

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH: 'E': NEW DELHI)**

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT  
&  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No:- 3813 /Del/2015,  
(Assessment Year: 2010-11)**

DCIT, Circle 19(1), New Delhi.	Vs.	M/s Orient Fashion Exports India Pvt. Ltd., E-45/14, Okhla Industrial Area-II, New Delhi.
<b>PAN No:</b> AAACO4581F		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**Revenue by** : Sh. B.R. Mishra (Sr. DR)  
**Assessee by** : Sh. R.S. Singhvi, (CA)

**Date of Hearing** : 23.05.2018.  
**Date of Pronouncement** : 14/06/2018.

**ORDER**

**PER: KULDIP SINGH, JM**

The Appellant, DCIT, Circle 19(1), New Delhi. (hereinafter referred to as 'the Revenue') by filing the present appeal, sought to set aside the impugned order dated 02.03.2015 qua Assessment

Year 2010-11 passed by Ld. CIT(A)-7, Delhi-110092, on the grounds that:-

- “1. *In the facts and circumstances, the Ld. CIT(A) erred in deleting disallowance of Rs.39,91,717/- made by the AO on a/c of conversion charges paid to the Municipal Corporation of Delhi by not appreciating the fact that the expenditure resulted in a benefit to the assessee of an enduring nature also specially because it was a onetime paramount made for removing the objection for earning out commercial activities.*
2. *In the facts and circumstances, the Ld. CIT(A) erred in deleting disallowance of Rs. 17,16,109/- made by the AO on account of repair and maintenance by ignoring the fact that no such repairs were carried out and the material was lying as stock and without rebutting the finding that actually no repairs were carried out.*
3. *In the facts and circumstances the Ld. CIT(A) erred in deleting disallowance of Rs.23,46,918/- made by the AO on account of business promotion expenses, in the absence of proper evidence adduced by the assessee and by stating that the appellant could not be accepted to furnish evidence in the form of list of persons to whom gift was given which in fact was in the nature of providing evidence.*
4. *In the facts and circumstances, the Ld. CIT (A) erred in deleting disallowance of Rs.7,35,71,281/- made by the AO u/s 40A(2)(b) 'on account of fabrication charges paid to sister concerns in the absence of proper evidence adduced by the assessee specially when the onus was on the assessee to establish with evidence that the payments made were as claimed at arm's length price.*
5. *In the facts and circumstances, the Ld. CIT (A) erred in deleting disallowance of production incentive of Rs.22,41,828/- made by the AO, in the absence of even primary evidence as to whom the payment was made and also by ignoring the fact that no such incentive was paid in earlier year.*
6. *The appellate craves to be allowed to add any fresh ground of appeal and/or delete or amend any of the grounds of appeal.”*

2. Briefly stated the facts necessary for adjudication of the controversy at hand are: The assessee company is into the business of manufacturing and exports of readymade garments. The AO noticed that the assessee has debited an amount of Rs. 3991718/- under the head Municipal Corporation of Delhi (MCD), claimed to be one time "Conversion Charges" for conversion of use of premises from "Industrial Activities" to "Commercial Activity". Disagreeing with the contentions raised by the assessee, AO made addition of Rs. 39,91,718/-, on the ground that these expenses would confer enduring benefit to the assessee by treating the same as capital in nature. Assessing Officer further noticed that the assessee claimed Repair and Maintenance Expenses of Building to the tune of Rs. 2458366 as against earlier year's expenses of Rs. 83316. Declining the contentions raised by the assessee, AO made addition of Rs. 17,16,109/-, on the ground that the assessee has purchased Marble at the Fag end of the year just to claim repair and maintenance expenses.

2.1 Assessing Officer further noticed that the assessee has claimed Business Promotion Expenses to the tune of Rs. 30,70,267/- pertaining to the purchase of valuable diamond set, coins, pendants

and diamond jewellery. On failure of the assessee to furnish any details to whom valuable items of jewellery and coins amounting to Rs. 23,46,918/- were distributed. AO further noticed that the assessee has claimed Fabrication Expenses amounting to Rs. 55,10,15,393/- as against earlier year's expenses of Rs. 53,92,93,225/-. AO further noticed that out of total expenses under the head fabrication charges of Rs. 55,10,15,393/-, 80% of the amount of Rs. 42,73,67,455/- has been claimed in the name of sister concerns just to reduce the taxable income of the company. Declining the contentions raised by the assessee, AO invoked the provisions contained u/s 40A(2)(b) restricted the fabrication expenses to 25% of the sales price i.e. 47,74,44,112/- and thereby made addition/disallowance of Rs. 7,35,71,281/- on account of excess claim of fabrication charges in the name of sister concern u/s 40A(2)(b) of the Act.

2.2 Assessing Officer further noticed that the assessee has claimed Production Incentives Expenses to the tune of Rs. 22,41,828/- as against the earlier year's expenses at nil. Declining the plea raised by the assessee that incentive has to be provided to increase sale is not acceptable because during the year under

assessment, the sale has been reduced from Rs. 2,13,49,07,433/- to Rs. 1,90,97,76,450/- and thereby made addition of Rs. 22,41,828/- to the total income of the assessee.

3. The Assessee carried the matter before the Ld. CIT(A) by way of filing the appeal, who has deleted the addition made by the AO by allowing the appeal. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and order passed by the revenue authorities below in the light of the facts and circumstances of the case.

**Ground no. 1.**

5. In so far as the question of Capitalization of conversion and Parking Charges of Rs. 39,91,717/- are concerned. Undisputedly, the assessee has got the use of industrial unit changed to commercial unit qua its outlet at Moti Nagar. Payment of conversion and parking charges by assessee to the Municipal Corporation of Delhi (MCD) is also not disputed. It is also not in dispute that assessee has paid one time conversion and parking charges to the MCD.

5.1 We are of the considered view that conversion charges as well as parking charges paid by the assessee are necessary charges without which the assessee cannot run the business.

5.2 Identical issue has been decided by Co-ordinate Bench of Tribunal in the case of **DCIT vs. Haldiram Products Pvt. Ltd. ITA No. 5158/12** by relying upon **CIT vs. J.K. Synthetics Ltd.,** decided by the Hon'ble Delhi High Court. In **Haldiram Product Pvt. Ltd. (Supra)** case wherein the assessee had also paid conversion charges from industrial unit to commercial unit qua its outlet and has also paid parking charges in order to save its business to the Municipal Corporation of Delhi (MCD), when the expenditure have been incurred by the assessee at the stage of setting of his business, the same was necessarily capital expenditure, however when necessary expenditure has been incurred by making payment to the MCD, it cannot be of any enduring benefit to the assessee. Moreover, no extra premises has been acquired or brought in into business fold to further enhance the business rather the charges have been paid by the assessee for regularization of his existing business. So, in these circumstances, we are of the considered view that the Ld. CIT(A) has rightly deleted

the addition made by the AO. Hence, Ground No. 1 determines against the Revenue.

**Ground no. 2**

6. So far as the question of deleting the addition of Rs. 17,16,109/- made by the AO is concerned, the AO has merely disallowed the same, on the ground that the assessee has purchased Marbles at the fag end of month of March and has not been utilized upto 31.03.2010. We are of the considered view of that, when purchasing of Marbles has not been disputed by the AO, addition cannot be made on the basis of assumption that the same has not been utilized upto 31.03.2010 particularly when books of accounts of the assessee have been accepted by the AO. Even the evidence adduced by the assessee to prove the repair and maintenance, has, also not been disputed but the addition has merely been made on the basis of surmises. In these circumstances, the Ld. CIT(A) rightly deleted the addition. Hence, Ground No. 2 also determines against the Revenue.

**Ground no. 3**

7. So far as the addition of amount of Rs. 23,46,918/- on account of disallowance of Business Promotion Expenses as made by AO, on the ground that the assessee has failed to prove by way of evidence as to whom the valuable items of jewelry and coins etc. were distributed are concerned, firstly, the Assessing Officer has not disputed the expenditure made by the AO nor disputed the books of accounts. Secondly, when we examine Business Promotion Expenses of Rs. 23,46,918/- claimed by the assessee in the light of the facts that the assessee has given turnover of more than Rs. 190 crores with returned income of Rs. 4,97,47,060/- and further in the light of the fact that in AYs 2008-09 & 2009-10, the Revenue has allowed expenses on account of Promotion Business Expenses to the tune of Rs. 32.33 lacs and 29.11 lacs respectively, the disallowance has rightly been deleted by the Ld. CIT(A). So, Ground No. 3 determines against the Revenue.

**Ground no. 4.**

8. In so far as deleting the disallowance of Rs. 7,35,71,218 made by the AO u/s 40A(2)(b) on account of Fabrication Charges paid to the sister concern is concerned, again, AO has disallowed the same in the absence of explanation made by the assessee as to how the rates charged by sister concern are on prevailing market rates. Firstly, AO has not disputed the books of accounts but has simply restricted the Fabrication Expenses to 25% of the sale price only, keeping in view the fact that the profit of the assessee company has been reduced by 3.6% of the sale value. Since, the AO has not disputed the reasonableness of the claim of fabrication charges nor brought on record any details to prove the excessive claim in view of section 40A(2)(b) of the Act, the disallowance cannot be made merely on the basis of estimation particularly when there is no fall in the G.P. Rate or Net Profit Rate which is more than the preceding year, which is extracted as under:-

<b>A.Y.</b>	<b>GP Rate</b>	<b>NP Rate</b>
2009-10	7.93%	1.99%
2010-11	8.20%	2.38%

8.1 Moreover, the AO has not collected any evidence to prove evidence from the prevailing market that expenditure incurred/claimed by the assessee were excessive or unreasonable with regard to the fair market value of the services. So, in the face of details of fabrication charges claimed by the assessee provided to the AO during the assessment proceeding, the Ld. CIT(A) has rightly deleted the disallowance of Rs. 7,35,71,281/- made by the AO. So, Ground No. 4 determines against the Revenue.

**Ground no. 5**

9. So far as the deletion of disallowance of Production Incentives of Rs. 22,41,828/- made by the AO for want of primary evidence as to whom the payment was made, is concerned. We are of the considered view that when the assessee has not brought on record the complete details of production incentives and the criteria for granting the incentive has not been provided to the AO. The same cannot be allowed. Perusal of the impugned order passed by the Ld. CIT(A) also shows that details of such expenses has not been insisted upon by Ld. CIT(A) also. No doubt to enhance the sale production incentives need to be given by the assessee to its

employees but the same cannot be allowed at the mere asking of the assessee. So, we set aside this issue to the AO to decide afresh on filing details/evidence by the assessee to prove the fact that the production incentive has been paid to employees under the policy formulated by the assessee. So, Ground No. 5 determines in favour of the Revenue.

10. In view of our ground wise findings, the present appeal filed by the Revenue is partly allowed.

Order pronounced in the open court on 14/6/2018

Sd/-

**(G.D. AGRAWAL)**  
**PRESIDENT**

Sd/-

**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

Dated: 14.06.2018  
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

## ITAT NEW DELHI

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