

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.583/Mds/2016
निर्धारण वर्ष / Assessment Year : 2012-13

M/s C.S. Garments,
42, Karumarampalayam Mannarai,
Tirupur – 641 607.

v. The Deputy Commissioner of
Income Tax,
Circle – 1,
Tirupur.

PAN : AACFC 0719 J
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. T. Banusekar, CA

प्रत्यर्थी की ओर से/Respondent by : Dr. U. Anjaneyalu, CIT

सुनवाई की तारीख/Date of Hearing : 02.06.2016

घोषणा की तारीख/Date of Pronouncement : 31.08.2016

आदेश /ORDER

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) – 3, Coimbatore, dated 18.12.2015 and pertains to assessment year 2012-13.

2. Sh. T. Banusekar, the Ld. representative for the assessee, submitted that the assessee is a partnership firm engaged in the

business of export of garments. The issue arises for consideration is with regard to disallowance of ₹3,01,04,150/- being the expenditure claimed by the assessee towards purchases. The Assessing Officer disallowed the claim of the assessee on the ground that these are all bogus credits / purchases. During the year under consideration, according to the Ld. representative, the assessee was doing business with its own funds to the extent of ₹2,30,00,000/-, out of which around ₹68,00,000/- was invested in fixed assets and the assessee was having liquid cash of ₹1,60,00,000/- for working capital. The assessee did not avail any loan from bank or financial institution. The assessee has earned an income of 7.20%. Even though the average net income for the assessment year 2011-12 was 0.89% and for the assessment year 2010-11 was 0.62%, due to disallowance of ₹3,01,04,150/-, the net profit goes to 32.07% which is impossible in this line of business. The average gross income returned by the assessee regularly was ranging from 0.32% to 9.15%. In fact, the gross income returned by the assessee for the assessment year 2013-14 was 5.97% and for the assessment year 2011-12, it was only 1.32%. Similarly, for the assessment year 2010-11, the returned income was only 4.24%. Therefore, according to the Ld. representative, if the disallowance

was made by the Assessing Officer towards expenses, the gross profit ratio will go to 28.60% and net profit would be 32.07%. This kind of profit is impossible to earn. Hence, according to the Ld. representative, the disallowance made by the Assessing Officer is highly arbitrary, therefore, it needs to be deleted.

3. Shri T. Banusekar, the Ld. representative for the assessee, further submitted that the assessee has to purchase raw materials like yarn and fabrics from manufacturers, dealers and through brokers in the open market. The raw materials are sourced from grey market. When the assessee purchased raw material from grey market, the supporting invoices may not be available. According to the Ld. representative, purchasing raw material from grey market will have an advantage of cost to the assessee. There was a substantial difference in the price of goods purchased in the grey market and from the regular market. Due to statutory restrictions, the legitimate business expenditure was not booked in the books of account maintained by the assessee. Moreover, the material purchased through grey market was also not brought in the books. According to the Ld. representative, the assessee has enough in-house manpower and human resources to carry out manufacturing

activity. The payment as per the trading account shown in the books of account is only to the extent of ₹18.59 lakhs which is considerably low comparing to the total production made by the assessee. According to the Ld. representative, the assessee cannot manufacture the entire goods in-house on the cost of ₹18.59 lakhs. The assessee has to incur additional cost for purchasing raw material like yarn, fabrics, etc. over and above what was disclosed in the books of account. In order to regularize the purchases made from grey market and the production cost, vouchers under different heads were obtained, which were used for accounting purposes. Even though the Department may not appreciate the way in which the vouchers were obtained, according to the Ld. representative, it would stand to test of scrutiny by the income-tax authorities. According to the Ld. representative, the assessee's turnover was very high. The manufacturing operation of the assessee was also very complex, since the assessee has to meet the expected standards fixed by the companies which are importing fabrics. According to the Ld. representative, the assessee consumed raw material at 33.79% for the assessment year 2012-13 as against 56.87% for the earlier year. Similarly, the in-house expenses were only 63.79% as against 70.70% for the earlier year. The Ld.

representative further submitted that without such purchases from grey market, the in-house production could not have been achieved by the assessee. The expenditure claimed by the assessee is, in fact, very less for the year under consideration in terms of percentage for the other years. Therefore, it cannot be said that the purchases claimed by the assessee are bogus. Even if the expenses claimed for purchase of raw material are unsatisfactory to the Assessing Officer, according to the Ld. representative, the Assessing Officer has to examine the actual consumption of raw material and profit. According to the Ld. representative, without purchase of raw material, the assessee could not have manufactured the finished goods as declared, therefore, the CIT(Appeals) is not justified in confirming the order of the Assessing Officer.

