

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” Bench, Mumbai**

**Before Shri Shamim Yahya, Accountant Member  
and Shri Ravish Sood, Judicial Member**

**ITA No.5902/Mum/2017  
(Assessment Year: 2013-14)**

ITO-12(3(3),  
R.No. 224, 2<sup>nd</sup> Floor,  
Aaykar Bhavan, M.K. Road,  
Mumbai-20

M/s M.M.Boutique Pvt. Ltd.  
[Earlier known as Mangalmurti Enterprises & Trading  
Pvt. Ltd.]  
Vs. A-305, Sai Palace, Vaitiwadi Lotus  
Gate, Achole Road Nalasopara  
East, Thane- 401209

PAN – AAHCM5579N

**(Appellant)**

**(Respondent)**

Appellant by: Shri D.G. Pansari, D.R

Respondent by: None

Date of Hearing: 19.06.2019

Date of Pronouncement: 28.06.2019

**ORDER**

**PER RAVISH SOOD, JM**

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-20, Mumbai, dated 01.06.2017, which in turn arises from the order passed by the A.O under Sec. 144 of the Income Tax Act, 1961 (for short ‘Act’), dated 31.02.2016 for A.Y. 2013-14. The revenue has assailed the order of the CIT(A) by raising the following grounds of appeal before us:

- “1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in estimating the income of the assessee at Rs.11,05,857/- being 0.12% of total sale turnover of Rs.92,15,47,374/- as against income assessed u/s 144 of the Income Tax Act by the AO Rs.1,84,14,168/- being commission earned @ 1% of the accommodation entries provided by the assessee in form of sales and purchases amounting to Rs.1,84,14,168/- reflected in the accounts.

2. On the facts and the circumstances of the case and in law, the Id. CIT(A) was not justified in holding that sale and purchase of cloths shown by the assessee were genuine despite the fact that-
  - (i) Neither the assessee nor the parties during the course of inquiries u/s 133(6) of the Act were able to produce any details relating to description of the goods, transportation and delivery of goods in question.
  - (ii) Out of the total 11 parties, only two parties had submitted the copy of ledger accounts and even these parties did not submit the specific details called for. Further, the assessee could submit confirmation of accounts from 4 parties only and even in respect of these parties, no description of goods, transportation & delivery of goods, copy of return of income, balance sheet and P&L Account of sale and purchase parties were submitted.
3. On the facts and the circumstances of the case and in law, the Ld. CIT(A) was not justified in substituting the best judgment assessment of Assessing Officer passed u/s 144 of the I.T Act after rejecting books of the accounts of the assessee with his own judgment and that too without giving any reason/basis, whatsoever, for estimating income 0.12% of sale.
4. The appellant prays that the order of the Ld. CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.
5. The appellant craves leave to amend or alter all or any grounds or add a new ground which may be necessary.”

2. Briefly stated, the assessee company had e-filed its return of income for A.Y. 2013-14 on 31.03.2014, declaring its total income at Rs.2,95,650/-. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the Act.

3. During the course of the assessment proceedings the A.O on a perusal of the profit and loss account observed, that the assessee which had claimed to have been engaged in the business of trading in textiles, dealing in grey and grey fabrics had shown purchases and sales, as under:

Sales	Rs.92,15,47,374/-
Purchases	Rs.91,98,69,480/-
Opening Stock	Nil
Closing Stock	Nil

On being called upon to furnish party wise details of purchases and sales, the same were furnished by the assessee, as under:

Purchase:

Sr. No.	Name	Total Purchase (Rs.)
1.	Astral Textile Trading Ltd.	9,03,75,140/-
2.	Pardha 9 Shades Fashions Pvt. Ltd.	76,49,72,274/-
3.	Salasar Fabtex Pvt. Ltd.	2,16,50,151/-
4.	Shree Bajrang Traders	1,65,71,682/-
5.	Barasana Fabtex Pvt. Ltd.	2,63,00,233/-
	Total	91,98,69,480/-

Sale:

Sr. No.	Name	Total Sales (Rs.)
1.	Agri Fibre Ltd.	70,41,90,608/-
2.	Alka Fiber Pvt. Ltd.	3,22,16,778/-
3.	Kuber Corporation	1,38,36,264/-
4.	R.S. Enterprise	3,00,000/-
5.	Satyen Weaves	1,63,65,077/-
6.	Shree Bajrang Traders	12,68,55,630/-
7.	Venus Lifestyles Ltd.	2,77,83,017/-
	Total	92,15,47,374/-

4. Observing, that the assessee had declared meagre trading profit of only Rs.2,95,650/- as against substantial volume of purchase/sale transactions, the A.O had doubts as regards the genuineness of the trading activities of the assessee. In order to verify the authenticity of the said purchase and sale transactions, the A.O issued notices under Sec. 133(6) to all of the parties with whom the assessee had claimed to have carried out such transactions. The aforementioned parties were called upon by the A.O to furnish the bill wise details of their trading transactions with the assessee company along with copies of bills, delivery challans, octroi receipts, mode of transportation and receipts thereof, weighment slips etc. Further, they were also directed to produce the sales register, stock register and goods movement register for the relevant period. Apart there from, the aforesaid supplier parties were also directed to submit the quantitative statements of sales made to the assessee, and were also queried as to whether the said

transactions were carried out directly or through any broker/agent. However, in respect of all the parties from whom the assessee had claimed to have carried out purchases, the notices issued under Sec. 133(6) were returned by the postal authorities with the remarks of 'left/not known', except for in the case of one of the party viz. M/s Pardha 9 Shades Fashions Pvt. Ltd., wherein the latter had furnished the copy of the ledger account. In the backdrop of the aforesaid facts, the A.O called upon the assessee to produce all the parties for verifying the genuineness of the purchase and sale transactions. In compliance, the assessee filed the confirmation of four parties from whom purchases were claimed by the assessee to have been made viz. (i) Astral Textile Trading Ltd.; (ii) Pardha 9 Shades Fashions Pvt. Ltd.; (iii) Salsar Fabtex Pvt. Ltd.; (iv) Shree Bajarang Traders. Apart there from, the assessee in order to fortify the genuineness of the purchase transaction also placed on record certain purchase invoices. However, the A.O was not impressed with the documentary evidence placed on record by the assessee in its attempt to substantiate the genuineness of the purchase/sale transactions. It was observed by the A.O, that as the assessee had failed to place on record certain documents viz. copy of bills, mode of transport of goods, description of goods, copies of return of income, computation of income, balance sheets and profit and loss accounts of the concerned parties, therefore, the genuineness of the transactions claimed by the assessee to have been carried out with the aforementioned parties could not be proved. Further, it was observed by the A.O that the assessee had also not been able to place on record the confirmations of all the parties. Apart there from, the A.O observed that a perusal of the profit and loss account of the assessee for the year ending 31.03.2012 and 31.03.2013 also did not inspire any confidence as regards the genuineness of the trading activities of the assessee. In fact, it was observed by the A.O, that a

perusal of the administration and other expenses claimed by the assessee to have been incurred revealed, that no expenditure with regard to transportation, loading, unloading, labour charges etc., which were very much indispensably required for running the aforesaid business was claimed by the assessee to have been incurred. In the totality of the facts of the case, the A.O was of the view that the genuineness of assessee's claim of trading in grey and grey fabrics could not be accepted. Accordingly, the A.O rejected the books of accounts and the trading results shown by the assessee and concluded, that the assessee without engaging itself into any genuine business had merely provided accommodation purchase and sale bills to the aforementioned parties, for which it had received unexplained commission income. On the basis of his aforesaid deliberations, the A.O being of the view that the assessee would have earned commission @ 1% on the aforesaid purchase and sale transactions, therein worked out its commission income at Rs. 1,84,14,168/- i.e @ 1% of Rs.1,84,14,16,168/- [Rs.92,15,47,374/- (sales) (+) Rs.91,98,69,480/- (purchases)].

5. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) after deliberating on the facts of the case, was of the view, that the assessee had discharged its onus by filing the requisite details i.e purchase bills, sale bills, copy of bank account, copy of audit report and confirmations from few parties with whom it had entered into purchase and sales transactions during the year under consideration. Further, it was observed by the CIT(A), that though the additions were made in the hands of the assessee primarily on the ground that the notices issued under Sec. 133(6) were returned unserved, however, there was no direct evidence which could conclusively prove that the assessee had only provided accommodation bills to the aforementioned parties. Rather, it was

observed by the CIT(A) that the assessee in order to fortify the authenticity of the purchase/sale transactions had placed on record sufficient documentary evidence. On the basis of his aforesaid deliberations, the CIT(A) was of the view that the addition made by the A.O could not be fully sustained. Accordingly, in the totality of the facts of the case, the CIT(A) was of the view that the income of the assessee in all fairness could be reasonably estimated @ 0.12% of the sales turnover of Rs.92,15,47,374/-, which worked out to an amount of Rs.11,05,857/-. Observing, that the assessee had already declared its business income of Rs.2,95,650/- for the year under consideration, therefore, the CIT(A) restricted the addition in the hands of the assessee to the extent of Rs.8,10,207/- [Rs.11,05,857/- (-) Rs.2,95,650/-].

6. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. We find that the assessee respondent despite having been put to notice as regards the date of hearing of the appeal has failed to put up an appearance before us. Accordingly, we are constrained to proceed with the appeal as per Rule 25 of the Appellate Tribunal Rules, 1963 and dispose off the same after hearing the departmental representative and perusing the orders of the lower authorities.

7. As is discernible from the orders of the lower authorities, the assessee had during the year under consideration claimed to have carried out business of trading in textile, dealing in grey and grey fabrics at a substantial scale. As per the profit and loss account of the assessee, the assessee had claimed to have carried out substantial purchases and sales of Rs.91,98,69,480/- and Rs.92,15,47,374/-, respectively, during the year under consideration. We find that as regards the aforesaid substantial purchase/sale transactions, the

assessee had shown a meagre trading profit of only Rs.2,95,650/-. In our considered view, the meagre trading profit reflected by the assessee as against the substantial trading transactions, justifiably triggered doubts in the mind of the A.O as regards the genuineness and veracity of the trading activities that were claimed by the assessee to have been carried out by it during the year. We find that the assessee despite specific direction by the A.O to furnish requisite details in order to facilitate verification of the authenticity of the purchase and sale transactions, however, failed to do the needful. As is discernible from the orders of the lower authorities, the assessee despite having been specifically directed to furnish certain details, viz. copy of bills, mode of transportation of goods, description of goods, copies of returns of income, computation of income, balance sheets and profit and loss accounts of the aforementioned parties, however, failed to place on record the said documentary evidence. Apart there from, the assessee as observed by us hereinabove also failed to comply with the direction of the A.O and did not produce the aforementioned parties for necessary verification of the authenticity of the purchase and sale transactions under consideration. Further, we find that the notices issued under Sec. 133(6) by the A.O to the aforesaid parties, wherein they were directed to place on record certain details along with supporting documents were also returned unserved by the postal authorities with the remarks 'left/not known'. In fact, only one of the so called purchase party i.e M/s Pardha 9 Shades Fashions Pvt. Ltd., had in part compliance to the aforesaid notice furnished the copy of the ledger account of the assessee as appearing in its books of accounts. Apart there from, we find that the assessee could only place on record confirmations of 4 of the parties (out of 5 parties) from whom purchases were claimed to have been made viz. (i) Astral Textile Trading Ltd.; (ii) Pardha 9 Shades Fashions Pvt. ltd.; (iii) Salasar

Fabtex Pvt. Ltd.; and (iv) Shree Bajrang Traders. As regards the parties to whom sales were claimed to have been made, no confirmation was furnished with the A.O.

8. In the backdrop of the aforesaid facts as are discernible from the orders of the lower authorities, we are of the considered view that the assessee had failed to substantiate the authenticity of the purchase and sale transactions on the basis of any clinching documentary evidence. Accordingly, the aforesaid facts in our considered view sufficed raising of doubts as regards the genuineness of the trading activities of the assessee. Apart there from, we find that the A.O on perusal of the administration and other expenses booked by the assessee, had observed, that no expenditure with regard to transportation, loading, unloading, labour charges etc. which would have been indispensably incurred in the normal course of the aforesaid trading business, was however found to have been borne by the assessee. In the backdrop of the substantial turnover shown by the assessee, the A.O held a conviction that the genuineness of the assessee's claim of having carried out the business of trading in textile, dealing in grey and grey fabrics during the year under consideration did not inspire any confidence, and thus could not be accepted.

9. We have given a thoughtful consideration to the issue before us and find substantial force in the view taken by the A.O. In our considered view, the assessee had failed to substantiate to the hilt its claim of having carried out the business of trading in textile, grey and grey fabrics. As a matter of fact, the assessee had not only failed to place on record the requisite documentary evidence to support the genuineness of its trading transactions, but had also despite specific directions of the A.O failed to produce the parties for examination by the A.O. Apart there from, the fact that the assessee had not incurred

any expenditure with regard to transportation, loading, unloading, labour charges etc., which were very much required for running the aforesaid business also raises serious doubts as regards the veracity of the aforesaid claim of the assessee that it had during the year carried out the business of trading in textiles, grey and grey fabrics etc. As is discernible from the orders of the lower authorities, a perusal of the profit and loss account of the assessee reveals that though there was inflow and outflow of enormous volume of goods by way of purchases/sales, however, no expenses for the movement of goods, its storage in godown, transportation, loading and unloading were booked by the assessee. In the totality of the facts of the case, we are of the considered view that the material placed on record by the assessee, and also a perusal of the facts discernible from the records, does not inspire any confidence as regards the veracity of the claim of the assessee that it had during the year carried out genuine trading business. At the same time, we find that the A.O without making any thorough verifications as regards the genuineness of the business of the assessee had hushed through the matter, and without placing on record any supporting material had concluded that the assessee was involved in the business of providing accommodation entries to the aforesaid parties. Admittedly, as observed by us hereinabove, the failure on the part of the assessee to place on record supporting documentary evidence and also not producing the aforementioned parties for necessary examination before the A.O does raise serious doubts as regards the genuineness of its business. Apart there from, the fact that absence of certain expenses viz. transportation expenses, loading charges, unloading charges, labour charges and other such expenses, which indispensably would be incurred in the normal course of trading business as claimed by the assessee, further fortifies the doubts that the assessee had not carried out any genuine trading

business, as claimed by it. In our considered view, neither the assessee had been able to discharge the onus as was cast upon it to prove the authenticity of its trading business and therein dispel the doubts raised as regards the genuineness of its trading activities, nor the A.O had conclusively proved on the basis of irrefutable and clinching material that the assessee had during the year merely provided accommodation entries to the aforementioned parties. We thus, in all fairness, are of the considered view that the matter requires to be revisited by the A.O for making necessary verifications. Accordingly, the matter is set aside to the file of the A.O, who shall in the course of the set aside proceedings make necessary verifications as to whether the assessee had during the year carried out trading in textiles, grey and grey fabrics etc., or not. Needless to say, the A.O shall in the course of the set aside proceedings afford a reasonable opportunity of being heard to the assessee, who shall remain at a liberty to substantiate its claim of having carried out genuine trading business during the year under consideration. Accordingly, the order of the CIT(A) is set aside and the matter is restored to the file of the A.O for fresh adjudication in terms of our aforesaid observations.

10. The appeal of the revenue is allowed for statistical purpose.

Order pronounced in the open court on 28.06.2019

Sd/-  
(Shamim Yahya)  
ACCOUNTANT MEMBER

Sd/-  
(Ravish Sood)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 28.06.2019

Ps. Rohit

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**

**आयकर अपीलीय अधिकरण, मुंबई / ITAT,  
Mumbai**