



ITA No.6921/Mum/2017
M/s. India Fashions Ltd.
Assessment Year :2011-12

आयकर अपीलीय अधिकरण "सी" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI

माननीय श्री महावीर सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।

BEFORE HON'BLE SHRI MAHAVIR SINGH, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.6921/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2011-12)

DCIT, Circle-6(3)(1) Room No.506, 5 th Floor Aaykar Bhavan, M.K. Road, Mumbai-400 020.	बनाम/ Vs.	M/s. India Fashions Ltd. 369, A-2 Shah & Nahar Industrial Estate Lower Parel Mumbai-400 013.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AABCI-4292-A		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Appellant by	:	Abhi Rama Kartikeyan-Ld.DR
Respondent by	:	Jitendra Jain- AR

सुनवाई की तारीख/ Date of Hearing	:	12/03/2019
घोषणा की तारीख / Date of Pronouncement	:	19/03/2019

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year [in short referred to as 'AY'] 2011-12 contest the order of Ld. Commissioner of Income-Tax (Appeals)-12, Mumbai, [in short referred to as 'CIT(A)'], *Appeal No. CIT(A)-12/DCIT-6(3)(1)/248/2016-17* dated 08/09/2017 on following effective grounds of appeal: -



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1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 1 crore made by the AO on account disclosure during the survey proceedings as the assessee had offered additional income of Rs. 1 crore from merchant trading from China to USA and income from wind turbine at Tamilnadu in his statement recorded on oath u/s. 133A and retraction of the assessee from the sworn in statement was an afterthought.'*

2. *On the facts and the circumstances of the case, and in law, the Ld. CIT(A) erred in restricting the disallowance made u/s. 14A at Rs. 5,64,729/- comprising of interest expenses of Rs.4,69,401/- under Rule 8D(2)(ii) and administrative expenses of Rs. 95,328/- under Rule 8D(2)(iii), without appreciating the fact that Rule 8D has a prescribed a formula for calculation of disallowance u/s 14A and the same is binding in nature and the investments were made from the common pool of fund and the assessee had not provided any evidence to prove that the interest free advances were not made out of borrowed funds."*

2.1 The assessment for impugned AY was framed by Ld. Deputy Commissioner of Income Tax, Circle 6(3)(1), Mumbai [AO] u/s 143(3) *read with Section 144C* on 29/03/2015 wherein the income of the assessee was determined at Rs.5.64 Lacs under normal provisions as against loss of Rs.371.81 Lacs e-filed by the assessee on 29/11/2011. The *book profits* u/s115JB were computed at Rs.122.23 Lacs as against Rs.116.58 Lacs computed by the assessee. The assessee being *resident corporate entity* was stated to be engaged as *manufacturer, trader and exporters of readymade garments* during impugned AY.

2.2 During assessment proceedings, it transpired that the assessee earned exempt dividend income of Rs.3,225/- which called for disallowance u/s 14A. Applying the provisions of Rule 8D, Ld. AO worked out aggregate disallowance of Rs.5.64 Lacs against the same which comprised-off of interest disallowance u/r 8D(2)(ii) for Rs.4.69 Lacs and expense disallowance u/r 8D(2)(iii) for Rs.0.95 Lacs.

2.3 The second addition of Rs.1 Crore stem from the fact that the assessee was subjected to survey action u/s 133A on 26/11/2010 wherein in response to question no.4 put to the director of the assessee,



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the assessee offered additional income of Rs.1 Crore to account for income from *merchant trading* from *China to USA* and income from wind turbine project at Tamil Nadu. On the basis of the same, Ld. AO proceeded to add the same to the income of the assessee since the same was not reflected separately in the return of income filed by the assessee.

2.4 The assessee defended its stand vide rely dated 18/03/2015 by submitting that the same was purely *ad hoc* disclosure and the income & expenses relating to *merchant trading activities* as well as turbine project was properly recorded in the books of accounts and therefore, further addition / disclosure, on that account, was not required. The attention was drawn to the fact that the disclosure made during survey proceedings was subsequently retracted by the director on 30/01/2011. However, treating the explanation merely an afterthought story created by the assessee, the amount of Rs.1 Crore was added to the income of the assessee.

3. Aggrieved, the assessee agitated the same with success before Id. first appellate authority vide impugned order dated 08/09/2017 wherein interest disallowance u/r 8D(2)(ii) was deleted by observing that own funds were far in excess of the investments made by the assessee. To arrive the said conclusion, strength was drawn from the judgments of Hon'ble Bombay High Court rendered in ***CIT Vs Reliance Utilities & Power Ltd. [313 ITR 340]*** & also in ***CIT Vs. HDFC Bank Ltd. [ITA No. 330 of 2012]***. The expense disallowance u/r 8D(2)(iii) was restricted to Rs.3,325, being exempt income earned by the assessee. Aggrieved by



the aforesaid relief provided by first appellate authority, the revenue is in further appeal before us.

4. Upon hearing rival submissions, the factual matrix that assessee's own funds were far in excess of investments made by the assessee remain unrebutted. Nothing has been placed on record to controvert the findings in impugned order. So far as expense disallowance is concerned, we find that the disallowance has been restricted to the extent of exempt income earned by the assessee which is in line with the settled legal positions. Therefore, finding no infirmity in the impugned order, we dismiss this ground of revenue's appeal.

5.1 So far as the addition of Rs.1 Crore is concerned, the assessee agitated the same before first appellate authority vide replies dated 22/08/2016 & 31/07/2017 wherein the assessee, *inter-alia*, contended that the sale and purchase transactions from merchant trading activity were duly reflected in the books of accounts and the concerned receipts as well as payments were through banking channels.

Regarding wind-turbine project, it was submitted that the assessee generated and sold energy aggregating to Rs.11.98 Lacs to *Tamil Nadu State Electricity Board* which was also reflected in the books of accounts under the head *Sale of energy* and therefore, no further addition, in that respect was warranted.

In support the above submissions, attention was drawn to the fact that the complete details of income from *merchant trading* as well as income from *wind turbine project* was filed along with documentary evidences as well as financial statements during assessment proceedings before Ld. AO.



Another important aspect brought to the notice of Ld. CIT(A) was the fact that no incriminating material was found during survey proceedings and the additions were made merely on the basis of the statement given by the director which has subsequently been retracted and therefore, the same could not form the basis of addition in the hands of the assessee. Reliance was placed on the decision of Hon'ble Madras High Court rendered in ***CIT Vs S.Khader Khan & Sons [300 ITR 157]*** to submit that statements made during survey proceedings could not have any evidentiary value unless corroborated with circumstantial evidences.

5.2 After due consideration of assessee' submissions, Ld. first appellate authority concurred with the stand that no incriminating material was found in the survey proceedings and the additions were made merely on the basis of statement given by the director without bringing on record any evidences either during survey proceedings or during assessment proceedings. It was further noted that these statements made during survey proceedings, on standalone basis, would have no evidentiary value in terms of cited decision of Hon'ble Madras High Court as confirmed by Hon'ble Apex Court vide its decision reported in 352 ITR 480. Finally, the additions were deleted by making following observations: -

*60. As stated earlier, no incriminating evidences were detected either during the course of the survey or the assessment proceedings with regard to the merchant trading activity and the wind turbine project of the appellant. The addition was made by the A.O. relying solely on the statement recorded during the course of survey. As held by the Hon'ble Supreme Court and Hon'ble Madras High Court in the case of **S.Khader Khan & Sons** (supra) and the Hon'ble Mumbai ITAT in the case of **Premsons** (supra), the statement recorded during the survey does not have any evidentiary value and no addition can be made based on the income admitted in such statement unless there are evidences to corroborate the income admitted in the statement. The ratio laid down in these cases is squarely applicable to the facts of the appellant's case. Hence, respectfully following the*



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same, it is held that the addition of Rs.1 crore made in the assessment order solely on the basis of the income admitted in the statement recorded during the course of survey is unsustainable and the A.O. is directed to delete the same. This ground of appeal is therefore allowed in favour of the appellant.

Aggrieved, the revenue is in further appeal before us.

6. The Ld. Departmental Representative [DR] supported the stand of Ld. AO by submitting that the material on record, *prima facie*, do not substantiate the assessee's stand that the transactions were duly reflected in the books of accounts. Per *Contra*, Ld. Authorized Representative for Assessee [AR], drawing our attention to the documents placed in the *paper-book*, submitted that all the transactions were duly reflected in the books of accounts and complete details, in this regard, was filed before Ld. AO during assessment proceedings and therefore, the onus casted upon the assessee was duly discharged.

7. We have carefully heard the rival submissions and perused relevant material on record. The undisputed position that emerges is that no incriminating material was found in the survey proceedings *qua* additional surrender of Rs.1 Crore made by the assessee. No circumstantial evidence has been brought on record either during survey proceedings or during assessment proceedings so as to support the impugned additions. The additions have merely been made on the strength of statement given by the director during survey proceedings and the same has subsequently been retracted. Such statement, in our opinion, do not carry much evidentiary value unless supported by certain circumstantial evidences and therefore, the reliance of first appellate authority on cited binding judicial pronouncements to arrive at the conclusion was quite appropriate and no infirmity could be found in the



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same. Another important factor to be noted is that the stated transactions were carried out through banking channels and duly recorded in the books of accounts which were subject to Audit. The complete details of these transactions along with relevant documentary evidences was placed by the assessee before Ld. AO and therefore, fully discharged the onus casted upon assessee, in this regard. Therefore, finding no infirmity in the impugned order, we dismiss this ground of appeal also.

8. Resultantly, the appeal stands dismissed.

Order pronounced in the open court on 19th March, 2019.

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 19/03/2019
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.