

आयकर अपीलिय अधीकरण, न्यायपीठ – “B” कोलकाता,  
*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH “B” KOLKATA*

Before **Shri Waseem Ahmed, Accountant Member** and  
**Shri S.S.Viswanethra Ravi, Judicial Member**

**ITA No.61/Kol/2014**  
Assessment Year:2008-09

DCIT, Circle-10, P-7, Chowringhee Square, 3 <sup>rd</sup> Floor, Kolkata-69	बनाम/ V/s.	M/s Magnum Clothing (P) Ltd., 133, Canning Street, Kolkata-700 001 [PAN No.AACCM 0783 F]
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Saurabh Kumar, Addl. CIT-DR
प्रत्यर्थी की ओर से/By Respondent	Shri Anil Kochar, Advocate
सुनवाई की तारीख/Date of Hearing	18-09-2017
घोषणा की तारीख/Date of Pronouncement	26-10-2017

**आदेश /O R D E R**

PER Waseem Ahmed, Accountant Member:-

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-XII, Kolkata dated 08.10.2013. Assessment was framed by JCIT (OSD), Circle-10, Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide his order dated 29.12.2011 for assessment year 2008-09. Saurabh Kumar, Ld. Departmental Representative appeared on behalf of Revenue and ShriAnil Kochar, Ld. Advocate appeared on behalf of assessee.

2. Solitary issue raised by Revenue in this appeal is that Ld. CIT(A) erred in deleting the addition made by Assessing Officer for ₹3,58,78,841/- on account of non confirmation.

3. Briefly stated facts are that assessee is a private limited company and engaged in business of manufacturing and export of ready-made garments. The assessee in the year under consideration has claimed manufacturing expenses which inter alia include processing, dyeing charges, embroidery charges, stitching charge, finishing charges, washing and ironing charges etc. The AO during the course of assessment proceedings issued notices to several parties u/s 133(6) of the Act to establish the manufacturing expenses claimed by assessee. However, in many cases, notices were not served and returned back with different remarks 'left', no such addresses as well as insufficient address. In some cases, notices were delivered to the parties but they did not make any reply to the notice issued u/s 133(6) of the Act. In one of the case the case the AO also observed difference in the amount of expenses and declared in the TDS certificate.

4. On question to the assessee about the non-delivery as well as non response of the notices issued u/s. 133(6) of the Act, assessee filed the confirmation from all the parties. However, the AO was of the view that the confirmation cannot be relied fully in view of non response / non service of notices u/s 133(6) of the Act. Thus, AO made disallowance of ₹3,58,78,841/- and added to the total income of assessee by observing as under:-

"A Stitching charges

<u>Name</u>	<u>amount (Rs)</u>	<u>Remarks</u>
1. J.S. Apparel	13,59,260	left
2. M.M. Exports	46,35,594	Reply not received
3. Maran Garments	11,20,883	-do-
4. Naru Exports India Ltd	9,94,519	-do-
5. Sai Apparels	9,67,448	left
6. Sri Arunai Garments	13,02,480	Reply not received
7. Sun Star Garments	33,46,668	left
8. Tex Wear Exports	24,38,339	being difference in
	(33,99,996 + 94,206 - 7,55,753)	expenditure shown and TDS
9. Tarika Apparels	11,75,772	left

B. Washing & Iron charges

1. Upendra Enterprises	5,91,146	No such address
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C. Embroidery charges

1. Needlecraft Embroidery	15,50,316	rely not received
2. Pioneer Embroideries TRIMS	14,81,937	-do-

*D. Processing and Dyeing charges*

1. Geetha & Company	78,14,403	-do-
2. Texvision	55,55,186	insufficient address

*E. Finishing charges*

1. Sri Kamatchi Garments	<u>15,44,890</u>	could not be served by
	Rs.3,58,78,841/-	Postal Department and their
		remarks are given in local
		language

5. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that all the bills / invoice were filed before AO in support of the manufacturing expenses claimed during the year. The payments to all the parties were made through account payee cheque. These manufacturing expenses were incurred in the AY 2007-08 and confirmation letters were sent in the year 2011 almost after a gap of four years approximately. During the period of four years, many parties might have shifted their offices or might have closed down their activities. Thus, non response from the parties/ non delivery of notice issued u/s. 133(6) of the Act cannot be the basis for making the disallowance in the hands of assessee. Ld. CIT(A) in his appellate proceedings called for remand report from the AO wherein certain parties has confirmed the transactions with the assessee in response to notice u/s 133(6) of the Act. The details of the party are reproduced as under:-

<i>Sl.No</i>	<i>Name of the party</i>	<i>Nature of expenditure</i>	<i>Date of receipt of confirmation by A.O</i>
1	<i>M.M. Exports</i>	<i>Stitching charges</i>	<i>09.03.12</i>
2	<i>Maran Garments</i>	<i>-do-</i>	<i>04.07.13</i>
3	<i>Upendra Enterprises</i>	<i>Washing &amp; iron charges</i>	<i>15.06.13</i>
4	<i>Pioneer Embroideries</i>	<i>Embroidery charges</i>	<i>06.01.12</i>
5	<i>Texvision</i>	<i>Processing &amp; dyeing charges</i>	<i>27.05.13</i>

The assessee in respect of other parties made a submission as detailed under:-

*1. J. S. Apparels*

*This is in respect of stitching charges. The appellant states that the party was a proprietorship concern and has since moved from the address,. the assessee had no dealing with him at present. The assessee had transaction with the party from*

17.01.2008J027.06.2008.: Copies of-the Bills/challans for that period were produced for perusal. It is stated that all the payments have been made by account payee cheque only.

#### 2. Naru Exports

The payments are in respect of stitching Charges. It is stated that the party had sent the reply to the Assessing Officer against the notice u/s, 133(6) via Speed post. The copy of the receipt from the postal department has been filed.

#### 3. Needlecraft Embroidery

The payments are in respect of embroidery work. According to the appellant, the party had confirmed the balance and the same had been submitted to the Assessing :Officer. It is stated that all the bills, challans for the period are maintained and all the payments have been made by A/c. Payee cheques only .

#### 4. Geetha & Company

These are for processing and dyeing charges. It is stated that the proprietor of Geeta & Company, late P. Vasanth Kumar had expired on 4th April 2010 and thereafter, there were no transaction with the party. The copy of death certificate of Mr. P. Vasanth Kumar has been filed.

#### 5. Tex Wear Exports

The appellant 'filed the copies of ledger summary for financial year 2006-2007 and financial year: 2007, 2008 and copies of TDS Certificates for the aforesaid periods. It is stated that during the financial year2007-2008 there is opening balance of. RS.2438229/- for which TDS has already been deducted in the financial year 2006-2007. It is submitted that the Assessing Officer had wrongly treated the opening balance as expenses incurred during the year and levied the tax thereon.

#### 6. Sun Star Garments

It is stated that the party has closed its stitching unit under the Firm's name Sun Star Garments arid that all the bills/challans and bank statements where the assesses's cheques are maintained, which have been produced before me.

#### 7. Tharlka Apparels

It is stated' that the assesses had the transactions with the party from 21.01 2008 to 06.04.2009 and that at present the party had closed the business and whereabouts of the firm is not known. It is submitted that the appellant all the bills/challans copy of bank statement where our cheques are cleared are kept and produced before me.

#### 8. Sal Apparels

The appellant submits that it had transaction with the party from 04.11.2005 to 18.06:2010 and that at present;' the where-about of the party is not known. It is submitted that all the bills/challans and bank statement where our cheques are cleared kept, which have been produced before me..

#### 9. Sri Kamatchl Garments

The appellant stated to hove paid finishing charges to this party. It is further stated that it had transactions with the party from 18.03.20D5to 20.05.2011and that at present, the party had closed its business. All the bills/challans for the aforesaid period have been produced. It is stated that all the payments have been mode-by account payee cheque only.

After considering the submission of assessee Ld. CIT(A) deleted the addition made by the AO by observing as under:-

*“5.1.4. Decision:*

*I have carefully considered the facts of the case, the material placed on record, the remand report of the Assessing Officer and the submissions put forth on behalf of the appellant company. During the course of assessment proceedings, the Assessing Officer found that the appellant company, during the relevant financial year, was engaged in the business of manufacture and export of readymade garments. The Assessing Officer had examined the books of accounts and documents produced by test check. The Assessing Officer found that the accounts of the appellant was got audited through Chartered Accountant. As regards, the manufacturing expenses, the appellant furnished details of bills and challans and bank statements showing that the payments for stitching, embroidery work, finishing work, etc., were paid to different parties through account payee-cheques, along with confirmations and copies of ledger accounts. The appellant also provided addressee of parties to whom' the Assessing Officer issued notices under sec. 133(6) of the Act. Since no compliance has been received in compliance with the said notices, except in one case, where difference was found in the accounts, the Assessing Officer held that the parties were non-existent and the entire expenditure aggregating to Rs.3,58,78,841/- was not allowable. The Assessing Officer did not accept the confirmation and other details furnished by the appellant on the ground that it was not 'sacro-sanct', when notices under sec.133(6) were not complied with.*

*5.1.5. The fact that the appellant company carried on manufacturing and export business is not doubted. The Assessing Officer has not examined the reasonability of the expenditure incurred. He has also not recorded any dear finding that the expenditure was not real that it was bogus. He has simply disallowed the same in the light of the non-compliance with notices under sec. 133(6). From the material available on record, it is clear that the appellant has discharged its onus of providing the identity of the payees. It is also a fact that in the remand report the Assessing Officer himself has mentioned that confirmation has been received in the cases of at least 5 parties. Admittedly, in the case of one party, namely, Tex Wear Exports, it was only opening balance which the AO has brought to tax. There is also no denying the fact that the payments were made through account payee cheques cleared from the appellant's bank account as is evidenced from the bank statements. In the case of Mother & Platt (India) Ltd .v. CIT[1987] 16S ITR 493 (Cal.), the Calcutta High Court has held that "where assessee had established identities of commission agents to whom it had made payments, the fact that summons sent to them by department come back undelivered four years later would not mean that they were non-existent at time of payment. In that case, the Hon'ble High Court observed that "in the entirety of the evidence, it cannot be held that if a person is not found in an address after four years, he is non-existent. The assessee has discharged its primary onus and established the identifies of the said two commission agents and no evidence has been brought on record by the revenue to rebut the case of the assessee. On the entirety of the evidence, it would be unreasonable to hold that the assessee had failed to establish the identity of the said two commission agents and the payments to the said commission agents were not genuine". Similar is the facts and circumstances of the appellant's case. There is no finding that the expenditure was not laid out wholly and exclusively for business purposes and that the conditions laid down under sec. 37 (1) were not*

*fulfilled. Therefore, having regard -to the facts and circumstances of the case and respectfully following the decision of the Hon'ble Calcutta High Court in the reported case, I am of the View that the Assessing Officer was not justified in making the impugned disallowance of Rs.3,58,78,841/-, The consequent addition is, therefore, deleted. This ground of appeal is accordingly allowed."*

The Revenue, being aggrieved, is in appeal before us.

6. Before us Ld. DR heavily relied on the order of AO whereas Ld. AR for the assessee reiterated the submissions that were made before Ld. CIT(A) and also relied on the order of Ld. CIT(A). He filed ledger copy of all the parties which are placed on record and demonstrated that it has been dealing with all the parties in earlier year as well as in the subsequent year. Therefore, the disallowance cannot be made on account of non identity of the parties as the identity of these parties have not doubted in other years.

7. We have heard the rival contentions of both the parties and perused the material available on record. In the case on hand, the AO has made the disallowance of the following expenditure:-

Sl. No.	<u>Particulars</u>	<u>Amount</u>
1.	Stitching charges	1,73,40,963
2.	washing and iron charges	5,91,146
3.	embroidery charges	30,32,257
4.	processing and dyeing charges	1,33,69,589
5.	finishing charges	<u>15,44,890</u>
		3,58,78,841/-

The above expenses were disallowed by AO on the ground that notice issued u/s. 133(6) of the Act to the respective parties were either not delivered or no response was received. However, Ld. CIT(A) granted relief to assessee after having reliance on the judgment of Hon'ble jurisdictional High Court in the case of *Mather & Platt (India) Ltd. Vs. CIT* (1987) reported in 68 ITR 493 (Cal) and relevant extract of the said judgment is reproduced below:-

*"On the consideration of the facts and circumstances, it appears that by taking an overall view, it is found that the assessee had been entering into transactions in its regular course of business through commission agents and paying the agents' commission on the basis of the transaction had. In respect of commission paid to the two commission agents which are in dispute, the assessee had established that in 1974 the assessee was in correspondence with the said agents. The assessee had entered into the transactions through the said agents and the assessee had paid commission to the said agents, in one case by bank draft and in the*

*other case by an account payee cheque which was encashed through a bank account of the agent. It stands established that at the material time at least one of the commission agents was maintaining a bank account.*

*On the entirety of the evidence, it cannot be held that if a person is not found in an address after four years, he is non-existent. The assessee has discharged its primary onus and established the identities of the said two commission agents and no evidence had been brought on record by the Revenue to rebut the case of the assessee. On the entirety of the evidence, it would be unreasonable to hold that the assessee had failed to establish the identity of the said two commission agents and that payments to the said commission agents were not genuine.*

Now, the issue before us arises for our adjudication so as to whether the expense which have not been confirmed u/s. 133(6) of the Act can be allowed as deduction in the given facts and circumstances of the case. The undisputed fact is that the AO has not brought any infirmity in the nature of all expenses as claimed by assessee during the year. Similarly, there was no allegation of the AO that the expenses were unreasonable. The sole reason for the disallowance of the expenses was that the notices issued u/s 133(6) of the Act were un-served or where the notices were served but the party failed to respond. Thus, an inference can be drawn the disallowances were made on account of non-existent of the party.

In this regard, we find that all the above parties in respect of which disallowances were made by the AO were old parties. Furthermore, the assessee has done its business transactions with these parties in the earlier year as well as in the subsequent year also. In those years, the existence of the parties has not been doubted and all the transactions were duly accepted by the Revenue. The details of the transactions with all the parties are enclosed a per **Annexure-I**. From the perusal of said Annexure-I which is enclosed with the order, we find that the existence of the parties have been duly accepted by the Revenue in earlier year as well as in subsequent years. Therefore, in such situation the disallowance cannot be made merely on the ground that the notice u/s. 133(6) of the Act have not been served or parties failed to response to the notice issued u/s. 133(6) of the Act. Besides the above, we also find that the assessee has claimed to have made payment to all the above parties through banking channel and AO has not doubted the genuineness of the same. Thus, in the circumstances, we are of the view that the expense claimed by assessee cannot be disallowed merely due to non service / non response of the notice issued u/s. 133(6) of the Act. While doing so,

we also find support and guidance from the judgment of Hon'ble jurisdictional High Court in the case of *Mather & Platt (India) Ltd. (supra)*. In view of this proposition, we do not find any reason to interfere in the order of Ld. CIT(A) and we uphold the same. Hence, this ground of Revenue's appeal is dismissed.

**8. In the result, Revenue's appeal stands dismissed.**

Order pronounced in open court on 26/10/2017

Sd/-

(न्यायिक सदस्य)  
(S.S.Viswanethra Ravi)  
Judicial Member

Sd/-

(लेखा सदस्य)  
(Waseem Ahmed)  
Accountant Member

\*Dkp-Sr.PS

दिनांक:- 26/10/2017 कोलकाता / Kolkata

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-DCIT, Circle-10, P-7, Chowringhee Square, 3<sup>rd</sup> Fl, Kolkata-69
2. प्रत्यर्थी/Respondent-M/s Magnum Clothing (p) Ltd., 133, Caning Street, Kolkata-01
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary,  
Head of Office/DDO  
आयकर अपीलीय अधिकरण,  
कोलकाता