

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No.1508/Del/2013
(Assessment Year: 2009-10)

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| ITO, Ward-1, Court Road, Saharanpur, Uttar Pradesh | Vs. | Narendra Kumar Dhingra, Prop. M/s. Bhaga Ram Godha Ram, Dhingar Market, Kakkar Ganj, Saharanpur PAN:ABIPD6038L |
| (Appellant) | | (Respondent) |

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|-----------------------|------------------------------------|
| Appellant by : | Sh. Rajesh Kumar, Sr. DR |
| Respondent by: | Sh. Dinesh Chander Aggarwal, CA |
| Date of Hearing | 30/01/2017 |
| Date of pronouncement | 28/03/2017 |

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the revenue against the order of the Id CIT (A), Muzaffarnagar dated 04.12.2012 for the Assessment Year 2009-10.
2. The revenue has raised the following grounds of appeal:-
 - “1. *On the facts and in the circumstances of the case, the CIT(A) has erred in law in deleting the addition of Rs.33,12,0597- made by the Assessing Officer, without appreciating the fact that in the circumstances of the case, the provisions of section 145(3) of the I.T. Act, 1961 have rightly been invoked after pointing out steep discrepancies in the books of books of accounts of the assessee.*
 2. *On the facts and in the circumstances of the case, the CIT(A) has erred in law in deleting the addition of Rs. 27,10,552/- made by the Assessing Officer on account of gift and incentives as the assessee could not explain the same, by ignoring the fact mentioned in the assessment order.*
 3. *On the facts and in the circumstances of the case, the CIT(A) has erred in law in deleting the addition of Rs. 9,92,150/- made by the Assessing Officer on account of goods returned to M/s OCM India Ltd as the company has categorically denied to have received back the goods under reference by ignoring the fact mentioned in the assessment order.*

4. *On the facts and in the circumstances of the case, the CIT(A) has erred in law in deleting the disallowance of Rs. 14,2647- out of Rs, 33,6257- made by the Assessing Officer on account of car running expenses, telephone expenses & depreciation on car by ignoring the fact mentioned in the assessment order.*
 5. *The order of the ld CIT(A) be set aside and that of AO be restored.”*
3. The brief facts of the case is that the assessee is a individual engaged in the business of wholesale trading of cloths in the name and style of M/s. Bhaga Ram Godaram. He filed its return of income on 23.09.2009 showing income of Rs. 217340/-. During the course of assessment proceedings the ld Assessing Officer rejected the books of accounts for the reason that no stock register is maintained. He estimated gross profit of the assessee at Rs. 5544280/- and worked out allowable expenses of Rs. 2232221/- and thereafter made an addition of Rs. 3312059/-. He further disallowed a sum of Rs. 2710552/- on account of incentive, gifts, and discounts. A further disallowance of Rs. 992150/- was made on account of difference in goods return account to M/s. OCM India Ltd. Consequently, after making some other minor disallowances total income was assessed at Rs. 7295127/- against return of income of Rs. 246741/- vide order dated 30.11.2011. The assessee aggrieved with the order of ld Assessing Officer preferred an appeal before ld CIT(A) who vide order dated 04.12.2012 partly allowed the appeal. The ld AO aggrieved with the order of the ld CIT(A), has preferred this appeal.
 4. The ground No. 1 of the appeal of the revenue is against deletion of the addition of Rs. 3312059/- made by the Assessing Officer by invoking provisions of section 145(3) of the Income Tax Act, 1961.
 5. The ld DR submitted that the assessee has not maintained the stock register therefore, there is defect pointed out by the ld Assessing Officer and such rejection of books of accounts is proper. He relied heavily on the order of the ld Assessing Officer.
 6. The ld AR submitted that the assessee has produced proper books of accounts before the ld Assessing Officer and merely non-maintenance of stock register cannot lead to rejection of the books of accounts. He therefore submitted that ld CIT(A) has rightly deleted the addition made by the ld AO rejecting books of accounts.
 7. We have carefully considered the rival contentions. The ld CIT(A) has deleted the addition after obtaining remand report and rejoinder thereon. According

to him no specific discrepancy was pointed out in the valuation of closing stock. He further held that it is practically not possible to maintain day-to-day stock register in cloth trade. The Id DR could not point out any infirmity in the order of the Id CIT(A), who has held that rejection of books of accounts is not proper based on several judicial precedents. Furthermore, Hon'ble Delhi High Court also in case of [2010] 324 ITR 95 (Del) Commissioner of Income-Tax vs. Jas Jack Elegance Exports has held that mere non-production of stock records cannot be a sole basis of rejection of books of accounts. Further, the Id Assessing Officer has accepted the gross profit ratio of the assessee of 12.33% for the year which is based on the same books of accounts, however, has tinkered with the figures of purchase, sales etc. which is not permitted in absence of proper evidence. Further, the Id CIT(A) has verified the details of reconciliation of the purchase as well as reconciliation of sales after verifying the details submitted by the assessee and obtaining the remand report as well as rejoinder thereon. The main reason for the difference as noted by him was with respect to the details of incentives and bonus as well as purchase return. He further gave a finding that these were transferred to purchase accounts, which were omitted by the Id. AO while calculating the purchases. He further held that no discrepancy exists in trading account of the assessee as each and every discrepancy pointed out have been reconciled properly. Furthermore, the assessee has produced assessment order for AY 2011-12 dated 19.02.2014 passed u/s 143(3) of the Act wherein, the books of accounts of the assessee were accepted though similar facts claimed to be prevailing in that year too. In view of this we do not find any infirmity in the order of the Id CIT(A) in deleting the addition of Rs. 3312059/-. In the result ground No. 1 of the appeal is dismissed.

8. Ground No. 2 of the appeal of the revenue is against deletion of addition of Rs. 2710552/- on account of gift and incentives. The Id Assessing Officer made an addition of the above sum for the reason that according to the Assessing Officer that the credit notes are not reduced from the purchases and same were also not added to the profit and loss account.
9. The Id DR relied upon the order of the Id Assessing Officer whereas the Id AR relied on the order of the Id CIT(A).

10. We have carefully considered the rival contentions. Ld CIT(A) has discussed the above issue in para No. 3.2.6 of his order at Page No. 29 to 31 and has deleted the incentives, gifts and discounts of Rs. 2710552/- received from OCM India Ltd. and M/s. Reid and Tailor Ltd. These incentives and bonus are transferred to purchase account of the Head Office of the assessee therefore, it cannot be said that these items are not forming part of the profit and loss account of the assessee. No infirmity has been pointed out in the order of the ld CIT(A) by the ld DR and therefore we confirm the finding of the ld CIT(A) in deleting the addition of Rs. 2710552/- on account of gifts and incentives. In the result ground No. 2 is dismissed.
11. Ground No. 3 of the appeal of the revenue is against deletion of addition of Rs. 992150/- on account of goods return to OCM India Ltd as that company has denied of receiving back the goods. The ld Assessing Officer has made the above addition on the basis of reply received from M/s. OCM Ltd with respect to goods return. The ld CIT(A) deleted the above addition.
12. The ld DR relied upon the order of the ld Assessing Officer and ld AR relied upon the order of the ld CIT(A).
13. We have carefully considered the rival contentions. The assessee has returned goods of Rs. 652031/- to OCM Ltd and goods of Rs. 206758/- were dispatched by OCM Mills in March 2009, which was received by the assessee after 01.04.2009. The only reason given by the ld AO was that the details of goods and credit notes were different from the goods returned by the assessee. The ld CIT(A) has examined the full reconciliation provided by the assessee of the account of M/s. OCM Ltd, which was also given to the ld Assessing Officer for verification and the ld, Assessing Officer could not substantiate the above addition. The ld DR also could not point out any infirmity in the order of the ld CIT(A) in deleting the above addition. in the result ground No. 3 of the appeal of the revenue is dismissed.
14. Ground No. 4 of the appeal is against deletion of disallowance of Rs. 14264/- out of Rs. 33625/- on account of car running expenses, telephone expenses. The ld Assessing Officer has disallowed the above expenditure @1/5th out of total expenditure of Rs. 168128/- applying the provision of section 38(2) of the Act. The ld CIT(A) has reduced the disallowance by making it 15% instead of 20% and thereby restricted the disallowance to Rs.

19361/-. The both the parties did not advance any argument on this ground. Therefore, this ground of the appeal of the revenue is dismissed.

15. In the result the appeal of the revenue is dismissed.

Order pronounced in the open court on 28/03/2017.

-Sd/-

**(KULDIP SINGH)
JUDICIAL MEMBER**

-Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated: 28/03/2017
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi