

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI**

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री एस जयरामन, लेखा सदस्य के समक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.65/Chny/2017

निर्धारण वर्ष /Assessment Year: 2011-12

The Dy. Commissioner of-
Income Tax,
Corporate Circle-4(1),
Chennai.

Vs. M/s.Linea Fashions (India)-
Pvt. Ltd.,
No.51-57, SDF III MEPZ,
SEZ, Tambaram,
Chennai-600 045.

(अपीलार्थी/Appellant)

[PAN: AAACL 7616 C]
(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.80/Chny/2017

निर्धारण वर्ष /Assessment Year: 2011-12

M/s.Linea Fashions (India) Pvt. Ltd.,
No.51-57, SDF III MEPZ, SEZ,
Tambaram, Chennai-600 045.

Vs. The Dy. Commissioner of
Income Tax, Corporate
Circle-4(1), Chennai.

[PAN: AAACL 7616 C]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Department by

: Mr. ARV.Sreenivasan, JCIT

Assessee by

: Mr.B.Gowthaman, CA

सुनवाई की तारीख/Date of Hearing

: 11.07.2018

घोषणा की तारीख /Date of Pronouncement

: 13.07.2018

आदेश / ORDER

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The Revenue as well as the assessee filed the appeal/cross-appeal against the Order of the Commissioner of Income Tax (Appeals)-8, Chennai, in ITA No.147/2015-16 dated 31.10.2016 for the AY 2011-12.

2. M/s.Linea Fashions (India) Pvt. Ltd., the assessee, is carrying on the business of manufacturing apparel for exporting. While making assessment for the AY 2011-12, the AO disallowed the assessee's claim of gratuity for the reason that the assessee has not furnished the required proof in support of its claim. The AO disallowed the depreciation on the Guest House as the assessee has not produced relevant material in support of its claim. The AO disallowed employees ESI Contribution collected by the company but was not paid before the due date specified under ESI Act u/s.36(1)(va) r.w.s.2(24)(x). The AO found difference between the amount shown in the Form No.26AS and the TDS claimed in the return. Since the assessee has not provided sufficient proof that the differential sum was admitted in the earlier year, he added the difference between the gross-receipts as per the TDS claim and Form No.26AS as an income. The AO has also disallowed 75% of the assessee's claim towards repairs and maintenance for factory and Guest House for want of proof. Further, the assessee claimed leave pay payable which was not paid till

March, 2011 since it was shown as an outstanding and was not paid before the due date u/s.139(1), the AO disallowed it.

3. Aggrieved, the assessee filed the appeal before the Ld.CIT(A). In respect of the issue on the disallowance towards repairs and maintenance, the Ld.CIT(A) has restricted the disallowance at 25%. In respect of all other issues, he allowed the assessee's appeal.

4. Aggrieved, the Revenue filed the above appeal on all the above issues. The assessee filed appeal against the order of the Ld.CIT(A) restricting the disallowance on repairs and maintenance at 25% of the total expenditure. On the Revenue's appeal, the Ld.DR submitted that the Ld.CIT(A) in violation of Rule 46A decided the issues viz., disallowance on the claim of gratuity, excess claim of depreciation, the addition made towards difference between gross-receipts and Form No.26AS and disallowance made u/s.43B. In respect of disallowance made u/s.36(1)(va) r.w.s.2(24)(x), though, the Ld.CIT(A) relied on the decision of the Hon'ble Jurisdictional High Court in allowing the appeal, the Ld.DR submitted that the Department has filed a Review Petition before the Hon'ble Jurisdictional High Court. In respect of the disallowance on the claim of expenditure towards repairs and maintenance of building, the Ld.DR submitted that the Ld.CIT(A) erred in not appreciating the

contention of the AO that no proof for claim on repairs and maintenance for factory and Guest House was furnished by the assessee. The burden was on the assessee to produce all evidences in support of the claims made and the assessee failed to discharge its burden and thus pleased to allow the Revenue's appeal.

5. Per contra, the Ld.AR supported the order of the Ld.CIT(A) in respect of all the above issues, but the Ld.AR submitted that the Ld.CIT(A) erred in his order in restricting the disallowance at 25% of the total expenditure as against 75% disallowed by the AO. The Ld.AR submitted that the Ld.CIT(A) failed to appreciate that the AO had not disallowed specific item of expenditure on the ground that it is not allowable but only made an adhoc disallowance. All the repairs and maintenance expenses were incurred by the assessee towards business purpose only and hence, the Ld.CIT(A) erred in restricting the disallowance to 25% of the total expenditure.

6. We heard the rival submissions and gone through the relevant orders. We find from the Assessment Order, the employees ESI contribution collected by the company till February, 2011 was paid on or before 29.03.2011 and the collection for the month of March was paid on 26.04.2011, well within the time of the filing return under the IT Act. Thus, the Ld.CIT(A) has correctly followed the decision of the Hon'ble

Jurisdictional High Court in the case of CIT vs. Industrial Security & Intelligence India Pvt. Ltd.. Hence, the corresponding grounds of the Revenue on this issue are dismissed.

7. In respect of all other issues, it is seen from the Assessment Order that the assessee has not furnished the required details and hence, the AO made the impugned disallowances. From the order of the Ld.CIT(A), we find that the assessee has furnished certain details before the Ld.CIT(A) which have not been furnished to the AO. Since the Revenue is challenging the order of the Ld.CIT(A) under Rule 46A, we find merit in the claim of the Revenue and hence all these issues are remitted back to the AO for fresh examination. The assessee shall furnish all the materials in support of its claims before the AO and comply to the AO's requirement as per law. The AO is free to conduct appropriate enquiry as deemed fit but he shall furnish adequate opportunity to the assessee on the material etc., to be used against it and decide these issues in accordance with law. On the assessee's appeal, on the restriction of disallowance towards repairs and maintenance @25% by the Ld.CIT(A), since the Revenue's appeal on this issue is remitted back, consequently this issue gets merged in it. In the facts and circumstances, the assessee's appeal is treated as allowed for statistical purposes.

8. In the result, the appeal filed by the Revenue is partly allowed and the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced on 13th July, 2018, in Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(एस जयरामन)

(S. JAYARAMAN)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: July 13th, 2018.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF