

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH 'B', KOLKATA  
[Before Shri P.M. Jagtap, Vice-President and Shri S.S. Viswanethra Ravi, JM]**

**I.T.A. No. 1433/Kol/2017  
Assessment Year: 2013-14**

**A.C.I.T, C.C - 2(3), Kolkata.....Appellant**  
**Room No. 403, 4<sup>th</sup> Floor,**  
**Aayakar Bhawan Poorva,**  
**110, Shanti Palli, E.M. Bye-pass,**  
**Kolkata - 700 107.**

**M/s. Simaaya Fashions Pvt. Ltd.....Respondent**  
**23A, Shakespeare Sarani,**  
**Kolkata - 700 017.**  
**[PAN: AAMCS 7514 A]**

**Appearances by:**

*Md. Usman, CIT, DR appearing on behalf of the Revenue.*

*Shri A.K. Tibrewal, FCA & Shri Amit Agarwal, Avocate appearing on behalf of the Assessee.*

Date of concluding the hearing : September 27, 2018

Date of pronouncing the order : October 31, 2018

**ORDER**

**Per P.M. Jagtap, Vice-President**

This appeal is preferred by the revenue against the order of Ld. CIT(Appeals) – 20, Kolkata dated 08.03.2017 and the solitary ground raised by the revenue therein reads as under:

*“Whether, in the facts & circumstances of the case as well as in the law and in view of the distinction of facts of the instant case (Discussed elaborately in the statement of facts), the Ld. CIT(A)’s order is justified in allowing relief to the assessee.”*

2. The assessee in the present case is a company which is engaged in the business of trading in sarees, dress materials and fabrics. A search and seizure action u/s 132 was conducted in the case of the assessee on 13.02.2013. During the course of search, a statement of the director of the assessee company was recorded u/s 132(4) of the Act wherein he admitted the undisclosed income of the assessee

amounting to Rs. 1,04,50,000/-. Thereafter the return of income for the year under consideration was filed by the assessee on 01.10.2013 declaring a total income of Rs. 8,23,610/-. In the profit and loss account filed along with the said return, additional income as declared during the course of search was credited by the assessee while the net profit was shown only at Rs. 6,54,840/-. When the assessee was called upon by the AO to offer its explanation in the matter, it was submitted by the assessee that it had incurred a trading loss purely due to the expenditure incurred at its new showroom in conjunction with increase in financial cost of Rs. 19.36 lacs. This explanation offered by the assessee was not found acceptable by the AO and rejecting the same, he brought to tax the additional income of Rs. 1,04,50,000/- as declared by the assessee during the course of search vide its order dated 31.03.2015 passed u/s 143(3) of the Act

3. Against the order passed by the AO u/s 143(3), an appeal was preferred by the assessee before the Ld. CIT(A) and after considering the submissions made by the assessee as well as the material available on record, the Ld. CIT(A) decided the issue vide paragraph no 6 and 7 of his impugned order as under:

*"6. I have considered findings of the AO on this issue in the assessment order and the written submission filed by the AR during the appellate proceedings. From the assessment order it seems, the A.O. has not considered the fact that during the relevant assessment year the assessee in his individual capacity did trading activity of fancy sarees and incurred a loss of Rs. 9176390/- from such trading activity.*

*7. There are various case laws such as Shilpa Dying & Printing Mills (supra), Chensing Ventures (supra) and Radhe Developers India Ltd. (supra) in which different judicial authorities have ruled that current year loss under one head of income can be set off against undisclosed income declared by the assessee. The AR has also submitted that requisite*

*details and books of accounts were produced before the A.O during the course of assessment proceedings. I think, in this case all relevant documents and details regarding different business activities were produced before the A.O during the assessment proceedings, in that situation the A.O should have considered the business loss of current year and should have allowed the assessee to set it off against the declared undisclosed income for the year. But here in this case the A.O has neither accepted nor rejected the claim of trading loss of the assessee from trading activity of fancy sarees. Accordingly, the A.O is directed to verify the claim of the assessee of loss from trading activity of fancy sarees of Rs.9176390/- and in case the assessee has claimed it in its return of income and filed details thereof, then allow such loss against the declared undisclosed income of the assessee. Thus, assessee's appeal on grounds no 1 and 2 are allowed."*

Aggrieved by the order of the Ld. CIT(A), the revenue has preferred this appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that the claim of the assessee for a trading loss of Rs. 91,71,390/- and set off of the same against the additional income declared during the course of search was not accepted by the AO without verification as the same was disallowed by him mainly on the ground that the assessee had deviated from the statement recorded during the course of search while filing the return of income. As rightly held by the Ld. CIT(A) by relying on the relevant judicial pronouncements, the assessee is entitled to set off a business loss, if any, against the undisclosed income declared during the course of search and the AO thus was not justifiable in disallowing the claim of the assessee for such set off even without verifying as to whether such loss was indeed incurred by the assessee company in its business during the year under consideration. He accordingly directed the AO to verify the

claim of the assessee for such loss and allow the claim of the assessee for set off of such loss against the additional income declared during the course of search on such verification. In our opinion, there is no infirmity in the impugned order of the Ld. CIT(A) in giving such direction to the AO and even the learned DR has not been able to raise any material contention to rebut or controvert this position. We accordingly uphold the impugned order of the Ld. CIT(A) on this issue and dismiss this appeal filed by the revenue.

**5. In the result, the appeal of the revenue is dismissed.**

Order Pronounced in the Open Court on 31<sup>st</sup> October, 2018.

Sd/-

(S.S.Viswanethra Ravi)  
 JUDICIAL MEMBER

Sd/-

(P.M. Jagtap)  
 VICE-PRESIDENT

**Dated: 31/10/2018**

Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Simaaya Fashions Pvt. Ltd., 23A, Shakespeare Sarani, Kolkata – 700 017.
2. A.C.I.T, C.C. 2(3), 110, Shanti Pally, Kolkata – 700 107.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar / H.O.O.  
 ITAT, Kolkata