

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "C", NEW DELHI  
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI L.P. SAHU, ACCOUNTANT MEMBER

	ITA No. 2119/Del/2011	
	A.Y. : 2003-04	
DCIT-12(1), NEW DELHI	VS.	M/S GOPAL CLOTHING CO. PVT. LTD., 42, SULTANPUR FARMS, PRAKRITI MARG, MEHRAULI ROAD, NEW DELHI - 110 030 (PAN: AAACG4705B)
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Department by : Sh. Arun Kumar Yadav, Sr. DR  
Assessee by : Sh. Prakash Kumar, Adv.

**ORDER**

**PER H.S. SIDHU, JM:**

The Revenue has filed the present appeal against the impugned order dated 15/2/2011 passed by the Ld. Commissioner of Income Tax (Appeals)-XXVI, New Delhi on the following grounds:-

1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,9,25,000/- being 11% of the

business expenditure u/s. 69 of the I.T. Act made by AO.

2. The appellant craves leave, to add, alter or amend any ground of appeal raised above at the time of the hearing.

2. The brief facts of the case are that the assessee filed return of income declaring total income of Rs. 37,97,660/- after claim of deduction of Rs. 35,03,079/- on 2.12.2013. The return of the assessee was processed under section 143(1) of the Income Tax Act, 1961 (hereinafter referred as the Act) Act. The case of the assessee was selected for scrutiny and notice u/s. 143(2) of the Act was issued on 08.12.2014. Again notice u/s. 143(2) of the Act alongwith questionnaire under section 142(1) of the Act was sent on 26.08.2005. In response to the notices, the A.R. of the assessee appeared from time to time. The assessee is in business of manufacture and export of garments. Assessee has shown total sales of Rs. 2184.09 lacs, on which book profit shown is Rs. 108.30 lacs. This is inclusive of other income of Rs. 212.99 lacs. This basically means that assessee has not made a penny out of sales of Rs. 2184.09 lacs and has on the contrary lost income of Rs. 104.69 lacs (212.99 – 108.30) in the entire business. Notices under section 142(1) & 143(2) dated 26.8.2015 were issued asking

assessee to produce basis trial balance and assessment history. During the assessment proceedings, the AR of the assessee has produced computerized ledger extracts which have been test checked. Thereafter, the income was determined at Rs. 2,82,22,660/- on account of disallowance of bogus / inflated /unproved purchases and manufacturing expenses of Rs. 1,90,25,000/- under section 69 of the Act vide order dated 12.12.2005 passed u/s. 143(3) of the Act.

3. Aggrieved with the aforesaid assessment order, assessee preferred an appeal before the Ld. CIT(A), who vide his impugned order dated 15.2.2011 has allowed the appeal of the assessee by deleting the addition in dispute.

4. Now the Revenue is aggrieved against the impugned order and filed the present appeal before the Tribunal.

5. Ld. DR relied upon the order of the AO and reiterated the contentions raised in the grounds of appeal.

6. On the contrary, Ld. Counsel of the assessee relied upon the order of the Ld. CIT(A) and stated that he has passed a well reasoned order, which does not need any interference.

7. We have heard both the parties and perused the records, especially the impugned order passed by the Ld. CIT(A). After

perusing the assessment order, it reveals that Assessing Officer has not brought on record any reasons for inclusion of manufacturing expenses of Rs.713.82 lacs which include fabrication and embroidery expenses of Rs.296.27 lacs and wages of Rs.280.53 lacs for working out the percentage of disallowance. There is not even a whisper as to why the Assessing Officer has chosen to include these expenses for making the disallowance. In the absence of reasons or any justification for disbelieving the genuineness of the manufacturing expenses, we are of the view that there is no basis for including the sum of Rs.173.82 lacs for disallowance, the inclusion of manufacturing expenses in the disallowance. Keeping in view of the facts and circumstances of the case, we are of the view that there is no need to interfere in the impugned order on this issue, hence we uphold the same.

7.1 With regard to the bogus purchases from M/s. Saba Finishers at Rs.87.56 lacs and M/s. Parvathi Agencies at Rs.19.24 lacs, it is to be seen whether the assessee has sufficiently discharged its onus u/s 37 for claiming the expenditure of Rs.106.80 lacs towards purchases from the two parties and whether since the purchases from the two constitutes 11.77% of the purchases, the disallowance of 11.77% of the total expenditure on consumption was justified or not. The primary basis for making the disallowance is that the two parties did not respond to the notice under section 133(6) issued by the Assessing Officer. In the case of M/s. Saba Finishers, the Assessing Officer noted that M/s. Saba Finishers had not responded by the (due date as mentioned in the notice. Though the assessment order is dated 12.12.2005, the Assessing Officer did not consider it of any consequence that on 8.12.2005 M/s. Saba Finishers had filed the following letter before him:-

In response to notice dated 3.11.2005, the following were submitted :-

- "a. Copy of account of Gopal clothing Co. Pvt. Ltd. during assessment year 2003-04 in our books*
- b. All sales bills issued to M/s. Gopal clothing Co. Pvt. Ltd. during assessment year 2003-04*
- c. Copy of my Income-tax return along with the Profit and Loss account and balance sheet.*
- d. copy of bank statement reflecting the payment received from Gopal Clothing Co. Pvt. Ltd. in respect of goods supplied to them.*

*Trusting that the above shall meet your requirement."*

A Copy of this letter showing the Dak receipt particulars of the Assessing Officer have been placed on record. Therefore at the time of finalization of assessment, the requirements of the notice under section 133(6) had been largely met by M/s. Baba Finishers itself and in the case of M/s Parvathi Agencies on being confronted by the Assessing Officer about the non-compliance, the appellant filed evidences in its possession as also compliance details on behalf of M/s. Parvathi Agencies required under section 133(6) of the Income-tax Act. Thereafter the Assessing Officer has not proceeded to further investigate or check out the correctness of the statements of accounts of both parties or whether any incorrect claims have

been made by any or all three. If Assessing Officer chooses not to investigate further and collect adverse material to rebut the claim, the assessee cannot be treated as not having discharged its onus under section 37(1) of the Income-tax Act. The assessee provided the Assessing Officer with a copy of the confirmed copy of account as maintained in its books of account. Evidently in course of assessment proceedings itself the appellant had provided primary evidences in support of the purchases to the Assessing Officer. In the course of the appellate proceedings a sample copy of the Purchase Voucher, Purchase order, Invoice of the party, Evidence of receipt of material by the assessee indicating the entry no., date and time of entry, quantity received, name of transporter/truck no., Material receipt note, Shrinkage report., Payment advice etc. were filed. A Copy of the bank statement of M/s. Baba Finishers was also filed, which shows receipts from the appellant. The assessee has filed the affidavits of M/s. Baba Finishers and M/s. Parvathi Agencies which acknowledge the transactions and the receipts from the appellant. The assessee's bankers have confirmed that cheques issued to M/s. Parvathi Agencies have been cleared. M/s. Parvathi Agency is also assessed to tax and as per affidavit has surrendered the profit relating to the transactions. It is a fact that the purchases are hypothecated with the bank and in the absence of purchases i.e.

stock, the banker would generally not give the loan to the appellant. The existence of Shri Anil Nagpal, proprietor of M/s Baba Finishers has also been adequately proved, in view of his physical presence before me as also the particulars of Permanent Account Number card and passport shown to me. That Shri Anil Nagpal is an Income-tax assessee and has filed his Income-tax returns is also an undisputed fact. For the relevant year, his balance sheet, profit and loss accounts disclose transactions with the appellant company. In the light of these evidences, the appellant has satisfactorily discharged its onus of proving that the purchases made from the two parties were genuine and were liable for deduction under section 37(1) of the Income-tax Act. The Assessing Officer on the other hand has not been able to rebut the evidences furnished by the assessee. The Inspector's report stating the non-existence of E-64, Chankaya Palace, Janak Puri, New Delhi has been adequately rebutted by the evidences furnished by the Ld. Counsel as discussed above which prove the existence of E-64, Chankaya Palace, Janak Puri, New Delhi and the carrying of the business by Shri Anil Nagpal. Thus it was held that the assessee has satisfactorily discharged its onus and the Assessing Officer has failed to make out a justifiable case for disallowance of 11.77% of the consumables as bogus/inflated or unproved. As above, it has been already held that

the inclusion of manufacturing expenses for determining the disallowance was totally unjustified. In effect it was rightly held there is no case for making the disallowance of Rs.1,90,25,000. Therefore, the disallowance made by the Assessing Officer was rightly deleted, which does not need any interference on our part, hence, we uphold the impugned order on the issue in dispute and reject the grounds raised by the Revenue.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 04/10/2017.

**Sd/-**

**[L.P. SAHU]  
ACCOUNTANT MEMBER**

*Date 04/10/2017*

**Sd/-**

**[H.S. SIDHU]  
JUDICIAL MEMBER**

**"SRBHATNAGAR"**  
**Copy forwarded to: -**

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

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches