

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No.1488/Del/2015
(Assessment Year: 2008-09)

Shikha Textiles Pvt. Ltd, 14, janta Nagar, Garh Road, Meerut PAN: AABCS9551J (Appellant)	Vs.	ACIT, Circle-2, Meerut (Respondent)
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Assessee by :	Shri R.K. Garg, Adv
Revenue by:	Shri S. S. Rana, CIT DR
Date of Hearing	16/10/2018
Date of pronouncement	08/01/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT, Meerut dated 16.02.2015 for the Assessment Year 2008-09.
2. The assessee has raised the following grounds of appeal:-
 - "1. *That under the facts & circumstances of the case, the learned CIT (Appeals) has erred to confirm an addition of Rs. 48,32,725/- without modifying the addition on the basis of assessment record and material placed on record. The confirmation of addition is arbitrary, unjust, uncalled-for, illegal, against assessment record and highly excessive.*
 2. *That under the facts & circumstances of the case, the learned CIT (Appeals) has erred to confirm the addition of Rs. 30,55,264/- treating the confirmed creditors as not explained. The addition made is arbitrary, unjust, uncalled-for, illegal and in any case highly excessive and against the material placed on record.*
 3. *That under the facts & circumstances of the case, the learned CIT (Appeals) has erred to confirm the addition of Rs. 18,50,000/- u/s 68 in spite of all evidences placed on record in proceedings u/s 263/143(3). The confirmation of addition is arbitrary, unjust,*

uncalled-for, illegal and in any case highly excessive and against the material placed on record.

4. *That under the facts & circumstances of the case, the learned CIT (Appeals) has erred not to go through the paper book and material placed on file and confirming the addition of Rs. 97,33,989/-.*
 5. *That the assessee has got the right to raise additional ground, if necessary."*
3. The brief facts of the case is that the assessee is a private limited company engaged in the business of manufacturing of cloths. The return of income was filed for Rs. 84370/- and it was assessed u/s 143(3) of the Act on 08.12.2010 at the same income. Subsequently, the Id CIT, Meerut passed order u/s 263 of the Act setting aside the assessment order and consequent to that a fresh assessment was framed u/s 143(3) read with Section 263 of the Act on 14.03.2014, wherein total income of the assessee is assessed at Rs. 9822360/- against the return and assessed u/s 143(3) of the Act of Rs. 84370/-. The assessee aggrieved preferred an appeal before the Id CIT(A) who dismissed the appeal of the revenue and therefore, the assessee is in appeal before us.
4. The first ground of appeal is against the addition on the basis of the estimation of net profit @5% of Rs. 4832725/-. The brief facts of the case shows that while passing the order u/s 263 of the Act the Id CIT has directed the Id AO to make the addition of Rs. 4832725/- on estimating the net profit @5% after rejecting the books of account of the assessee. The order of the Id CIT was challenged by the assessee before the coordinate bench and appeal of the assessee was dismissed in ITA No. 3056/Del/2013 dated 27.04.2018. The coordinate bench has confirmed the action of the Id CIT in toto dismissing the appeal of the assessee. Therefore, now so far as the ground No. 1 is concerned the addition on the basis of estimation of net profit @5% is inevitable. However, the Id AR has submitted that when the net profit @5% is adopted and added to the total income of the assessee, the Id AO is required to eliminate the net profit shown by the assessee. He stated that the Id AO should have

removed the content of the net profit in the total income shown by the assessee in the return of income. He submitted that the figure adopted by the Id AO is incorrect figure. He referred to the written submission. The Id CIT(A) dismissed this argument of the assessee holding that the Id CIT has decided the issue on merit and making an addition, now this ground is not maintainable.

5. The Id AR submitted that there is apparent error in the order of the Id AO which should have been rectified by the Id CIT.
6. The Id DR relied upon the order of the Id CIT(A).
7. We have carefully considered the rival contentions and find that the Id CIT has made an addition by estimating net profit of the assessee @5% of the total turnover. The addition is not in dispute but when the net profit has been added on estimate basis the profit shown as per the books is required to be reduced from that addition. The Id AR has given working of the same before the Id CIT(A) and same is also submitted before us. It clearly shows that the addition has been made to the total income already shown by the assessee. Naturally it results into double addition. In view of this we set aside ground No. 1 of the appeal back to the file of the Id AO directing him to reduce the addition in the income already disclosed by the assessee in the return of income while retaining the addition made by the Id CIT(A). Accordingly, ground of appeal is allowed with above direction.
8. The 2nd ground of appeal relates to the addition of INR 3055264/- on account of sundry creditors. The learned assessing officer asked the assessee to file details and confirmation of the sundry creditors. During the course of assessment proceedings, the assessee submitted that confirmation was originally filed under assessment proceedings. However, no fresh confirmation was filed in the assessment proceedings set aside by the learned CIT under section 263 of the income tax act. The assessee also stated that the amount of INR 2421315/- are all opening creditor and some payments were made during the assessment year and the rest

outstanding payment of INR 2421315/- was made in the succeeding year in cash. The learned AO noted that the assessee has not filed the permanent account number and the address of these creditors and also not submitted these details in the original assessment proceedings as well as in this assessment proceedings. The assessee has also shown its inability to produce the identity, genuineness and creditworthiness or any other details regarding the old creditors and also admitted that they were paid in cash in succeeding year which once again is unverifiable in absence of any banking transaction detail. Therefore the learned AO held that the sundry creditors of INR 2421315/- are unverified and therefore same were added to the total income of the assessee. Further, in case of one creditor, the assessee filed the confirmation copy of the account, which was not found by the learned assessing officer as genuine and therefore the addition was made of that creditor also. Consequently the total addition of INR 3055264/- was made. The assessee challenged addition before the learned CIT(A), who confirmed the addition giving the same reasons as recorded by the learned assessing officer.

9. The learned authorised representative submitted that list of sundry creditors along with the confirmed copy of account and the copy of account of the creditors was filed before the learned assessing officer and same are also placed before us at page Nos. 17 – 19 of the paper book. He further stated the list of weavers with the opening balance as on 01/04/2007, paid during the year and the closing balance as on 31/3/2008. Copy of account from all the creditors were also filed before the learned assessing officer in the original assessment proceedings. He submitted, such details at page number 20 – 59 of the paper book. In view of this, he stated that the assessee has submitted complete details before learned assessing officer and all these creditors were outstanding, as on the date of the balance sheet at the last date of the accounting year and therefore the same cannot be added to the total income of the assessee.

10. The learned departmental representative vehemently submitted that the addition has been made by the learned assessing officer. With respect to the details of sundry weavers which was outstanding of Rs. 2421315. He further referred to the list of sundry weavers submitted as on 31/3/2008, wherein, out of the 39 people where the total opening balance was Rs. 4322637/- out of which only Rs. 1901322/- was paid and therefore it resulted into the outstanding balance of Rs.2421315/-. The learned departmental representative vehemently stated that all these weavers are the small persons and their outstanding for such a long time is not possible. He further stated that merely Rs. 40,000 to 60,000 have been paid to these persons during the year in cash and therefore the whole amount becomes unverifiable. He further stated that the assessee has not submitted the confirmation of these parties.
11. We have carefully considered the rival contention and perused the orders of the lower authorities. The assessee has submitted the list of sundry weavers as on 31/3/2008 at page number 20 of the paper book where 39 persons have been shown outstanding amount of INR 4 322637/- as on 01/04/2007. During the year each of them have been paid in cash of INR 40,000 to INR 60,000/- and the total cash payment was made of INR 19 01322/-. This has resulted into the closing balance of INR 2 421315/-. Further, on verification of the Ledger account of all these parties, there is no fresh credit made to the account of these persons. The assessee has also not furnished the confirmation of these parties. However, looking at the Ledger account, it is apparent that in the subsequent years, the assessee has started paying to these parties in cash. Assessee has filed the confirmation of these parties in the original assessment proceedings. Naturally these are being a small weavers perhaps they may not have the permanent account number or they may not have the bank account too. But these facts do not make them ingenuine payment when the assessee is engaged in the business of manufacturing of cloth. In view of this, we set aside this ground to the file of the learned assessing officer with a

direction to the assessee to substantiate the outstanding creditors by furnishing the credible evidences of their existence. The learned assessing officer is directed to examine the details furnished by the assessee and decide the issue afresh after granting proper opportunity of hearing to the assessee. Accordingly ground number 2 of the appeal of the assessee is allowed with above direction.

12. The 3rd ground of appeal is with respect to the addition of INR 185000/- under section 68 of the income tax act with respect to 3 persons. The learned assessing officer noted that the learned CIT, Meerut directed the AO to look into the outstanding unsecured loan of INR 1,850,000 with respect to the 3 persons. The learned AO asked the assessee to furnish the details of loan and interest payment with confirmed copy of the Ledger account. The assessee did not submit any details before the assessing officer. Also the statement of the account of the unsecured loan depositor filed by the assessee during the course of assessment proceedings did not have proper details with respect to the name of the party and bank details and the copy of the income tax returns. Further in case of one lender the signatures are of an individual but the permanent account number related to the trust. Therefore the learned assessing officer made the addition of INR 1 850000 u/s 68 of the income tax act. The assessee preferred the appeal before the learned CIT(A). Before him the assessee pleaded that the payments were made through cheques and same were also accepted through the cheques and therefore same were genuine, however, no further evidences as required by the learned AO was furnished before the CIT(A) capital and therefore he confirmed the addition.
13. Before us the learned authorised representative submitted that the assessee has submitted the complete details with respect to the 3 creditors in the form of their permanent account number along with the confirmation and address of the lenders. It was further stated before us that the assessee has also submitted the income tax returns of those

persons. Such details are also placed before us at page No. 61 – 89 of the paper book. In view of this the learned AR submitted that the learned assessing officer has incorrectly stated that the assessee has not furnished the requisite details. He stated that the assessee has discharged its initial onus u/s 68 by producing the confirmation, the name and address of the parties, income tax return and bank statements. He further stated that the amount of loan has been accepted through the banking channel and the same have also been repaid through banking channel. Therefore, the addition made by the learned assessing officer and confirmed by the learned CIT(A) is not correct.

14. The learned departmental representative relied upon the orders of the lower authorities and stated that the addition has rightly been made in the hands of the assessee u/s 68 of the income tax act with respect to the 3 unsecured loans.
15. We have carefully considered the rival contention and perused the orders of the lower authorities. Apparently the assessee has submitted a chart stating permanent account number of all these 3 parties are submitted. Further, the confirmation of the parties are also submitted. The assessee has also submitted the copy of the income tax return of the lenders along with the bank statement where the amount received from them is shown and amount paid to them is also reflected. However these details have been ignored by the lower authorities. In view of this, we set aside this ground of appeal to the file of the learned assessing officer, with a direction to the verify the details submitted by the assessee and if the learned assessing officer is satisfied with the explanation submitted by the assessee explaining the identity, creditworthiness and the genuineness of the transaction, then the impugned addition may be deleted. In view of this ground number 3 of the appeal of the assessee is allowed with the above direction.
16. Ground number 4 of the appeal of the assessee is general in nature, no arguments were advanced and therefore same is dismissed.

17. Accordingly appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 08/01/2019.

-Sd/-

(BHAVNESH SAINI)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 08/01/2019
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi