

**IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH KOLKATA**

**BEFORE SHRI S. S. GODARA, JM & DR. A.L.SAINI, AM**

**आयकरअपीलसं./ITA No.2153/Kol/2016**

**(निर्धारणवर्ष / Assessment Year: 2010-11)**

<b>Avinandan Fashions Pvt. Ltd.</b> 95, Park Street, 7 <sup>th</sup> Floor, Kolkata – 700 016.	<b>Vs.</b>	<b>ITO, Wd.1(1), Kolkata</b> P-7, Chowringhee Square, 8 <sup>th</sup> Floor, Kolkata – 700 069.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: <b>AAFCA 3467 M</b>		
<b>(Appellant)</b>	<b>..</b>	<b>(Respondent)</b>

Appellant by : Shri A. K. Tibrewal, FCA  
Respondent by : Shri S. Dasgupta, Addl. CIT, Sr. DR

सुनवाईकीतारीख/ **Date of Hearing** : **10/05/2018**

घोषणाकीतारीख/**Date of Pronouncement** : **27/07/2018**

**आदेश / ORDER**

**Per Dr. A. L. Saini:**

By way of this appeal, the assessee has challenged the correctness of the order dated 17.10.2016, passed by the Id. Commissioner of Income Tax (Appeals)-15, Kolkata in the matter of assessment u/s 143(3) of the Income Tax Act, 1961 ( 'the Act') for the Assessment Year 2010-11.

2. The grievances raised by the assessee are as follows:

*"1. That the Ld. Assessing Officer erred in law as well as in facts in passing the order appealed against and the Ld. CIT(A) erred in law as well as in facts in partly confirming the additions/disallowances to the extent of Rs.27,13,015/- in as much as in view of the facts and circumstances of the case no such additions/disallowances were at all called for.*

*2. That the Ld. Assessing Officer erred in law as well as in facts in disallowing a sum of Rs.39,890/- on account of F&O Business loss from transactions in KBB Nifty with a recognized share broker and the Ld. CIT(A) erred in law as well as in facts in confirming*

*the said disallowance in as much as in view of the facts and circumstances of the case no such disallowance was at all called for.*

*3. That the Ld. Assessing Officer erred in law as well as in facts in making addition of Rs.26,73,125/- on account of alleged bogus sundry Creditors against purchases and the Ld. CIT(A) erred in law as well as in facts in confirming the same in as much as in view of the facts and circumstances of the case no such addition was at all called for.*

*4. That the appellant company craves leave to add, alter, change and/or modify any of the Grounds of Appeal at or before hearing of the appeal and claim further relief or reliefs which is necessary for the ends of justice.”*

3.The Id Counsel for the assessee informs the Bench that Ground No.1 raised by the assessee is not pressed, accordingly we dismiss the ground No.1 raised by the assessee, as not pressed.

4. Ground No.2 raised by the assessee relates to addition of Rs.39,890/- on account of Future & Option business loss from transactions in KBB Nifty with a recognized share broker.

5. The brief facts qua the issue are that during the assessment year under consideration, the assessee had made transaction in KBB Nifty and incurred loss to tune of Rs.39,890/-. The assessee was asked to furnish the supporting evidences for the aforesaid transaction. In response, the assessee explained that it is a knowledge based broking done through the broker. The assessee furnished to AO a copy of agreement with broker and details of loss in the transactions. However, the assessee failed to produce the contract notes for the transaction, therefore, the Assessing Officer disallowed the amount of Rs.39,800/-.

6. On appeal by the assessee, the Ld. CIT(A) parroted the facts narrated in assessment order and confirmed the addition made by the Assessing Officer. Aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

7. The Id. Counsel for the assessee submitted before us additional evidence vide P.B Volume-1 wherein the assessee has submitted the copy of agreement between the assessee company and Dynamic Equities Pvt. Ltd for providing broking services to the assessee company. The assessee also furnished before us the copy of confirmation received from the broker along with details of loss. The assessee also submitted before us copy of the ledger of the sundry creditors along with copy of purchase bills and copy of bank certificate issued by the assessee company's bank certifying the payments made to the sundry creditors. The assessee also submitted before us copy of contract notes. The Id. Counsel for the assessee substantiated assessee's claim by submitting these additional evidences before the Bench.

8. On the other hand, the Id. DR for the Revenue submitted to the Bench, that since these additional evidences submitted by the assessee for the first time, therefore, these should be examined by the Assessing Officer and, hence, this issue is to be remitted back to the file of the Assessing Officer for his examination.

