

आयकर अपीलीय अधीकरण, न्यायपीठ – “C(SMC)” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “C(SMC)” BENCH: KOLKATA
 (समक्ष) श्री ए. टी. वर्की, न्यायीक सदस्य)
 [Before Shri A. T. Varkey, JM]

I.T.A. No. 2416/Kol/2018
Assessment Year: 2012-13

Muslin (PAN: AAEFM5121G)	Vs.	Income-tax Officer, Wd-39(3), Midnapore.
Appellant		Respondent

Date of Hearing	19.03.2019
Date of Pronouncement	26.04.2019
For the Appellant	Shri Gautam Ghosh, Advocate
For the Respondent	Shri Rabin Choudhury, Addl. CIT, Sr. DR

ORDER

This appeal filed by assessee is against the order of Ld. CIT(A) - 11, Kolkata dated 28.05.2018 for AY 2012-13.

2. This appeal of assessee is time barred by 87 days and a condonation petition has been filed by the assessee explaining the reasons for the delay. The assessee in its condonation petition submitted that the advocate to whom it had entrusted the appeal to be filed misplaced the papers given to him including the first appellate order, demand notice etc. so the delay occurred, which was beyond assessee's control. So it was urged before the bench to condone the delay and admit the appeal for hearing. After having gone through the condonation application, we note that the delay in filing appeal on time was not intentional and there was reasonable cause as discussed above. Therefore, we condone the delay and proceed to hear the appeal on merits.

3. The assessee's sole ground of appeal is against the action of Ld. CIT(A) in confirming the addition of Rs.12,09,064/- on account of cash purchase. Brief facts of the case are that the assessee firm is a retail trader of cotton sarees, silk sarees and artificial silk sarees. The AO observed during the course of assessment proceedings that the assessee has submitted list of cash purchases from different parties totaling Rs.60,45,322/- and the assessee failed to furnish details of such purchases such as bills, vouchers, name of the party, address etc. According to assessee, the purchases were made in cash since the local vendors did not accept any other mode of payment and the assessee has not breached the threshold limit of cash payment when payment is considered on daily basis. Reasons given by the assessee was not acceptable to the AO, so he estimated 20% of such purchases i.e. Rs.12,09,064/- and added back the same to the total income of the assessee. Aggrieved, assessee preferred appeal before the Ld. CIT(A), who confirmed the action of AO. Aggrieved, assessee is before us.

4. We have heard rival submissions and gone through the facts and circumstances of the case. During the course of hearing before us, the Ld. AR drew our attention to the fact that the assessee firm is a retail saree shop. And it undertakes two types of sales of sarees viz., sarees made from Mill and the other from weaver's of sarees which are of low cost/range. We note that the AO has made ad hoc disallowance of 20% taking note of the fact that the expenses for purchase of sarees were made in cash from the local market which assembles at a pre-decided place once in a week, at different parts of Kolkata and these sales take place from temporary sheds and there were no voucher/bill, name of the party, address etc of vendors. Be that as it may be, we note that in this case, sales have been accepted by the AO, so purchases cannot be disbelieved. We also note that the books of account maintained by the assessee have not been rejected by the AO, therefore, estimation of income could not have been ventured into by the AO without following sec. 145(3) and sec. 144 of the Act. We note that the assessee maintained books u/s. 44AB of the Act which was duly audited. In such a scenario, without rejecting the books of account, the ad hoc disallowance made is

not sustainable in the eyes of law, which view the Tribunal has been taking consistently in plethora of decisions. It should be kept in mind that if the AO finds that any specific expenditure is unverifiable or is un-vouched, then such specific expenditure is disallowable. In the present case no specific item has been identified by the AO to make the disallowance, therefore, we are of the view that estimated disallowance as confirmed by the Id. CIT(A) is an arbitrary exercise of power and, therefore, unsustainable in the eyes of law and therefore, it stands deleted. Appeal of assessee is allowed.

5. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 26th April, 2019

Sd/-

(A. T. Varkey)
Judicial Member

Dated: 26th April, 2019

Jd.(Sr.P.S.)

Copy of the order forwarded to:

- 1 Appellant –MUSLIN, NTE-150, Gole Bazar, Kharagpur, Paschim Medinipur-721301, West Bengal.
- 2 Respondent – ITO, Ward-39(3), Midnapore.
- 3 CIT(A)-11 , Kolkata. (sent through e-mail)
- 4 CIT , Kolkata
- 5 DR, Kolkata Benches, Kolkata (sent through e-mail)

/True Copy,

By order,

Assistant Registrar