

IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH 'B' NEW DELHI

BEFORE : SHRI H.S. SIDHU, JUDICIAL MEMBER &
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA No. 4868/Del./2012
Asstt. Year : 2009-10

Income-tax Officer,
Ward 24(1), New Delhi.

vs.

Frontline Int'l Inc.
C/o Singhal Matta & Co.
B-21, Lajpat Nagar -1,
New Delhi.

(PAN: AAAFF 1099E)

(Appellant)

(Respondent)

Appellant by : Sh. Anil Kumar Sharma, Sr. DR
Respondent by : S/Sh. Sh. G.C. Srivastava,
Rakesh S. Bhardwaj &
Anubhav, Jain, Advocates.

Date of hearing : 02.02.2017
Date of pronouncement : 28.02.2017

ORDER

Per L.P. Sahu, Accountant Member:

This is an appeal filed by the Revenue against the order of the ld. CIT(A)-XXIII, New Delhi dated 18.06.2012 for the assessment year 2009-10 on the following grounds :

"1. On the facts and on the circumstances of the case, the ld. CIT(A) has erred in deleting the addition of Rs.28,84,038/- made by the AO on account of bogus purchases.

2. On the facts and on the circumstances of the case, the ld. CIT(A) has erred in deleting the addition of Rs.83,418/- on account of prior period expenses.

3. On the facts and on the circumstances of the case, the ld. CIT(A) has erred in deleting the addition of Rs.32,89,083/- on account of bogus expenses shown under the head expenses payable.”

2. The brief facts of the case are that the assessee is engaged in the manufacturing & export of knitting readymade garments including knitting job work and local sales. The assessee is a partnership firm consisting of four partners. The assessee filed his return of income on 22.09.2009 declaring an income of Rs.7,26,150/-. The case was selected for scrutiny and statutory notices were issued. In compliance of this, the assessee filed the details as required by the AO as well as month-wise stock and purchase bills. The AO noted that two bills dated 29.03.2008 bearing No. C/2781 for Rs.55721/- and C/2780 for Rs.27697/- were recorded in stock register in the month of April and purchases were also recorded in the month of April. The ld. Assessing Officer disallowed these bills by treating it as a prior period items and paid during the year and he enhanced the income by Rs.83,418/-.

3. The next issue relates to expenses payable of Rs.32,89,083/-. The assessee submitted the details as per his letter dated 16.11.2011 as under :

DETAIL OF EXPENSES PAYABLE Rs.32,89,083/- (2008-09)

Head	Month	Amt. in Rs.	Total Rs.
Fabrication Charges	Jan-2009	326308	
(Detail enclosed as per Register)	Feb- 2009	456832	
	Mar- 2009	522093	1305233

Embroidery Charges	Jan-2009	113563	
(Detail enclosed as per Register)	Feb- 2009	158987	
	Mar- 2009	181700	454250
Sample Dev. Charges	Jan-2009	162875	
(Detail enclosed as per Register)	Feb- 2009	228025	
	Mar- 2009	260600	651500
Knitting Charges	Jan-2009	62463	
(Detail enclosed as per Register)	Feb- 2009	87447	
	Mar- 2009	99940	249850
Packing Charges	Jan-2009	131413	
(Detail enclosed as per Register)	Feb-2009	183977	
	Mar-2009	210260	525650
Printing & Stationery	Jan-2009	25650	
(Detail enclosed as per Register)	Feb- 2009	35910	
	Mar- 2009	41040	102600
Total			3289083

In respect of above, specific query was raised by the Assessing Officer for the justification of above expenses. In reply of this, the assessee submitted as under :

"In connection with the fabrication charges payable, we have kept a separate register in Form No. 12. Further to say that these are our workers which we employ from time to time for fabrication work as per our order requirement. We have not deducted any PF/ESI because it was not applicable to them because these salaries are out of the basic limit on which PF & ESI are applicable. These are debited in Fabrication account because of its nature of payment. No TDS has been deducted because it was not applicable to these workers as per applicable income loss further we have to explain that we have already intimated to the related labour departments. Hence there are no bills in relation to the Fabrication charges payable. In relation to the other expenses payable like Embroidery charges, Sample charges, Packing charges etc. These are carried out by the various small individual village based labour and those labour do not provide any bills. Hence, we have to pay them

through our vouchers only on which they also agree. No TDS has been deducted because all payments were below TDS limits."

