

IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH KOLKATA
BEFORE SHRI S.S.GODARA, JM &DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.855/Kol/2017

(निर्धारणवर्ष / Assessment Year:2007-08)

ITO, Ward-1(1), Kolkata	Vs.	M/s One Plus Fashion Pvt. Ltd. (Formerly Two Plus Fashion Pvt. Ltd.) 6D, Park Plaza, 71, Park Street, Kolkata-700016.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AACCT 3458 L		
(Appellant)	..	(Respondent)

C.O. No. 99/Kol/2018

(Arising out of आयकरअपीलसं./ITA No.855/Kol/2017

(निर्धारणवर्ष / Assessment Year:2007-08)

M/s One Plus Fashion Pvt. Ltd. (Formerly Two Plus Fashion Pvt. Ltd.) 6D, Park Plaza, 71, Park Street, Kolkata-700016.	Vs.	ITO, Ward-1(1), Kolkata
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AACCT 3458 L		
(Cross objector)	..	(Respondent)

Appellant by : Shri Sankar Halder, JCIT, Sr. DR

Respondent by : Shri Sumit Kumar Gupta, ACA

सुनवाईकीतारीख/ Date of Hearing : 19/08/2019

घोषणाकीतारीख/Date of Pronouncement : 01/10/2019

आदेश / ORDER

Per Dr. A. L. Saini:

The captioned appeal filed by the Revenue and the cross objection filed by the assessee, pertaining to assessment year 2007-08, are directed against the order

passed by the Commissioner of Income Tax (Appeal)-15, Kolkata, which in turn arises out of an assessment order passed by the Assessing Officer u/s 144 of the Income Tax Act, 1961 (in short the 'Act') dated 22/12/2009.

2. The appeal filed by the Revenue for A.Y. 2007-08, is barred by limitation by 5 days. The Revenue filed a petition for condonation of delay. We have heard both the parties on this preliminary issue and having regard to the reasons given in the petition for condonation of delay. We condone the delay and admit the appeal of Revenue for hearing.

3. In the Revenue's appeal in I.T.A. No. 855/Kol/2017, the undisputed fact is that the tax effect is below the monetary limit of Rs.50,00,000/- fixed by the *CBDT vide Circular No.17/2019, F. No. 279/Misc. 142/2007-ITJ(Pt.), dt. 8th August, 2019*. Therefore, the appeal of the Revenue is dismissed in limine in terms of the Circular issued by the CBDT mentioned hereinabove.

4. Now we shall take assessee's cross objection in C.O. No. 99/Kol/2018 for A.Y. 2007-08. Grounds of appeal raised by the assessee in cross objection are as follows:

- 1. For that the assessment order is void ab initio, opposed to requirement of and bad in law.*
- 2. For the determination of taxable income by the lower authorities is void ab initio opposed to the requirement of law and not tenable in law.*
- 3. For that the ld. CIT(A) erred in confirming the addition of Rs. 13,72,211/- under the head of other income and is not tenable in law as well as in facts.*
- 4. For that the addition of Rs. 60,54,694/- under the head liabilities by the ld. CIT(A) is neither tenable in law nor in facts.*
- 5. For that the ld. CIT(A) erred in confirming the factory rent of Rs. 82,122/-.*
- 6. For that the confirming of Rs. 6,14,063/- under the head clearing and forwarding expenses by applying section u/s 40(a)(ia) of the Act is unjustified and uncalled for.*
- 7. For that other grounds may be urged at the time of hearing.*

5. During the course of hearing, the Id. Counsel for the assessee informs the Bench that the assessee does not want to press cross objection ground no. 1, 2, 3 & 6 therefore, we dismiss them as not pressed.

6. Now we shall take ground nos. 4 and 5 raised by the assessee in cross objection, which relates to addition of Rs. 60,54,694/-, and addition on account of factory rent of Rs. 82,122/- respectively.

7. At the outset itself, the Id. Counsel for the assessee fairly submitted that the matter relating to factory rent to the tune of Rs. 82,122/- and addition of Rs. 60,54,694/- under the head liabilities should be remitted back to the file of the Assessing Officer for fresh adjudication as the Id. CIT(A) has not considered the facts in proper perspective. We note that in the balance sheet, assessee had shown current liability and provision of Rs. 1,17,87,666/-. As details were not submitted regarding these current liability, therefore, these were considered as bogus liabilities and addition were made. During appeal proceedings, assessee submitted party wise details of this liability; that is, liabilities stand in the names of 26 parties. During remand proceedings assessee did not furnish complete details. Assessing Officer has mentioned that copies of bills of only 11 parties were filed. But ledger accounts, transactions details or PAN of these parties were not furnished. Hence, Assessing Officer has considered entire current liabilities to be bogus in nature. In appeal proceedings, assessee's A.R. have filed some details about 11 parties. But only in few cases copy of bills and proof regarding payment have been filed. Perusal of the bills and the subsequent payments made, establish that transactions with the following parties are genuine.

Sl. No.	Name	Amount (in Rs.)
1.	A.L. Shethi	37,950/-
2.	Capital apparel Tech. Pvt. Ltd.	56,19,945/-
3.	Corrugated Product	10,096/-
4.	Jontex International	27,888
5.	Shyam Sel Ltd.	7,808/-
6.	B.R. Lebls	29,015/-
	Total	57,32,702/-

Therefore, the Id. CIT(A) confirmed the balance addition of Rs. 60,54,696/- (11787888/- - 57,32,702/-).

8. We heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials available on record. We note that the Id. Counsel informs the Bench that assessee could not furnish the explanations and evidences in respect of liabilities, as the evidences were not in the possession of the assessee. That is due to circumstances beyond his control, the assessee could not furnish evidences / explanations before Assessing Officer / Id. CIT(A). If an opportunity is given the assessee is ready to make compliance. Therefore, the Id. Counsel prayed the Bench that matter should be remitted back to the file of Assessing Officer for fresh adjudication of this issue. Regarding cross objection no. 5 which relates factory rent to the tune of Rs. 82,122/-. We note that Assessing Officer has not adjudicated the issue, as the assessee could not file any details before him. During the appellate proceedings, also the assessee has not submitted any details. Before us, the Id. Counsel for the assessee submitted that during the assessment stage and appellate stage the assessee could not file details due to circumstances beyond his control, and now the assessee is ready to file required details therefore this issue needs to be remitted back to the file of the Assessing Officer. The Id. Counsel for the assessee submitted that at the time of assessment proceedings and during the appellate proceedings, the assessee did not have in his possession, the information and documents relating to these two additions therefore he could not file documents and evidences during the appellate proceedings. However, now the assessee got details/evidences in respect of factory rent and liabilities and ready to furnish the details and evidences before the Assessing Officer therefore these two issues should be remitted back to the file of the Assessing Officer for fresh verification. We note that the Id. D.R. for the revenue has fairly agreed with the proposition of the Id. Counsel for the assessee. Considering the factual position as narrated above and taking into account the principles of natural justice, we are of the view that one more opportunity should be given to the assessee to plead his

case before Assessing Officer. Therefore we set aside the order of the Id. CIT(A) and remit this issue back to the file of Assessing Officer for fresh adjudication.

9. In the result, the appeal of the Revenue is dismissed and the cross objection nos. 4 and 5 of the assessee are allowed for statistical purposes.

Order pronounced in the Court on 01.10.2019

Sd/-
(S.S.GODARA)
न्यायिकसदस्य / JUDICIAL MEMBER

Sd/-
(A.L.SAINI)
लेखासदस्य / ACCOUNTANT MEMBER

दिनांक/ Date: 01/10/2019
(SB, Sr.PS)

Copy of the order forwarded to:

1. ITO, Ward-1(1), Kolkata
2. M/s One plus Fashion Pvt. Ltd. (Formerly Two Plus Fashion Pvt. Ltd.)
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

True copy

By Order

Assistant Registrar
ITAT, Kolkata Benches