

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "F" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA.No.5302/Del./2015
Assessment Year 2012-2013

The Income Tax Officer, Ward-13(2), C.R. Building, New Delhi.	vs	M/s. Jaidka Woolen & Hosiery Mills P. Ltd., D-6, NDSE, Part-1, New Delhi. PAN AAACJ0351N
(Appellant)		(Respondent)

Cross Objection No.409/Del./2015
Arising out of
ITA.No.5302/Del./2015 - Assessment Year 2012-2013

M/s. Jaidka Woolen & Hosiery Mills P. Ltd., D-6, NDSE, Part-1, New Delhi. PAN AAACJ0351N	vs	The Income Tax Officer, Ward-13(2), C.R. Building, New Delhi.
(Cross Objector)		(Respondent)

For Revenue :	Shri Surender Pal, Sr. D.R.
For Cross Objector :	Shri Ashwani Kumar & Shri Aditya Kumar, C.As

Date of Hearing :	06.09.2018
Date of Pronouncement :	01.10.2018

ORDER

PER BHAVNESH SAINI, J.M.

The Departmental Appeal as well as Cross Objection by Assessee are directed against the Order of the Ld. CIT(A)-5, New Delhi, Dated 02.06.2015, for the A.Y. 2012-2013.

2. The assessee-company is stated to be engaged in the business of manufacturing, exporter and trading of grossery, ready made goods. The return of income was filed at the income of Rs.11,77,271/-. However, A.O. made five additions and computed the total income of assessee at Rs.9,18,30,610/-. The assessee challenged all the five additions before the Ld. CIT(A). The Ld. CIT(A), deleted two additions, however, maintained three additions. The appeal of assessee was partly allowed. The Revenue and the Assessee are in cross-appeals as above.

3. We have heard the Learned Representatives of both the parties and perused the material available on record. Both the appeals are decided as under.

C.O.No.409/Del./2015 – Assessee's Appeal :

4. On ground No.1, assessee challenged the disallowance of Rs.1,53,072/- on account of electric repair and maintenance expenses. The A.O. noted that electricity repair and maintenance expenses has been claimed at Rs.1,53,072/- in the P & L A/c. The details of these expenses were filed and perused by the A.O. It revealed that most of the expenses have been incurred for purchase of tube rods, electrical wires, condensers, capacitors etc. The A.O. noted that these items are of enduring nature and cannot be termed as consumables and rather in the nature of capital items. The A.O. allowed 10% depreciation on the same and made the addition of Rs.1,37,765/-. The Ld. CIT(A) confirmed the addition.

5. After considering the rival submissions, we are of the view that the addition is wholly unjustified. Considering the nature of business of assessee, these expenses are incurred on electrical repair and maintenance, which are in nature and consumable expenses. The assessee has rightly treated the same as revenue expenditure. The A.O. has not pointed-out as to which capital have been generated by the assessee for purchasing tube rods, electrical wires etc. In the absence of any specific finding against the assessee, we set aside the Orders of the authorities below and delete the addition of Rs.1,37,765/- made by the A.O. Ground No.1 of cross-objection is allowed.

6. On ground No.2, the assessee challenged the addition of Rs.1,81,937/- on account of car running and telephone expenses. The A.O. directed the assessee to explain as to why car running and telephone expenses be not subjected to disallowance as the quantum of personal expenses under these heads cannot be ascertained as per the

audited report. The assessee stated that there is no personal expenses on account of car running and telephone expenses. The A.O. however, noted that in the absence of any cogent reply from the assessee and any log book for maintenance of the car having been maintained or produced, 50% of the said expenses were disallowed and made addition of Rs.1,81,937/-. The Ld. CIT(A) on the same reasoning dismissed this ground of appeal of assessee.

7. After considering rival submissions, we are of the view that addition is wholly unjustified. The assessee is a domestic company and as such there may not be any personal expenses incurred by the assessee company on account of car running and telephone expenses. It appears to be an adhoc addition made by the A.O. without pointing out any specific inadmissible expenses incurred by the assessee. In this view of the matter, we set aside the Orders of the authorities below and delete the entire addition. Ground No.2 of cross objection of the assessee is allowed.

8. On ground No.3, assessee challenged the addition of Rs.7620/- under section 14A of the I.T. Act.

9. Learned Counsel for the Assessee did not press this ground. The same is accordingly dismissed.

10. In the result, C.O.No.409/Del./2015 of the Assessee is Partly Allowed.

ITA.No.5302/Del./2015 – Departmental Appeal :

11. On Ground No.1, Revenue challenged the Order of the Ld. CIT(A) in accepting the new evidence produced before him regarding payment made to job workers in violation of Rule 46A of I.T. Rules. The Ld. D.R. contended that Ld. CIT(A) has violated Rule 46A in the matter because the books of account were not produced before A.O. which have been called by him at the appellate stage and after examination allowed the relief to the assessee.

12. On the other hand, Learned Counsel for the Assessee submitted that assessee did not file any additional

evidence before Ld. CIT(A) and no additional evidence have been considered by the Ld. CIT(A). All evidences were produced before A.O. including cash book. He has referred to PB-193 which is a reply filed before A.O. at assessment stage on 16.03.2015, in which, the assessee in response to query of the A.O. submitted several details before him i.e., details of the stock, details of fall in gross profit, copy of ITR, computation of income and balance sheet of M/s. Shivam International Ltd., details of employees, note on role for fabrication in business activities, party-wise details of fabrication charges, copy of the cash book, copy of the purchase bills and details of the expenses. Learned Counsel for the Assessee, therefore, submitted that since books of account of the assessee produced before A.O, therefore, no additional evidence has been considered by the Ld. CIT(A).

13. We have considered the rival submissions and do not find any justification to entertain the submissions of the Ld. D.R. The assessee has filed reply before A.O. as referred to

above in which several details as per the query of the A.O. were furnished at assessment stage including copy of the cash book. Therefore, all the details were furnished before A.O. including production of the books of account Learned Counsel for the Assessee also contended that no additional evidence was filed before Ld. CIT(A). The Ld. D.R. has not pointed-out as to which of the additional evidence was submitted before Ld. CIT(A) in violation of Rule 46A. Therefore, in the absence of any specific averment on this issue, no interference is called for in the matter. The Ld. D.R. pointed-out from the findings of the Ld. CIT(A) that books of account have been produced before Ld. CIT(A) for the first time for examination. Even if contention of Ld. D.R. is considered that assessee did not produce books of account before A.O. but the Ld. CIT(A) recorded in his findings that he has called for the books of account of the assessee like cash book, ledger and vouchers which were produced before him and he has verified the same. These observations of the Ld. CIT(A) clearly show that Ld.

CIT(A) called for the production of the books of account, ledger and vouchers at the appellate stage for examination. Rule 46A(4) of the I.T. Rules provides that “*nothing contained in this Rule shall effect the power of the Ld. CIT(A) to direct for production of any document or examination of any witness to enable him to dispose of the appeal or for any other substantial cause.*” According to the reply of the assessee, assessee produced books of account and other details before A.O. at the assessment stage. Therefore, even if Ld. CIT(A) called for the books of account, details and vouchers at appellate stage for examination, there is nothing wrong in his power to examine the books of account as per Rule 46A(4) of the I.T. Act. There is no merit in Ground No.1 of appeal of the Revenue and the same is accordingly dismissed.

14. On ground No.2, Revenue challenged the Order of the Ld. CIT(A) in deleting the addition of Rs.7,58,31,017/- on account of fabrication charges.

15. The A.O. noted that the assessee was debited in the P & L A/c expenses which includes fabrication charges of Rs.7,58,31,017/-. The assessee was required to explain the role of fabricator in its business, the system of fabrication along with reconciliation of knitting process and party-wise details, monthly fabrication charges and their ledger accounts in order to justify the claim of fabrication charges. The A.O. however, noted that complete desired details were not submitted. The details submitted are in two parts i.e., month-wise fabrication charges and fabrication tax-free. It was submitted that the assessee-company takes the help of fabricator for the job of Panel knitting, Linking of palla (stitching) etc., Hand embroidery and bead etc., and Crocheted work etc., and other related work is also done to complete the above job. The A.O. however, noted that complete details are not provided to substantiate the claim. It was also noticed that fabrication charges were not subjected to TDS and all the expenses were made in cash. The reason of

exigency for making payments to fabricators in cash was also not provided. The assessee merely stated that fabrication charges has been paid in course of business and were below the threshold limit prescribed for TDS provisions. The A.O, therefore, noted that assessee engaged services of 3600+ fabricators in order to justify its claim of fabrication charges. Even the cash book reveals that expenses have been incurred in cash and are below Rs.20,000/-. Thus, devised a method not to deduct tax. The A.O. also noted that assessee has also claimed expenses of wages and salary and dyeing expenses. The assessee was asked to produce the monthly trading account and reconcile the same with fabrication charges and wages paid along with electricity charges. The assessee provided details of only one month salary details which clearly implies that no such expenditure as fabrication charges has been incurred by the assessee. The assessee was asked to give details of all the employees with their particulars to whom salary is paid in cash. The assessee instead of providing

details so desired, simply filed a statement of wages drawn by 83 workers and that too only for one month i.e., April 2011. Even the addresses of the parties to whom dyeing charges paid were not provided in the details filed to avoid cross-examination. The A.O. in the absence of cooperation from the side of the assessee, disallowed the entire fabrication charges and made addition of Rs.7,58,31,017/-.

16. The assessee challenged the addition before the Ld. CIT(A). The written submissions of the assessee is reproduced in the appellate order in which the assessee reiterated the submissions made before the A.O. It was also submitted that assessee-company is engaged in the business of manufacturing, exporting and trading of hosiery/readymade goods. The hosiery items/readymade goods manufactured by the assessee-company comprises of sweaters/cardigans/pullovers etc are required to be manufactured in various sizes/shares/designs etc., depending upon the requirements of the individual customers. The entire process involves a

series of steps from the purchase of yarn to the delivery of the finished products each of which is required to be performed by different workers having defined skill sets. The assessee-company for some of the activities has its own staff, kept on its rolls and a majority of the activities are outsourced to outside independent parties to whom "Fabrication Charges" have been paid. Various activities have been done by the workers on outsource basis. The amount is paid to them for which details are maintained. Complete details were filed before A.O. and also before Ld. CIT(A). It was submitted that fabricators mostly comprise of migrants who come from different part of country temporarily, stay and work for a few months and return back to their native places. These workers do not function in an organized manner but keep migrate from place to place in search of work and as such, once they leave, the possibility of finding them is remote. The payment of fabrication charges to each fabricator is done on the basis of quantity and nature of work done by them, for which complete records are

maintained. The payments are made by cheque as well as in cash. Tax has also been deducted on part of the payments. The assessee, therefore, produced complete details to satisfy the payment on account of fabrication charges. The assessee engaged only 1555 fabricators and not 3600 wrongly calculated by the A.O. Complete details have been maintained along with details of wages and salaries. All the details are verifiable. The assessee maintained regular books of account which are duly supported by bills and vouchers and subjected to check. The details of fabrication charges of earlier year were also filed to justify the payment of fabrication charges.

17. Ld. CIT(A) considering the explanation of assessee in the light of material on record, deleted the addition. His findings in pages 13 and 14 of the impugned order are reproduced as under :

“Ground No.2: I called books of account of the appellant company like cash book ledger book and vouchers which the AR produced before me with the accountant of the

company. I verified the books of accounts and found that books are maintained in computer and printed ledger was produced before me for verification. The appellant company is giving its job works for their woolen and hosiery mills in Ludhiyana (Punjab) and it is assessed in Delhi. The appellant did not produce books of accounts before the AO, for which such a big addition has been made by the A.O. The A.O should have referred the matter to the local A.O at Ludhiana as of appellant legal there is office on to verify the reality of business transactions of appellant made to local weavers. The AO had calculated that about 3600 persons of weavers community have been paid by appellant company in cash, whereas the AR said that it is around 1300 persons involved for such contract works. Those people are from Bihar, Jharkhand, Eastern U.P. in season time and they work part time with the company and they go back to their villages after in agricultural seasons. U/s 194C of the Income Tax Act,

there are three limits for cash payment on contractual agreements. On single contract one can pay Rs.30,000/- per contract in cash, u/s 194C(5) and in a whole year one can make payment not exceeding Rs.75,000/- as per the proviso to Section 194C(5) of the Income Tax Act. This amendment is from 01.06.2010. Since the appellant's assessment year involved is A.Y. 2012-13, the appellant's books of accounts are maintained in accordance with the law. Hence, the disallowance made by the AO is not appropriate and justified on account of disallowance of fabrication charges. The appellant had paid Rs.6,24,58,750/- in CASH to which no tax was deducted at source. And balance amount of Rs.1,33,72,267/- in cheque on which TDS of Rs.1,31,951/- has been deducted by the appellant company. The AR argued that since the appellant are within the monetary limits of section 194C(5) of the Income Tax Act, no TDS was made by the appellant company. In future the AO should refer these matters to

local TDS authority of the department and local AO. For verification of these figures and facts so that proper revenue can be obtained from the company. Since the appellant had done proper maintenance of books of accounts, the addition made by the AO is not proper and hence deleted. This ground of appeals no. 2 is allowed.”

18. The Ld. D.R. relied upon the Order of the A.O. and submitted that no remand report was called for from the A.O. No opportunity was given to the A.O. to verify the payment of fabrication charges. Therefore, matter may be remanded to the Ld. CIT(A) for passing the order afresh.

19. On the other hand, Learned Counsel for the Assessee, reiterated the submissions made before the authorities below and submitted that complete details on account of fabrication expenses under various heads and supported details are filed from pages 66 to 159 of the paper book. It contains names of the fabricator and his address. PB-160 is the chart of fabrication charges for preceding three

years in proportion of sales and average rate of fabrication charges. Learned Counsel for the Assessee submitted that in assessment year under appeal, the average rate of fabrication charges have increased as compared to earlier year. Similarly, the average sale per packet of manufacture and sale also increased substantially as compared to earlier year. Books of account of the assessee have not been rejected. No addition have been made for any TDS violation. PB-10 is P & L A/c and PB-19 is details of expenses which includes fabrication charges. He has submitted that fabrication charges is essential expenses for conduct of the business to earn income. Therefore, entire amount could not have been disallowed by the A.O. He has submitted that entire details were furnished before the authorities below. Therefore, Ld. CIT(A) on proper appreciation of facts and material on record, correctly deleted the addition.

20. We have considered the rival submissions and perused the material available on record. The assessee is

engaged in business of manufacture, exporter and trading of hosiery readymade goods. In this nature of business, fabrication charges are essential for conduct of business and to earn income. The assessee filed complete details in the paper book to show the name of the fabricator and his address. These are mostly amount paid to the fabricators. PB-160 is the chart for preceding three years including assessment year under appeal to show that assessee has been making payment of fabrication charges in earlier year as well. In assessment year under appeal, the average rate of fabrication charges have increased and the average rate of sale have also increased substantially. Therefore, there is nothing unusual in the business of assessee to incur fabrication charges. The A.O. has not rejected the books of account of the assessee and no specific defects have been pointed out in maintenance of the books of account. No addition has been made by the A.O. for violation of any TDS provisions. The details of expenses at PB-19 shows that the expenses are

essentially incurred on fabrication charges, consumption of indigenous consumable stores, import of components and spare parts and cleaning and forwarding and freight. Thus, for earning income, assessee shall have to incur expenses on fabrication charges. In the absence of any specific defect pointed-out in the maintenance of the books of account, there were no justification for the A.O. to disallow the entire amount of fabrication charges. The assessee has given a certificate in the paper book that all the documentary evidences were filed before A.O, which have not been rebutted through any evidence or material on record by the Revenue. The Ld. CIT(A) also verified the details and the books of account and came to the finding that the assessee has maintained proper books of account and that there are no violation of TDS provisions. The Ld. CIT(A) on proper appreciation of facts and verification of the record and the books of account produced by the assessee, correctly deleted the addition. Therefore, there is no justification to restore back the matter in issue to the file of

the Ld. CIT(A) for fresh examination as is argued by the Ld. D.R. We have also noted above that there is no reason for invoking Rule 46A in the matter. Therefore, no further interference is required in the matter. Ground No.2 of appeal of Revenue is dismissed.

21. On ground No.3, Revenue challenged the order of Ld. CIT(A) in deleting addition of Rs.1,44,95,000/- made under section 68 of the I.T. Act. The A.O. noted that during the year assessee-company received loan of Rs.1,44,95,000/- from M/s. Shivam International Limited. The assessee-company was asked to produce copy of the income tax return, copy of the balance-sheet and bank account to justify the genuineness and creditworthiness of the loan. In response to the above, assessee-company has produced the copy of the ITR and the balance-sheet of the lender. On perusal of the balance-sheet of the lender company, it emerges that Share Capital is of Rs.73.86 lakhs, Reserve and Surplus (-) Rs.15 lakhs, Long Term borrowings Rs.2.26 crores, Trade Payables Rs.2.46 lakhs

and the income returned is zero. The A.O, therefore, noted that from these financial statistics, creditworthiness of the lender company, *prima facie* is crystal clear and require no more comments. The transactions in the bank statement of the lender company shows entries in round and big figures looking like an entry provider. When a company itself is surviving on borrowed funds to run its own business and in losses, how it can afford to lend its finances to some other concern ? The A.O. accordingly, made addition under section 68 of the I.T. Act.

22. The assessee challenged the addition before Ld. CIT(A). The written submissions of the assessee is reproduced in the appellate order in which the assessee submitted that assessee produced documentary evidence to prove the identity of the investor company which is a registered company and assessee filed confirmation, income tax return, copy of bank statement and balance-sheet to prove ingredients of Section 68 of the I.T. Act. The Investor is a registered company and

has complied with the provisions of Companies Act. The assessee produced evidence of creditworthiness of the investor company as well as genuineness of the transaction in the matter. The assessee relied upon the decision of Delhi High Court in the case of CIT vs. Steller Investment Ltd., (1991) 192 ITR 287 (Del.), confirmed by the Hon'ble Supreme Court reported in (2001) 251 ITR 263 (SC) and decision of Hon'ble Supreme Court in the case of CIT vs. Lovely Exports Pvt. Ltd., (2008) 216 CTR 195 (SC) and other decisions to prove that it was a genuine loan taken by the assessee. The Ld. CIT(A) considering the explanation of assessee and material on record, deleted the entire addition. His findings at page-15 of the appellate order are reproduced as under :

“Ground No.5: The appellant had taken interest free loan from its sister concern Shivam International Limited who had confirmed that he had paid Rs.1,44,95,000/- as loan to the appellant company as on 31.03.2012. The sister concern is filing its return and not paying any tax, the

total income of the appellant company is 224 but the AR argued that sister concern had transferred many from its long term borrowings of Rs.2,26,37,663/-, as appearing in the balance sheet (schedule 4). This is a trend in all group companies. The AO had objection that the lender company had followed details as appear in page 4 of the assessment year.

Share Capital	- Rs.73.86 lakhs
Reserve & Surplus	-(-) Rs.15.00 lakhs
Long Term Borrowings	-Rs.2.26 crores
Trade Payables	-Rs.2.46 lakhs
Income returned during the A.Y. 2012-13	-0 (zer0)

From this he concluded that the creditworthiness of the lender was not proved and money is transferred from the balance sheet of the lender company to the appellant company. However, the AO is directed to send this information to the Assessing Officer of the lender company i.e ITO Co. Ward 8(2)/NWR/W/038/02 having its office at "D-6, NDSE, Part-I, South Extension, New Delhi-110001" .

The office is located in Delhi but A.O is in N.W.R which is suspicion in the jurisdiction. The AO is directed to refer the matter to concerned A.O and pass on the information along with this assessment order and appeal order, for necessary action at the other end of the A.O. Therefore, the addition made by A.O of Rs.1,44,95,000/- is deleted in the appellant's case and this ground of appeal is allowed.”

23. The Ld. D.R. relied upon the Order of the A.O. and submitted that assessee did not prove creditworthiness and genuineness of the transaction. The matter may be remanded to the Ld. CIT(A) for fresh adjudication.

24. On the other hand, Learned Counsel for the Assessee, reiterated the submissions made before the authorities below and referred to PB-167 to 187 which are confirmations by lender company, its ITR and balance-sheet. PB-185 to 187 are the copy of the bank statement of the lender company to prove creditworthiness of the lender

company. He has, therefore, submitted that assessee has satisfied conditions of Section 68 of the I.T. Act.

25. We have considered the rival submissions and perused the material available on record. It is an admitted fact that assessee filed confirmation from the investor company, its income tax return, balance-sheet and bank statement. The investor company has confirmed the transaction with the assessee and shows that it had sufficient means to make investment in the assessee-company. The bank account of the investor company shows all the transactions are routed through banking channel and there is no cash deposited in the bank account of the investor company. No evidence has been brought on record, if any amount was diverted by assessee-company to the investor company. The assessee thus, proved identity of the investor company, its creditworthiness and genuineness of the transaction in the matter.

25.1. The Hon'ble Delhi High Court in the case of CIT vs. Fair Investment Ltd., 357 ITR 146 in which it was held that *“A.O. did not summon investors and did not make efforts. There is no finding that material disclosed was untrustworthy. The Appellate Authorities rightly deleted the addition.”*

25.2. The Hon'ble Delhi High Court in the case of CIT vs. Kamdhenu Steel and Alloys Ltd., & Ors. 361 ITR 220 (Del.) in which it was held as under :

“Once adequate evidence/material is given, which would prima facie discharge the burden of the assessee in proving the identity of shareholders, genuineness of the transaction and creditworthiness of the shareholders, thereafter in case such evidence is to be discarded or it is proved that it has “created” evidence, the Revenue is supposed to make thorough probe before it could nail the assessee and fasten the assessee with such a liability under s.68; AO failed to carry his suspicion to logical

conclusion by further investigation and therefore addition under s.68 was not sustainable.”

25.3. The Hon’ble Delhi High Court in the case of CIT vs. Vrindavan Farms Pvt. Ltd., etc., in ITA.No.71 of 2015 vide Order dated 12.08.2015, held as under :

“The sole basis for the Revenue to doubt their creditworthiness was the low income as reflected in their return of income. It was observed by the ITAT that the AO had not undertaken any investigation of the veracity of the documents submitted by the assessee, the departmental appeal was dismissed by the Hon’ble High Court.”

25.4. The Hon’ble Delhi High Court in the case of CIT vs. Value Capital Services Pvt. Ltd., (2008) 307 ITR 334 (Del.) in which it was held as under :

“Dismissing the appeal, that the additional burden was on the Department to show that even if the share applicants

did not have the means to make the investment, the investment made by them actually emanated from the coffers of the assessee so as to enable it to be treated as the undisclosed income of the assessee. No substantial question of law arose.”

26. Considering the facts of the case, evidence on record and above decisions, we are of the view that no interference is called for in the matter. The assessee proved the identity of the investor, its creditworthiness and genuineness of the transaction in the matter. Whatever documentary evidences were filed on record, the A.O. did not make any efforts to summon the Investor and no efforts have been made to verify the documents from the Investor. There is no finding that material disclosed was untrustworthy. No evidence has been brought on record, if investment made by the Investor Company actually emanated from the coffers of the assessee-company so as to enable the total investments to be treated as undisclosed income of the assessee. No interference is called

for in the matter. Ground No.3 of the appeal of the Revenue is dismissed. No other point is argued or pressed.

27. In the result, appeal of the Department is dismissed.

28. To sum-up, Cross-Objection of the Assessee is partly allowed and Appeal of the Department is dismissed.

Order pronounced in the open Court.

Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 01st October, 2018

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "F" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.