

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'B', NEW DELHI**

**BEFORE SHRI P.K. BANSAL, VICE PRESIDENT
&
SHRI AMIT SHUKLA, ACCOUNTANT MEMBER**

**ITA No. 820/Del/2011
A.Y. 2005-06**

DCIT Circle-3(1) New Delhi	vs.	Creative Home Fashions Pvt.Ltd. A 210, Vardhman Apartments Mayur Vihar New Delhi PAN: AABCC4828Q
(Appellant)		(Respondent)

Appellant by	Sh. Anshu Prakash, Sr.DR
Respondent by	Sh. K Sampath, Adv.
Date of Hearing	19 th September, 2017
Date of Pronouncement	22 nd September, 2017

ORDER

PER P.K. BANSAL, VICE PRESIDENT

This appeal has been filed by the Revenue against the order of Ld. CIT(A)-IV, New Delhi dated 01.12.2010. The Revenue although in the original grounds of appeal taken two grounds of appeal, but subsequently the Ld. DR before us filed revised grounds of appeal along with the revised Form 36A and the Certificate of the Principal CIT as required for filing the appeal. These revised grounds read as under.

“1. The Ld. CIT(A) has erred on facts and in law in deleting addition made on account of rejection of books of accounts u/s 154(3) of the Income Tax Act,

1961 and also allowing claim of the assessee on account of disallowance of commission expenses ignoring that:

- a) *The assessee failed to submit the specific vouchers/bills in respect of dyeing and printing charges, packing materials, fabrication and embroidery charges during the assessment proceedings.*
 - b) *The assessee failed to submit the confirmation from the parties/agents to whom the commission was paid.*
 - c) *There is no material on record to show that the commission payment has been made by the assessee for the purpose of business.*
 - d) *The assessee failed to produce necessary registers in respect of raw material, stock material and packing material.*
 - e) *During the search operation dated 8.3.2006 and further enquiries of the Excise Department it was revealed that the assessee has shown wrong CENVAT credit on certain invoices of suppliers based in Surat. The receipts of the concerned fabrics covered under those invoices were not found to be entered in the company's accounts and corresponding gate inward register as well as store register.*
 - f) *The gross profit ratio has come down from 17.38% to 14.66%. The AO applied the average of these two ratios and accordingly made addition.*
2. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in accepting the additional evidence filed without waiting for the remand report of the Assessing Officer which is in contravention of Rule 46A of IT Rules."*

2. At the outset the Ld. D.R. before us contended in respect of ground no.2 and submitted that the Ld. CIT(A) has erred in law in accepting the additional evidences filed by the assessee during the course of appellate proceedings without waiting for the remand report of the Assessing Officer. According to the Ld.DR this was in contravention of Rule 46A of the Act. The Ld.DR carried us to the assessment order and stated that the Assessing Officer although issued notice to the assessee u/s 143(2) of the Act on 22.6.2006 and the case was adjourned more than eight times by giving various opportunities to the assessee, but the assessee did not submit the vouchers/bills in support of the dyeing and printing, packing material, commission, fabrication and embroidery charges, but when the

matter travelled before the Ld. CIT(A) the assessee submitted the evidences. No doubt the Ld. CIT(A) has called for the remand report of the Assessing Officer but without receiving the remand report accepted the additional evidence and dismissed the appeal of the assessee.

3. Ld.AR on the other hand drew our attention towards the order of the Ld. CIT(A) for pointing out that it is not a case whether the Ld. CIT(A) had not referred the additional evidences to the Assessing Officer, the Ld. CIT(A) has sent copy of submissions of the assessee to the Assessing Officer but has also given him 3 opportunities to submit the remand report. But the Assessing Officer did not bother to submit the remand report. Therefore the Ld. CIT(A) has after discussing under paras 10 and 11 of his order but the Assessing Officer has not shown any need of specific documents, the order sheet also does not report that what has precisely been not produced by the assessee, accepted the explanation of the assessee.

4. We have heard the rival submissions and carefully considered the same along with the order of the tax authorities below. We noted that it is the case where the Ld. CIT(A) has accepted the additional evidences produced by the assessee under Rule 46A after giving reasonable opportunity to the assessee. Rule 46A(3) requires when the Ld. CIT(A) before accepting the additional evidence should give reasonable opportunity to the A.O., this rule nowhere requires that the Ld. CIT(A) cannot accept the additional evidence in case the Assessing Officer does not submit any reply to the Ld. CIT(A) even after giving a reasonable

opportunity. The Ld. CIT(A) has given 3 opportunities to the A.O. but the A.O. did not bother to submit any remand report. Under the circumstances if the Ld. CIT(A) being the appellate authority has accepted the additional evidences after being satisfied that the assessee was prevented by sufficient cause from producing before the Assessing Officer these evidences and after noting the order sheet entry dt. 24.12.2007 and 27.12.2007. In our opinion there is no violation of Rule 46A. Rule 46A(3) does not state that the CIT(A) cannot accept the additional evidences in the absence of any remand report being submitted by the Assessing Officer.

4.1. In view of this fact, we dismiss ground no.2.

5. Now coming to ground no.1 which relate to the estimation of profit @ 16% and reduced by the Ld. CIT(A) as has been returned by the assessee.

6. We heard rival submissions. We noted that the Assessing Officer has rejected the books of accounts of the assessee u/s 145(3) of the Act due to certain discrepancies noted in the bills/vouchers submitted by the assessee in respect to the fabrication and embroidery charges and also the fact that the assessee did not produce before us any vouchers/bills in respect of the part of the expenses relating to dyeing and printing, packing materials and commission, the assessee has declared the gross profit @ 14.68% but the Assessing Officer noted that in the earlier Assessment Year the assessee has declared the gross profit @ 17.38%.

6.1. The Ld.DR tried to justify the order of the Assessing Officer by referring to the reasons given by the Assessing Officer.

6.2. The Ld.AR before us referred to paras 11 and 12 of the order of the Ld. CIT(A) and on this basis he contended that the rejection of the books of accounts u/s 145(3) has not been accepted by the Ld. CIT(A), we noted that this is a fact that the Assessing Officer has rejected the books of accounts u/s 145(3) but when the matter went to the Ld. CIT(A) the assessee has taken a ground against rejection of the books of accounts. The Ld. CIT(A) after discussing the relevant facts did not uphold the action of the Assessing Officer under para 12 rejecting the books of accounts u/s 145(3). The Revenue although taken the grounds of appeal as has been reproduced by us in the preceding paragraph but did not specifically challenged the action of the Ld. CIT(A) in not upholding the rejection of books of accounts by the Assessing Officer u/s 145(3). Section 145(3) requires that when the books are rejected the income has to be determined in the manner as has been specified u/s 144 i.e. the income has to be estimated on the basis of the material available on record or as has been gathered by the Assessing Officer, but since the action of the Assessing Officer rejecting the books of accounts has not been upheld by the Ld. CIT(A). Therefore in our opinion the Assessing Officer is debarred to determine the income of the assessee by estimating the gross profit. In view of this fact ground no.1 taken by the Revenue stands dismissed.

7. In the result the appeal filed by the Revenue stands dismissed.

Pronounced in the Open Court on 22.09.2017.

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-

(P.K. BANSAL)
VICE PRESIDENT

Dated: the 22nd September, 2017

* *gmv*

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches
New Delhi