

IN THE INCOME TAX APPELLATE TRIBUNAL
"I" Bench, Mumbai
Before Shri B.R. Baskaran (AM)& Shri Pawan Singh (JM)
I.T.A. No. 5735/Mum/2016 (Assessment Year 2012-13)

Shri Kamleshkumar P. Jain 206-A, Shree Industrial Estate, Subhash Road 2 nd Floor, Jogeshwari(East) Mumbai-400 064. PAN : AAEPJ9516E (Appellant)	Vs.	ITO 30(2)(1) Pratyakshakar Bhavan, C-10 709, Bandra Kurla Complex Mumbai-400051 (Respondent)
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Assessee by	Shri B.P. Purohit & Shri Lavanya Rajpurohit
Department by	Shri V. Justin
Date of Hearing	06.03.2018
Date of Pronouncement	20.04.2018

ORDER

Per B.R. Baskaran (AM) :-

The appeal filed by the assessee is directed against the order dated 01-07-2016 passed by Ld CIT(A)-41, Mumbai and it relates to the assessment year 2012-13. The assessee is in appeal challenging the decision rendered by Ld CIT(A) on the following issues:-

- (a) Addition made u/s 41(1) in respect of M/s Suryalakshmi Garments
- (b) Disallowance made out of labour charges
- (c) Disallowance made out of purchases made from M/s Harsh Textiles.

2. We heard the parties and perused the record. The assessee is the proprietor of a concern named M/s Mehta Creation and is engaged in the business of manufacturing of garments. The return of income filed by the assessee was taken up for scrutiny and the AO completed the assessment by making various additions. The Ld CIT(A) granted partial relief to the assessee and still aggrieved, the assessee has filed this appeal before the Tribunal.

3. The first issue relates to the addition made u/s 41(1) of the Act. During the course of assessment proceedings, the AO issued notices u/s 133(6) of the Act to six creditors in order to verify the genuineness of creditors. All the notices were returned unserved and hence the AO added the balances outstanding in the name of six creditors u/s 41(1) of the Act. In the appellate proceedings, the Ld CIT(A) deleted the addition relating to five creditors and confirmed addition of Rs.1,01,867/- relating to M/s Suryalaxmi Garments. The reasoning given by the Ld CIT(A) was that the assessee has failed to produce the party or could furnish any traceable address.

4. Before us, the Ld A.R submitted that the notice issued to M/s Suryalaxmi Garments has returned back due to change of address. He further submitted that the above said party is doing job works for the assessee and it is having running account with the assessee. The Ld A.R also invited our attention to the copies of bank accounts placed in the paper book to show that the business transactions are continuing and hence the balance standing in the name of M/s Suryalaxmi Garments cannot be considered as ceased liability warranting addition u/s 41(1) of the Act.

5. On the contrary, the Ld D.R submitted that the assessee has failed to produce the party before the AO and the notice issued to the party has also returned back. Hence the Ld CIT(A) was constrained to sustain the addition.

6. We have heard the parties on this issue. The provisions of sec. 41(1) shall apply only in case of ceased trading liability. Before us, the assessee has demonstrated that M/s Suryalaxmi Garments is having running account and the balance outstanding in its name has been paid in the succeeding years. Hence we are of the view that the provisions of sec. 41(1) shall not apply to the facts of this issue. Accordingly we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the addition of Rs.1,01,867/- relating to M/s Suryalaxmi Garments.

7. The next issue relates to the disallowance made out of labour charges. The AO issued notices u/s 133(6) of the Act to the various persons claimed to have been providing job work to the assessee. Hence the AO disallowed entire labour charges relating to five persons. The Ld CIT(A) restricted the disallowance to 30%, since it was not proved beyond doubt that those persons have really provided job work service to the assessee and the AO has also failed to prove that the labour charges paid to them have returned back to the pockets of the assessee.

8. The Ld A.R submitted that the assessee has furnished copies of labour bills and also shown that the entire payments have been made by way of cheques. On the contrary, the Ld D.R submitted that the documents may support the claim, but they will not prove the genuineness.

9. We have heard the parties on this issue and perused the record. We notice that the assessee has furnished copies of labour bills and payment details in order to prove the genuineness of expenses. It is, however, an admitted fact that the notices issued to the job workers were returned unserved and the assessee has also failed to produce them before the AO. Hence, as rightly held by Ld CIT(A), it cannot be said that the assessee has conclusively proved the genuineness of labour charges. In these circumstances, a portion of the expenditure claim may be disallowed in order to take care of revenue leakages. We notice that the Ld CIT(A) has disallowed 30% of the labour charges paid to the five parties. We notice that the AO has not shown that the labour charges were not incurred at all. It is an admitted fact that the garments cannot be manufactured without incurring labour charges. Hence, in our view, the disallowance of 30% appears to be on the higher side. Accordingly we modify the order passed by Ld CIT(A) on this issue and direct the AO to restrict the disallowance to 15% of the labour charges paid to the five parties.

10. The last issue relates to the disallowance made of purchases made from M/s Harsh Textiles. The assessee has purchased fabrics to the tune of Rs.45,25,048/- from M/s Harsh Textiles. In order to verify the genuineness of purchases, the AO issued notice u/s 133(6) of the Act to the above said party, but the same was returned unserved. Hence the AO disallowed 25% of the value of purchases made from M/s Harsh textiles, which worked out to Rs.11,31,262/-. The Ld CIT(A) upheld the same.

11. The Ld A.R submitted that M/s Harsh Textiles is not declared as Hawala dealer by the Sales tax department. He submitted that the assessee has produced all the evidences to prove the genuineness of purchases. He submitted that the assessee has purchased Grey cloth from the above said party and the same is exempt from VAT tax. He submitted that the G.P rate declared during the year under consideration is very much comparable with other years. He submitted that the assessee has furnished quantity details to prove the receipt and use of cloth purchased from the above said party. Accordingly he submitted that there is no reason to doubt the genuineness of purchases.

12. On the contrary, the Ld D.R placed reliance on the order passed by Ld CIT(A).

13. We heard the parties on this issue and perused the record. We notice that the AO has issued notice u/s 133(6) of the Act to M/s Harsh Textiles and the same has returned back by postal authorities. The assessee has also not produced the said party before the AO. Though the assessee has furnished invoices and payment details, yet it is established proposition of law that the onus to prove the genuineness of expenditure would lie upon the assessee. Since the notice issued to the above said party has returned back and since the assessee could not produce the above said party before the AO, it cannot be said that the assessee has conclusively proved the genuineness of purchases. Accordingly we are of the view that disallowance of a portion of

purchases is called for to take care of revenue leakages. The assessee has contended that he has produced the quantity details to prove the receipt and consumption of the cloth. It was also submitted that the cloth is rateable item under VAT tax. We notice that the tax authorities have disallowed 25% of the value of purchases made from M/s Harsh Textiles, which we consider to be on the higher side when we consider the contentions of the assessee. Accordingly we modify the order passed by Ld CIT(A) on this issue and direct the AO to restrict the addition to 5% of the value of purchases made from M/s Harsh textiles.

14. In the result, the appeal filed by the assessee is partly allowed.

Order has been pronounced in the Court on 20.04.2018.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 20/04/2018

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

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Senior Private Secretary
ITAT, Mumbai