4. On the contrary, Dr. U. Anjaneyalu, the Ld. Departmental Representative, submitted that the assessee booked enormous amount of bogus expenditures. According to the Ld. D.R., there may be some difficulty for the assessee in carrying out its business activity. It does not mean that the assessee can violate the provisions of law. Since the assessee claims that raw materials

were purchased in grey market, in all probability, the assessee might have paid the purchase price in cash contrary to the provisions of Section 40A(3) of the Income-tax Act, 1961 (in short 'the Act'). According to the Ld. D.R., the object of Section 40A(3) of the Act is to curb the grey market.

5. Referring to the assessment order, the Ld. D.R. pointed out that the Assessing Officer, during the course of assessment proceeding, found that the total credit balance was ₹4.18 Crores out of which, a sum of ₹3.14 crores was outstanding in respect of five parties. The Assessing Officer found that the five creditors estimated their income without maintaining any proper books of account. According to the Ld. D.R., in the absence of any material available on record to substantiate the creditworthiness of five parties from whom the assessee said to have purchased the raw material on credit, the Assessing Officer has rightly treated the so-called purchase as bogus purchase. In fact, a sworn statement was recorded by the Assessing Officer after examining the so-called creditors under Section 131 of the Act. According to the Ld. D.R., each one of the creditors claimed before the Assessing Officer that they have done job work like embroidery, stitching, checking and

sequencing to the extent of ₹8 lakhs to 12 lakhs approximately on ad hoc and piece rate basis. The Assessing Officer, on examination of respective parties, found that cheques issued by the assessee were immediately encashed. All the five creditors are having bank account in the same branch. According to the Ld. D.R., the assessee itself admitted that they introduced bogus expenditure in the books, therefore, the CIT(Appeals) has rightly confirmed the order of the Assessing Officer.

6. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, the assessee-partnership firm engaged in the business manufacturing and export of garments. During the course of assessment proceeding, the Assessing Officer found that the so-called expenditure claimed by the assessee to the extent of ₹3,01,04,150/- is bogus and no such purchases were made as claimed by the assessee. The assessee appears to have claimed before the lower authorities that credit purchases were made from five parties, namely, (i) Bamboo Checking Centre; (ii) R.V.S. Stitching Centre; (iii) Shankar Hand Embroiders; (iv) Silky Shine Fashion; and (v) S.K. Squances. The assessee also claimed that raw material, such

as yarn and fabrics, are purchased from grey market since such purchase is cost advantage to the assessee. The fact is that existence of grey market in this line of business is not in dispute. When the existence of grey market in this line of business is not in dispute, the claim of the assessee that they have purchased raw material such as yarn and fabrics from such grey market cannot be doubted at all. The assessee admittedly has not maintained any proper books of account and the assessee itself admitted that the goods purchased from grey market are not routed through books maintained in the regular course. The expenditure booked in the books of account is only ₹18.59 lakhs. The assessee itself returned an income of ₹57,07,989/-. When the assessee's expenditure is only ₹18.59 lakhs, as rightly submitted by the Ld. representative for the assessee, the assessee could not have earned ₹57,07,989/-. Therefore, the books of account maintained by the assessee are not reflecting the correct income of the assessee. From the material available on record, it is obvious that the assessee purchased raw material in grey market outside the books of account.

7. The Assessing Officer made casual reference about Section 40A(3) of the Act regarding use of cash for purchase of raw material

in the grey market. It is not the case of Revenue that the assessee has paid ₹20,000/- to any particular person on a particular day. The Assessing Officer cannot presume that the assessee paid ₹20,000/- and above for purchase of raw material in grey market. As rightly contended by the Ld. D.R., the object of Section 40A(3) of the Act is to curb the grey market and curtail the circulation of black money. If the Assessing Officer has any doubt, he has to bring on record the details of payment made by the assessee in cash exceeding ₹20,000/- to any particular individual. Unfortunately, the Assessing Officer could not bring on record any details regarding the payment made by the assessee exceeding ₹20,000/-. In fact, the Assessing Officer made disallowance on the ground that the claim of purchase of raw material is bogus. In other words, the Assessing Officer found that the assessee has not purchased any raw material at all. The fact remains that the production of finished goods in-house is not disputed. The turnover of the assessee is not disputed. Therefore, the Assessing Officer cannot dispute the purchase of raw material. As rightly submitted by the Ld. representative for the assessee, the gross profit would go upto 28.60% in case the purchase of raw material to the extent ₹3,01,04,105/- is disallowed, which is exorbitant when compared to other years.

8. When the assessee has not maintained any books of account for purchase of raw material in grey market, and the turnover and in-house production of finished goods are not disputed, this Tribunal is of the considered opinion that the disallowance made by the Assessing Officer is not justified.

9. Accordingly, the orders of the lower authorities are set aside and the disallowance of ₹3,01,04,150/- is deleted.

10. In the result, the appeal of the assessee is allowed.

Order pronounced on 31st August, 2016 at Chennai.

sd/-
(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)
लेखा सदस्य/Accountant Member

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 31st August, 2016.
Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-3, Coimbatore
4. Principal CIT-3, Coimbatore
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.