

**IN THE INCOME TAX APPELLATE TRIBUNAL  
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 390/VIZ/2017  
(Asst. Year : 2011-12)**

M/s. Laxmi Samhitha Textiles, vs. ACIT, Circle-2(1),  
C/o Vupputuri Srinivasa Rao, Guntur.  
D.No. 9-53, Pulladigunta,  
Vatticherukuru Mandal,  
Guntur.

PAN No. AADFL 5073 H  
(Appellant)

(Respondent)

Assessee by : Shri G.V.N. Hari – Advocate.  
Department By : Smt. Suman Malik – Sr.DR

Date of hearing : 17/01/2019.  
Date of pronouncement : 06/02/2019.

**ORDER**

**PER V. DURGA RAO, JUDICIAL MEMBER**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-1, Guntur, dated 30/11/2016 for the Assessment Year 2011-12.

**2.** There is a delay of 135 days in filing the appeal. The assessee has filed a petition for condonation of delay wherein he stated that the Managing Partner Sri Vupputuri Srinivasa Rao had been sick with high fever and weakness during the first week of

January 2017 was found to be affected with Hepatitis and Jaundice. He was given treatment immediately and was advised to take complete bed rest for two months. However, even after two months Sri Srinivasa Rao could not recover from fever and weakness. Therefore, the medication was continued and he was advised complete bed rest for another two months. The Managing Partner thus could not attend to his normal affairs during the period of 08.01 2017 to 20.06.2017. The assessee also filed medical certificate along with the petition. We have gone through the petition and also medical certificate filed by the assessee and find that there is a sufficient cause to condone the delay. Accordingly, we condone the delay.

**3.** So far as merits of the case is concerned, the Assessing Officer noticed that on verification of the return of income, it is seen that the assessee has claimed expenses towards following heads of expenses:-

Rents	:	Rs. 72,72,592/-
Commission	:	Rs. 60,38,266/-
Audit fee	:	Rs. 80,000/-

Since the assessee could not produce any books of account and bills/vouchers for verification, the genuineness of the above

expenses could not be verified. Even if it is assumed that the expenses are genuine, the assessee was required to be deducted tax at source at the time of payment of the above expenses under the various provisions of I.T. Act. Payment of rent attracts the provisions of TDS under section 194-I of the Act. Similarly, payment of commission and audit fee attract the provisions of TDS under section 194-H and 194-J of the Act respectively. Vide notice under section 142(1) the assessee was asked to furnish the details of tax deducted from various expenses and paid to the Government account. However, the assessee has been unable to furnish any details to show that the tax has been deducted under the respective provisions of I.T. Act. Further, the assessee has failed to furnish a copy of the tax audit report and therefore, the comments of the auditor regarding compliance by the assessee to the TDS provisions could not be ascertained. In that view of the matter, all the above expenses are liable to be disallowed as per the provisions of section 40(a)(ia) of the Act. Accordingly, the above expenses have disallowed and added back to the total income of the assessee.

**4.** On appeal, Id. CIT(A) confirmed the order of the Assessing Officer.

- 5.** On being aggrieved, assessee carried the matter in appeal before the Tribunal.
- 6.** Ld. counsel for the assessee has filed a petition for admission of additional evidence and submitted that the details were not filed before the lower authorities on the ground that the factory was closed down and they are not in a position to produce the books of account, and submitted that now they are in a position to file all the details before the Assessing Officer and prayed that issue may be remitted back to the Assessing Officer.
- 7.** On the other hand, Id. Departmental Representative has strongly supported the orders of the authorities below.
- 8.** We have heard both the sides, perused the material available on record and orders of the authorities below.
- 9.** The Assessing Officer has noted that the assessee has claimed expenditure in respect of payment of rent, commission and audit fee, no TDS was deducted on account of the above payments under section 40(a)(ia) of the Act. On appeal, on the same ground, Id. CIT(A) confirmed the order of the Assessing Officer. On appeal before us, the assessee filed a paper book consisting of 72 pages wherein he has filed all the details in respect of copy of MOU with M/s. Sree Meenakshi Sundaram Textiles Ltd. for leasing of spinning mill, copy of annual report filed

by Sree Meenakshi Sundaram Textiles Ltd. before the ROC, copies of challans for TDS made on commission payments and copies of details of gratuity paid and receipts thereof. The reasons given by the assessee for admission of additional evidence for non-filing of the details before the lower authorities that the assessee was facing financial crisis and company was closed down, he has shifted to Karnataka from Andhra Pradesh. Under these circumstances, the assessee was not in a position to collect the relevant material to submit before the authorities below.

**10.** We have considered the petition filed by the assessee for admission of additional evidence and find that the reasons mentioned for non-filing of the details before the authorities below are genuine, therefore, in the interest of justice, additional evidence filed by the assessee has to be admitted to do substantial justice to the assessee. Accordingly, the additional evidence filed by the assessee is admitted. These details filed by the assessee in the form of additional evidence are neither before the Assessing Officer nor before the Id. CIT(A), for the first time, he has filed these details before the ITAT. Under these facts and circumstances of the case, in our opinion, the details filed by the assessee have to be examined by the Assessing Officer. In view of the above, we set aside the order passed by the Id. CIT(A) and

remit the matter back to the Assessing Officer to consider the additional evidence filed by the assessee and pass orders in *denovo* in accordance with law. Thus, this appeal filed by the assessee is allowed for statistical purposes.

**11.** In the result, appeal filed by the assessee is allowed for statistical purposes.

Order Pronounced in open Court on this 06<sup>th</sup> day of Feb., 2019.

Sd/-  
**(D.S. SUNDER SINGH)**  
**Accountant Member**

sd/-  
**(V. DURGA RAO)**  
**Judicial Member**

**Dated: 06<sup>th</sup> Feb., 2019.**

**vr/-**

*Copy to:*

1. *The Assessee - M/s. Laxmi Samhitha Textiles, C/o Vupputuri Srinivasa Rao, D.No. 9-53, Pulladigunta, Vatticherukuru Mandal, Guntur.*
2. *The Revenue - ACIT, Circle-2(1), Guntur.*
3. *The Pr.CIT, Guntur.*
4. *The CIT(A)-1, Guntur.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)  
Sr. Private Secretary,  
ITAT, Visakhapatnam.