional evidence before the Tribunal, during the course of assessment proceedings. Even the Id. D.R. has not been able to dispute this position, which is clearly evident from the record. I, therefore, set aside the impugned order passed by the Id. CIT(Appals) ex-parte and restore the matter to the file of the Assessing Officer for making the assessment afresh after giving the assessee proper and sufficient opportunity of being heard and after verifying the additional evidence filed by the assessee before the Tribunal.

5. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court on February 03, 2017.

**Sd/-
(P.M. Jagtap)
Accountant Member**

Kolkata, the 3rd day of February, 2017

- Copies to : (1) **M/s. D. Bimala Enterprises,
1st Floor, Opp. C.D. House,
123, Mathuradas Mill Compound,
M.M. Joshi Marg, Lower Parel (West),
Mumbai-400 013**
- (2) **Deputy Commissioner of Income Tax,
Circle-43, Kolkata,
3, Government Place (West),
Kolkata-700 001**
- (3) **Commissioner of Income Tax(Appels)-21, Kolkata;**
- (4) **Commissioner of Income Tax- ,**
- (5) **The Departmental Representative**
- (6) **Guard File**

**By order
Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata**

Laha/Sr. P.S.