9. We have given a careful consideration to the rival submissions and perused the materials available on record, we note that assessee has submitted before the Bench first time the contract notes, copy of agreement between the assessee company and Dynamic Equities Pvt. Ltd. and confirmation received from the broker, audited financial statement and ledger of sundry creditors, purchase bills etc. Since, these additional evidences are being submitted before the Bench first time therefore, keeping in mind the principle of natural justice and fair play, we are of the view that Assessing Officer should be allowed a reasonable opportunity to examine them because this ensures full, fair and detailed enquiry and verification. Therefore, we are of the view that this issue should be remitted back to the file of the Assessing Officer to examine these additional evidences. Hence, we set aside the order of the Id. CIT(A), and remit the

issue back to the file of the Assessing Officer to adjudicate this issue afresh, after taking into account the additional evidences and accordance with law. We also direct the assessee to participate in assessment proceedings diligently. Therefore, we allow this ground of appeal for statistical purposes.

10. Ground No.3 raised by the assessee relates to addition of Rs.26,73,125/- on account of alleged bogus sundry creditors against purchases.

11. The brief facts qua the issue are that the assessee company has shown in its Balance Sheet, sundry creditors for goods to the tune of Rs.26,73,125/- as on 31.03.2010, For verification of genuineness of these creditors a departmental Inspector was deputed by AO to make physical enquiry and submit a report. After verification, the Inspector reported to the AO that most of the creditors could not be found at the given address. During the assessment proceedings the assessee was asked to explain the transactions with supporting evidences. In response, the assessee furnished the supporting evidences for transaction with some of the sundry creditors in question i.e copies of purchase bills, party ledges and details of payment during the year and subsequent year against the purchases. However, the assessee could not furnish the above details in respect of the following sundry creditors:

<b>Name of Sundry Creditors</b>	<b>Amount of credits</b>
1. Jagdamba Traders	Rs.2,15,250/-
2. Kushi Suppliers	Rs.3,41,500/-
3. MaaGayatri Enterprises	Rs.4,81,705/-
4. Om Trading	Rs.2,22,145/-
5. Pashupati Traders	Rs.3,47,950/-
6. Pitambari Saree House	Rs.4,08,395/-
7. Rajshri Arts	Rs.2,10,430/-
8. Renuka Distributors	Rs.2,20,050/-
9. Shivam Enterprises	<u>Rs.2,25,640/-</u>
Total	Rs.26,73,125/-

In respect of the above creditors, the assessee, neither furnished the supporting evidences nor explained. The Ld AO noticed that all these creditors were new creditors and transactions were made by the assessee in the last two months of the financial years. No payment against the purchases from these creditors was found to be made during the years. The Id AO noted that assessee failed to prove the genuineness of transactions therefore, he made addition to the tune of Rs. Rs. 26,73,125/-.

12. On appeal by the assessee, the Id. CIT(A) confirmed the addition made by the Assessing Officer. The Id CIT(A) noted that the disputed nine parties were related to one and other and these parties did not appear to have conducted any business with assessee. Further, on perusal of the bills issued by these parties to the assessee showed that bills were prepared in the same manner and in the same hand writing, bill numbers were not pre-printed and no contact number was mentioned on the bill of M/s Renuka Distributors. Hence, Id CIT(A) confirmed the addition made by Id AO.

13. Aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

14. The Ld. Counsel for the assessee begins by pointing out that since the assessee's sale were not doubted, therefore, corresponding purchases should not be disallowed. In case of trading business, the sales cannot be done without purchases. Since, the sales has been accepted by the Assessing Officer, therefore, all the purchases made by the assessee are genuine. The Id. Counsel for the assessee also drew our attention towards Page Book Page No.146, which contains the details of purchases and sales data vis a vis net profit ratio in terms of turnover. As on 31.03.2010,

the sales of the assessee was to the tune of Rs.111,500,195/- and the gross profit earned by the assessee was to the tune of Rs.19,062,458/- and gross profit ratio (in terms of gross profit/turnover) comes at 17.10%. Net profit earned by the assessee as on 31.03.2010 is to the tune of Rs.1,587,871/- and the net profit ratio for the Assessment Year 2010-11 is at 1.42%, which is more or less close to the previous year (at 1.26%) and the subsequent years (at 1.27%). Therefore, purchases made by the assessee should not be doubted. The Id. Counsel for the assessee submitted that the assessee had submitted copies of bill issued by the nine parties and certificate from its bankers regarding payments made to these parties in the month of April, 2010. These documents were submitted to establish the genuineness of the transactions with these parties. The Id. Counsel for the assessee submitted that during the assessment proceedings, the Assessing Officer had deputed Inspector of Income Tax to make necessary verification at the addresses of creditors. On verification by Inspector, it was found that some of the creditors were not found at the addresses given, in this respect, the Counsel submitted that the creditors may have shifted their residents or relocated their offices. The assessee furnished evidences of transaction and merely because these parties could not be available on addresses given, does not mean that his entire purchases and the creditors were bogus. Since, all these nine transactions were new and transactions with these parties were done in last two months of the current year. The Counsel submitted that the Assessing Officer has power u/s 131 to summon and compel the presence of creditors but he has not done during the assessment proceedings. However, the Id. CIT(A) has power to summon the creditors u/s 131 of the Act and compel their presence during the appellate proceedings but he has failed to exercise their power u/s 131 of the Act.

15. On the other hand, the Id. DR for the Revenue has primarily reiterated the stand taken by Assessing Officer which we have already noted in our earlier para and is not being repeated for the sake of brevity.

16 We have given a careful consideration to the rival submissions and perused the materials available on record, we note that during assessment proceedings, Assessing Officer had deputed the Inspector of Income Tax to make necessary verification at the addresses of the creditors. On verification, it was found that some of the creditors were not found at the addresses given. Hence, assessee was requested to furnish explanation for the same, alongwith supporting evidences. In compliance, assessee furnished evidences of transactions with some of the sundry creditors and produced copies of purchases bills, party ledgers and details of payment. However, assessee could not produce the supporting evidences in respect of nine creditors. All these nine creditors were new and transactions with these parties had happened in the last 2 months of the current year. In appeal proceedings assessee has submitted that it had produced all the relevant documents. It was further submitted that provisions of section 68 are not applicable to creditors for purchase of trading goods. In appeal proceedings, theassessee has submitted the copies of the bills issued by the parties and a certificate from its banker regarding payments made to these parties in the month of April, 2010. These documents were submitted to establish the genuineness of the transactions with these parties, however, Id CIT(A) did not consider these evidences in right perspective.

17. We note that neither Assessing Officer nor Id. CIT(A) brought any evidence on record to show that bills and certificate from bank produced by the assessee to prove the genuineness of creditors, in respect of nine creditors are not genuine. Just because the bills were made manually and bills number were not pre-printed,does not mean that these bills were bogus. Therefore, we note that the assessee has discharged its primary onus by providing bills, vouchers and bank certificate in support of the said purchases. We note that books of accounts of the assessee were not rejected by the Assessing Officer and entire sales have been accepted.The Assessing Officer has accepted the sale figures so, therefore, question of rejecting the purchases simply because some notices were returned back

cannot be the sole reason to make the addition. The sale only represents the price received by the seller of the goods for the acquisition of which it is already incurred the cost. It is the realization of expenditure over the cost incurred that only forms the part of the profit included in the consideration of sales. It is not the case of the Assessing Officer that examination by way of incurring the cost in acquiring the goods, sales has been made by the assessee and that has also not been disclosed. In the absence of such finding of fact, the sum of purchases cannot be treated as income in the relevant assessment year. Apart from this, the lower authority did not bring any cogent evidence to prove that the bills and certificate of bank and other information submitted by the assessee were not genuine.

18. We note that the gross profit rate and net profit rate of the assessee during the Assessment Year under consideration is more or less similar to the previous year and subsequent year. Therefore, considering this factual position, the addition made by the Assessing Officer and confirmed by the Id. CIT(A) needs to be deleted. Accordingly, we delete the addition.

19 In the result, the Ground No.3 raised by the assessee is allowed.

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

Order is pronounced in the open court on 27.07.2018.

**Sd/-**  
**(S. S. GODARA)**  
**न्यायिक सदस्य / JUDICIAL MEMBER**

**Sd/-**  
**(A.L.SAINI)**  
**लेखा सदस्य / ACCOUNTANT MEMBER**

कोलकाता /Kolkata;

दिनांक/ Date: 27/07/2018

(RS, SPS)

**आदेशकीप्रतिलिपिअग्रहित/Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant- Avinandan Fashions Pvt. Ltd.
2. प्रत्यर्थी/ The Respondent- ITO, Wd.1(1), Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, **कोलकाता/** DR, ITAT,  
Kolkata
6. गार्डफाईल / Guard file.  
सत्यापितप्रति

True Copy

By Order

Senior Private Secretary,  
Head of Office/D.D.O,  
I.T.A.T, Kolkata Benches,  
Kolkata.