The Assessing Officer considering the submissions of the assessee vide letter dated 16.11.2011 & 21.11.2011 observed as under :

"After going through the replies of 16th and 21st November, 2011, it was clear that the assessee was claiming that the expenses payable actually pertained to workers / employees / wagers of the assessee. What the assessee was trying to emphasize that the payments to these workers/employees/wagers for the months of January, February & March, was paid after the year under assessment and that these wagers were not liable for ESI/PF. Why they were not covered by the rules of ESI/PF has not been disclosed by the assessee. The assessee forgot that there is no minimum wages for ESI/PF and obviously these persons were not in the managerial positions to have come out of ESI/PF. Thus, the stand taken by the assessee was wrong. On the one hand the assessee submits that these were small labours and on the other hand he was pressing that the payments were made to them after five to six months. This was hard to digest. Accordingly, vide questionnaire dated 22.11.2011, the assessee was asked to produce all the wagers for examination on 29.11.2011 and it was made clear that in the absence of the same, the amount of Rs. 32,89,083/- shown under the above said heads shall be treated as bogus expenses claimed by you and the same amount will be added in your taxable income as unexplained expenditure u/s 69C of the IT Act, 1961."

4. The Assessing officer noted that the assessee also failed to produce any single labourer for verification of payments made to them. Moreover, no PF/ESI were deducted and he also noted that entire transactions were made through self serving vouchers without any documentary evidence. In view of the above, he disallowed the entire payments of Rs.32,89,083/- and added it as unexplained expenditure u/s. 69C of the Act.

5. The third issue relates to purchase of Rs.28,84,038/- from following parties :

M/s. Shiva Texfabs Ltd.	Rs.3,03,729/-
M/s. Purushotam Dass Niranjana Lal	Rs.10,86,717/-
M/s. H.K. Enterprises	Rs.4,64,800/-
M/s. Enn Ess Impex	Rs.10,28,992/-

	Total: Rs.28,28,038/-

6. In order to verify the purchases, the AO issued notices u/s. 133(6) to the above parties. However, the same remained un-complied. In this regard, the assessee was asked to justify the purchases from above parties by giving complete address, complete set of ITRs and confirmations. In response to this, the assessee did not comply with the requirements and the AO treated it as bogus purchases and added back to the income of the assessee. Aggrieved by these additions, the assessee preferred an appeal before the first appellate authority. The assessee made detailed submissions before the first appellate authority and after considering the submissions of the assessee, the first appellate authority allowed the appeal of the assessee. Aggrieved by the order of the first appellate authority, the Revenue is in appeal before the ITAT.

7. The learned DR relied on the order of the AO. He submitted that the ld. CIT(A) did not call for any remand report before relying on the submissions of

the assessee. The assessee could not substantiate the outstanding payments made after 5 to 6 months to the labourers who were daily wages workers. Such daily wagers hardly earn their livelihood on daily basis and therefore, there is no reason to withhold their wages for five to six months. The assessee also could not file their latest address and any confirmations from four parties, but he has filed the same before the CIT(A). Merely making the stock entry in the books of account is not sufficient. In view of this, the Assessing Officer has made a good order.

8. On the other hand, the Id. AR relied on the order of the Id. CIT(A). He submitted that the Id. CIT(A) after considering the submissions and facts of the case has rightly allowed the appeal of the assessee. He pointed out that the AO has accepted the purchases made and the stock statements submitted before him and sales made also. The gross profit has also not been disturbed. Mere non-production of ITR and confirmations from the vendors which is beyond the control of the assessee, does not warrant to reject the purchases. He further submitted that the confirmation of account, PAN & all the invoices were placed before the Assessing Officer which are available at Annexure-E of the paper book. However, it has been disregarded by the AO. In respect of expenses payable, he submitted that there was no obligation to deduct PF/ESI, TDS because these are not covered under the statutory limits prescribed

under the applicable Act. The labour payment vouchers in form No. 12 (paper book pages 40 to 57) in case of fabrication charges are also attached in the paper book for verification of genuine labour payments. The Id.AR also alleged that the AO has wrongly applied section 69C for disallowing the expenses payable. All the payables were paid in subsequent years and it has been accounted for separately in the cash book. He also submitted that all the requirements of the Assessing Officer were complied with but he has ignored without applying his mind before disallowing the expenses payable. The Id. CIT(A) has considered the circumstantial evidences filed before the Assessing Officer and the Id. CIT(A) has deleted the addition. He further submitted that in case of prior period items, the Assessing Officer has accepted the purchase and has not denied the quantity received during the year and the payments made. Therefore, it is not justified to treat it as prior period items. The Id. CIT(A) has considered all material facts and allowed the appeal.

9. We have heard both the parties and perused the materials available on record and the arguments advanced by the parties. In respect of ground No. 1 for the addition of Rs.28,84,038/-, we find that the contention of the assessee has been that he had furnished all the requisite documentary evidence before the AO, whereas the AO has categorically mentioned in the assessment order that assessee was asked to file the confirmation of parties along with complete

set of ITR with latest address of the parties, however, no such details or documents were furnished by the assessee. Such documentary evidences are stated to have been furnished before the Id. CIT(A) and the Id. CIT(A) has accepted the same without calling for any remand report from the AO. A perusal of the purchase bills of M/s. H.K. Enterprises, available at paper book page 75 to 77 shows that the said bills do not contain any TIN number whereas the alleged purchases are shown to have been made against form-C, which is a declaration Form under the Central Sales Tax Act and such Form can be given to a registered dealer having valid TIN Number. This ambiguity creates doubt on the purchase bills submitted before the Id. CIT(A) who has not examined the issue from this angle also. The Id. CIT(A) has coterminous powers u/s. 250(4) for examination and enquiries, which he has failed to exercise before accepting the evidences simply by relying on the submissions of the assessee. Besides, the assessee had submitted stock statement month-wise whereas it is a general practice that the stock register is maintained on daily basis for every receipt and issue of materials. In view of all this, we deem it appropriate to remit the matter back to the Assessing Officer to adjudicate the same afresh after examining and verifying all the material and evidences which the assessee deems fit to furnish before the Assessing Officer in support of its claim. Needless to say, the assessee shall be given adequate opportunity

of being heard before finally deciding the issue. Accordingly, this ground is allowed for statistical purposes.

10. As regards ground No. 2 relating to addition of Rs.83,418/-, the assessee has received material in the month of April and it has been accounted for in the month of April. Therefore, it cannot be treated as a prior period item merely because the bill relates for the previous financial year, unless the assessee has shown to have made any expenditure or gain on that item in the previous year. No such expenditure or gain is established by the department to have been made by the assessee in the previous year. Therefore, this ground of appeal deserves to fail.

11. Adverting to ground No. 3 of appeal relating to addition of Rs.32,89,083/- on account of bogus expenses shown under the head 'expenses payable', we have perused the order of the lower authorities, the reasons for disallowance given by the Ld. assessing officer as well as the reasons of deletion of the same mentioned by the Ld. CIT(A). The Ld. Assessing Officer has stated that the assessee was claiming the expenses payable actually pertaining to the workers and employees of the assessee for the month of January, February and March, 2009 which was paid after the year under assessment and that the wages were not liable for deduction of

provident fund, ESI & TDS. The contention of the assessee before the Ld. Assessing Officer was that these are small labourers and on the other hand he was pressing that the payments be made to them after 5 to 6 months. This fact was doubted by the Ld. Assessing Officer and he disallowed a sum of Rs. 32,89,083/- treating it as bogus expenses. On appeal before the Ld. CIT(A), the claim of the assessee was allowed wherein he has held that he has examined the month wise expenditure and in para No. 5.2 it is stated that expenditure pertaining to December 2008 were paid by the assessee upto the end of the year. Further, on examination of the month wise details of the expenditure on the specific head between April 2008 and March 2009 he has noted that in all these months the payments are invariably made after a time gap of 3 to 6 months. No such submission was made by the assessee before the Ld. Assessing Officer and the Ld. CIT (A) has also not sought remand report from the Assessing Officer during the course of appellate proceedings on this issue. Interestingly, while noting the submission of the assessee at para No. 4.5 at page No. 9 of the order of the CIT(A), we also do not find any such argument raised before him. Therefore this aspect needs to be verified whether the assessee is always paying to the labourers payment after 3 to 6 months of services rendered by them. The Ld. Assessing Officer has doubted that when the labourers employed by the assessee were very small village labourers and their wages are outstanding for 3 to 6 months, further the

assessee himself has stated that the workers engage for fabrication charges are on the payroll of the assessee, it would have been possible for the assessee to produce at least some of the workers. With respect to the payments made for other than fabrication charges where the assessee has produced form No. 12 which contains information regarding the name of the worker, name of the father of the worker, shift-wise attendance of the workers, and amount paid to the worker duly stamped and acknowledged however with respect to all other payments such as embroidery charges, sample development charges, knitting charges, packing expenses etc. no such evidences are available on record. In view of this we set aside this ground of appeal to the file of AO to verify about the claim of the assessee that generally the payments have been made to the labourers upto 6 months of the services rendered. He is also directed to verify about the other payments where form No. 12 is only available in case of the fabrication works, such as the name of the worker address of the worker name of the father of the workers shift wise attendance of the worker, an amount paid to the worker. It may also be examined that whether the payment of such charges are in consonance with the business of the assessee compared to the earlier years and the subsequent years or not. If in this case this expenditure is found to be in accordance with the earlier year and subsequent year along with the necessary details as demonstrated in form No. 12 with respect to other services, the expenditure may be allowed to the

assessee in accordance with the law. Needless to state that assessee may be given adequate opportunity to adduce the evidence as well as of hearing. Accordingly, this ground is allowed for statistical purposes.

12. In the result, the appeal is partly allowed for statistical purposes.

Order pronounced in the open court on 28.02.2017.

Sd/-
(H.S. SIDHU)
Judicial Member

Sd/-
(L.P. SAHU)
Accountant Member

Dated :28.02.2017

*aks/-

Copy of order forwarded to:

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|--|---------------------------|
| (1) <i>The appellant</i> | (2) <i>The respondent</i> |
| (3) <i>Commissioner</i> | (4) <i>CIT(A)</i> |
| (5) <i>Departmental Representative</i> | (6) <i>Guard File</i> |

By order

*Assistant. Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi*