

**IN THE INCOME TAX APPELLATE TRIBUNAL "H"
BENCH, MUMBAI**

**BEFORE SH. R. C. SHARMA, AM &
SH. SANDEEP GOSAIN, JM**

आयकरअपीलसं./ I.T.A. No. 5129/Mum/2016
(निर्धारणवर्ष / Assessment Year: 2011-12)

DCIT Cen Cir -5 (3) (Erstwhile DCIT Cent Cir-36) Room No. 1906, 19 th Floor, Air India Building, Nariman Point, Mumbai-400021	बनाम/ Vs.	Krishna Knitwear Technology Ltd. 11/12, Raghuvanshi Mill Compound, SenapatiBapat Marg, Near Mahalaxmi Station, Mumbai-400013.
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAACK4721H		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri M. C. Omi Ningshen
प्रत्यर्थीकीओरसे/Respondentby	:	ShriSanat Kapoor

सुनवाईकीतारीख/ Date of Hearing	:	06.02.18
घोषणाकीतारीख / Date of Pronouncement	:	21/02/2018

आदेश / ORDER

Per Sandeep Gosain, Judicial Member:

The present Appeal filed by the revenue is against the order of Ld. CIT (Appeal) – 53, Mumbai dated 23.03.16 for AY 2011-12 on the grounds mentioned herein below:-

1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) is justified in not deciding the issue and giving the directions for verification of vouchers and evidences maintained by the assessee of Rs. 2,36,75,192/- for Rent, Rates and taxes claimed by the assessee instead of disallowing the same without taking into consideration the fact that principal of natural justice was followed by giving sufficient opportunity to the assessee at the time of assessment proceedings to furnish the vouchers, other evidences etc?"

2. Without prejudice to the above ground, whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) is justified in giving the directions for verification of vouchers and evidences maintained by the assessee of Rs. 2,36,75,192/- for Rent, Rates and taxes claimed by the assessee instead of remanding back the issue under consideration to Assessing Officer for verification during the appellate proceeding?"

2. The brief facts of the case are that the assessee is engaged in the business of manufacturing of cotton yarns, circular

knitted fabrics, hosiery and processing cloth. The assessee filed e-return declaring total income of Rs.Nil on 30.09.2011 and the same was processed u/s.143(1) of the Act. The assessee declared book profit of Rs.275,123/- u/s..115JB and paid taxes on it. Thereafter, the case was selected for scrutiny and after serving statutory notices, order of assessment u/s 143(3) was completed by the Ld. AO on 28.03.14after making certain additions/disallowance.

Aggrieved by the order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the case of both the parties allowed the appeal of the assessee.

Now before us, the revenue has preferred the present appeal by raising the above grounds.

Ground No. 1& 2.

3. This ground raised by the revenue are inter connected and inter related and relates to challenging the order of Ld. CIT(A) in not deciding the issue and giving the directions for verification of vouchers and evidences maintained by the assessee for rent, rates

and taxes claimed by the assessee, therefore we thought it fit to dispose of the same by this common order.

4. We have heard counsels for both the parties at length and we have also perused the material placed on record as well as the orders passed by revenue authorities.

Before we decide the merits of the case, it is necessary to evaluate the orders passed by Ld. CIT(A). The Ld. CIT(A) has dealt with the above grounds raised by the revenue in para no. 4.1 to 4.3 of its order. The operative portion of the order of Ld. CIT(A) is contained in para no. 4.3 of its order and the same is reproduced below:-

4.3 I have considered the submissions of the appellant and perused the materials available on record. The point for adjudication is whether the A.O. was justified in making disallowance of Rs.2,36,75,192/- out of Rent, Rates and Taxes. It is noticed that the A.O. made the aforesaid disallowance in view of the appellant's failure to furnish the details of nature of payments and of deduction of tax at source on rent paid to workers/ others. A perusal of the

assessment order reveals that the appellant has three manufacturing divisions at Silvassa and a processing division at Navi Mumbai. The appellant has a total turnover of Rs.2,307 crores during the relevant period. It is claimed that the appellant has more than 500 workers who are reimbursed monthly rent as per their entitlements on account of accommodation hired by them. It is also claimed that depending on the entitlement of workers/employees, the rent payment in each case is ranging between Rs.1,000 to Rs.5,000 per month which is far below the threshold limit on which TDS is required to be deducted. However, the appellant has not produced the relevant documentary evidence to substantiate the above claims, though it is stated that the payment of rent to workers/ others is backed by vouchers and supporting evidence. In these circumstances, it is considered fair and reasonable to direct the A.O. to carry out necessary verification of the vouchers and evidences maintained by the appellant in this regard and act accordingly. Needless to say, the appellant will be afforded reasonable opportunity of being heard and presenting the relevant evidences and materials in this regard. If the claim of the appellant is found to be correct upon verification, the disallowance of Rs.2,36,75,192/- made by the A.O. out of Rent, Rates & Taxes will stand deleted. With this

direction, Ground raised by the appellant is treated as allowed.

After having gone through the facts of the present case as well as considering the orders passed by revenue authorities and submissions made by both the parties, we find that the point for adjudication before the Ld. CIT(A) was as to whether the AO was justified in making disallowance of Rs. 2,36,75,192 out of rent, rates and taxes. As per factual position, since the assessee has failed to furnish the details of nature of payments and deduction of taxes at source on rent paid to workers /others, therefore in order to carry out necessary verifications of the vouchers and evidences maintained by the assessee, necessary direction were given to the AO.

Against that directions, the revenue has filed the present appeal before us.

After considering the facts of the present case, we find that Ld. CIT(A) has directed the AO to carry out necessary verifications of the vouchers and evidences **maintained** by the assessee. However, we have also noticed that the AO while

passing the order of assessment has categorically held that the assessee has failed to furnish the details of nature of payment and of deduction of tax at source on rent paid to the workers /others. Therefore, in such circumstances, instead of using the word vouchers and evidences '**maintained**' by the assessee, Ld. CIT (A) ought to have directed the AO to carry out necessary verifications of the documents or evidences so produced by the assessee by following the provisions of the Act.

In our considered view, the purpose of investigation by the AO is to find the truth and though in this case, the matter has been remanded back by the Ld. CIT(A) to the AO for carrying out necessary verifications. To our mind, this order has not caused any prejudice to the rights of the revenue. Hence, we uphold the orders passed by Ld. CIT(A) with a modification to the effect that AO would carry out necessary verifications of vouchers and evidences so produced by the assessee after following the provisions of the I.T. Act.

With these observations and modifications, we **dismiss** these grounds of appeal raised by the revenue.

5. In the net result, the appeal filed by the revenue stands **dismissed.**

Order pronounced in the open court on 21st Feb, 2018

Sd/-

(R. C. Sharma)

लेखासदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 21.02.2018

Sr.PS. Dhananjay

Sd/-

(Sandeep Gosain)

न्यायिकसदस्य / Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार

(Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai