

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B', NEW DELHI**

**Before Sh. H. S. Sidhu, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 1456/Del/2017 : Asstt. Year : 2012-13**

Deputy Commissioner of Income Tax, Circle-8(1), New Delhi	Vs	M/s Earthline Apparels Pvt. Ltd., 2168, Gurudwara Road, Karol Bagh, Delhi-110005
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AABCE4236G</b>		

**Assessee by : Sh. Pradeep Dinodia, FCA**

**Revenue by : Sh. Saras Kumar, Sr. DR**

**Date of Hearing: 18.12.2019**

**Date of Pronouncement: 20.12.2019**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the revenue against the order of Id. CIT (A)-3, Delhi dated 16.12.2016.

2. Following grounds have been raised by the revenue:

*"1. The Id. CIT (A) has erred in law and on facts of the case in deleting the disallowance of interest expenses of Rs.25,92,188/-.*

*2. Ld. CIT (A) erred in law and on facts of the case in admitting additional evidence in the shape of details of loan taken from bank and working of interest, in violation of the provisions of Rule 46A of the I.T. Rules and without confronting to A.O.*

*3. Ld. CIT (A) erred in law and on facts of the case in deleting the addition of Rs.3,11,34,517/- made by the AO on account of enhancement of gross profit. "*

3. The ground no.1 of the appeal has been raised by the assessee regarding the addition of Rs.25,92,188/- made by the Assessing Officer on account of excess interest. The submissions of the assessee filed before the Id. CIT(A) in this regard which are relied by the Id. AR are reproduced as under:-

*"As regards the addition on account of excess interest charged to profit & loss accounts, it is brought to your kind notice that the learned A.O. has added back the interest of Rs. 25,92,188/- as the appellant has transferred the lesser amount of interest to his sister concern namely M/s Aero club and claim the higher amount of interest.*

*We would like to inform you that the appellant has taken loan of Rs. 12 Cr. & 4 Cr. from Kotak Mahindra bank and proportionate amount of Rs. 5.50 Cr & 3.65 Cr has been transferred to M/s Aero Club respectively. The appellant has not claimed the total interest on loan as its expenses rather it has transferred the proportionate amount of interest to M/s Aero Club. The appellant has transferred the interest amount on diminishing balance basis i.e. in the ratio of the principal amount has been repaid by the sister concern namely M/s Aero Club.*

*We rely on the judgements which clearly states that the expenses i.e. interest should be used "for the purpose of business" includes expenditure voluntarily incurred for commercial expediency, and it is immaterial if a third party also benefits thereby:-*

*I. Supreme Court In the case of S.A. BUILDERS LTD., V. COMMISSIONER OF INCOME TAX (APPEALS) AND ANOTHER reported in 2007 (288) ITR*

*The extract of relevant portion of the judgement is reproduced as under:-*

*"We agree with the view by the Delhi High Court in the case of Commissioner of Income-Tax v. Dalmia Cement (P.) Ltd. [(2002) 254 ITR 377], that once it is established that there was nexus between the expenditure and the purpose of the business (which need not necessarily be the business of the assessee itself), the Revenue cannot justifiably claim to put*

*itself in the arm-chair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. It is further held that no businessman can be compelled to maximize his profit and the income-tax authorities must out themselves in the shoes of the assessee and see how a prudent businessman would act and they must not look at the matter from their own point but that of a prudent businessman. As already stated above, we have to see the transfer of the borrowed funds to a sister concern from the point of view of commercial expediency and not from the point of view whether the amount was advanced for earning profits."*

*II. Similar view has been taken by the Apex Court in the case of Hero Cycles (P) Ltd vs. CIT 514/2008 and*

*III. Gujarat High Court In the case of NITIN K MEHTA Vs COMMISSIONER OF INCOME TAX (APPEALS) 333 ITA 2014"*

*2.1 Having gone through the submissions of the appellant, order of the assessment made by the Assessing Officer and the material evidences placed on the record, it emerges from the facts of the case that the Assessing Officer has made the disallowance of the interest of Rs.25,92,188/-. The counsel submitted that the company has taken loan of Rs. 16,00,00,000/- from the Bank and transferred Rs.9,15,00,000/- to M/s Aero Club and transferred interest of Rs.9.15 crore to M/s Aero Club. The Assessing Officer accordingly, disallowed the proportionate interest of Rs.25,92,188/-."*

4. During the arguments before us, the Id. AR argued that the entire repayment of the loan taken by the assessee along with the interest has been paid by M/s Aero Club. Hence, the disallowance is uncalled for. The Id. DR supported the arguments of the Assessing Officer and submitted that the interest paid by the assessee on the loan which was not used wholly and fully for the purpose of the business and hence, a non-allowable deduction.

5. Heard the arguments of both the parties and perused the material available on record.

6. We find the complete details of the loan taken from the bank were called for and examined during the appellate proceedings by the Id. CIT (A). The interest has been worked out on the reduced amount of the balance outstanding with M/s Aero Club. We find that the repayment of the entire loan including the interest amount outstanding with the assessee has been made by M/s Aero Club. In view of the facts on the record there is no justification for making the disallowance of the interest, hence we decline to interfere with order of the Id. CIT (A).

7. Regarding the ground no. 2, we find no material on record to prove that the Id. CIT (A) has admitted any additional evidence which have not been filed before the Assessing Officer. Regarding the loan, the total cost of interest on the loan amount have been duly borne by the recipient M/s Aero Club on diminution balances. The Id. CIT (A) has only examined the details of the bank, loans and the repayments. Hence, the appeal of the revenue taken up at ground no. 2 with regard to Rules 46A is hereby dismissed.

8. In ground no.3 of the appeal, the assessee has raised the issue of addition of Rs.3,11,34,517/- on account of enhancement of the gross profit. The Assessing Officer held that the assessee has disproportionately transferred the profit to its sister concern. The submissions of the assessee filed before the Id. CIT (A) in this regard are reproduced as under:-

*"As regards to addition on accounts of estimated Gross Profit, it is brought to your kind notice that the Learned A.O. has added back an amount of Rs. 3,11,34,517/- alleging that the appellant has disproportionately transferred its profit to its sister concern i.e. M/s Aero Club.*

*The appellant has paid Excise Duty on retail sale price basis as the government has notified branded Ready-made garments and made-up articles for valuation with reference to retail sales price. Section 4A of Central Excise Act 1944 read with rule 9 of valuation rules in respect of valuation of excisable goods with reference to retail sale price is as under: (1) .....*

*(2) Where the goods specified under sub-section (1) are excisable goods and are chargeable to duty of excise with reference to value, then, notwithstanding anything contained in section 4, such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow by notification in the Official Gazette.*

*(3) .....*

*(4) .....*

*Explanation 1 — For the purposes of this section, "retail sale price" means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like and the price is the sole consideration for such sale:*

*We would like to inform you that the Learned AO has failed to consider that the appellant has made all sales to M/s Aero Club, as it was exclusively manufacturing garments for during the year under appeal. The assessee sold the garments to M/s Aero Club at cost plus profit margin which worked out approximately 30% to 35% of the MRP / Retail sales price of M/s Aero Club varying for different garments. The Ld. AO has taken a view that appellant has disproportionately transferred its profit to M/s Aero Club, it incurs heavy marketing and administrative expenses and derives its MRP by loading all these costs to the purchase cost.*

*We humbly submit that the appellant does not need to incur heavy expenditure on marketing expense as it exclusively manufacture for Aero Club, on the other hand, Aero Club sells those garments through its exclusive retail outlets situated PAN India for which is the sale price for the appellant. Moreover, as garment is not the main product for Aero Club, it sells these products @ 40% to 50% discount.*

*The Ld. AO has failed to consider our aforesaid submission submitted before him vide our letter dated 27.01.2015 vide para no 4 and 6 & dated 16.03.2015 vide para no 3.*

*I. The Hon'ble Supreme Court has held in the case of CST Vs Esufali (1973) 90 ITR 271 "that where the assessee has admittedly filed accounts, balance sheet: etc there is no suggestion that the accounts are false or fraudulent, an assessment on best judgement must be based on such accounts. And estimate made by the assessing officer must be bonafide and on rationale basis."*

*II. It has also been held in the case of Shri Shanker Sugar Mills 1993 ITR 669 "that even if guess work is resorted to for estimation of gross profit etc. it should not be a wild guess but based on facts and circumstances of the case. It has also been held that the order should be well reasoned order and merely general comments given in the assessment order without giving the facts or circumstances of the case does not empower the learned assessing officer to make huge addition of approx. Rs. 10 Lacs. It is further respectfully submitted that in the case of the assessee. The estimate made is not a well reasoned estimate and deserves to be rejected."*

*III. It has been held by the Hon'ble Supreme Court in C. Valimutty (1996) 60 ITR 339 "that the best judgement assessment must have reasonable nexus to the material available".*

*And it was held in the case of Brij Bhushan Lal P Kumar 1987 115 ITR 524 SC "that the estimate must be honest and fair".*

*IV. Dhakeshwari Cotton Mills Ltd. vs. Commissioner of Income-tax [26 ITR 775 (SC)] - "In making the assessment u/s.143, the Assessing Officer is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment."*

*The Ld. AO has failed to appreciate that the business model of the appellant and its sister concern is altogether different, while the appellant is a manufacturing concern exclusively producing apparels for M/s Aero Club, it has failed to consider the fact that even Aero Club is not able to sell these apparels at the MRP as it is not a brand known for casual footwear and due to this it has to offer 40% to 50% flat discount on apparels brought from the appellant. Moreover, the assumptions taken by the Id. AO while*

*arriving at Gross Profit Ratio of the Appellant is arbitrary and without any basis.*

*In view of the above submission it is most humbly prayed that the above mentioned additions made by Learned Assessing Officer are fully misconceived and deserves to be deleted."*

9. During the arguments before us, the Id. DR relied on the order of the Assessing Officer whereas the Id. AR supported the order of the Id. CIT (A).
10. Heard the arguments of both the parties and perused the material available on record. We have gone through the reasoning given by the Id. CIT (A) which is as under:

*"Having gone through the submissions of the appellant, order of the assessment made by the Assessing Officer and the material evidences placed on the record, it emerges from the facts that the company is manufacturing the different variety of branded readymade garments as per the specific directions of the purchase. The entire sales are made to the Aero Club who has created its market for the brand "Aero". The evidence adduced during the appellate proceedings show that the company has paid the excise duty at the retail sales price of the Aero Club. The company has sold the garments to M/s Aero Club at the cost plus profit margin of 30% to 35% of the maximum retail price of M/s Aero Club without incurring any administrative marketing and distribution cost whereas M/s Aero Club has incurred the administrative cost of Rs. 41 crore and marketing and distribution cost of Rs.142 crore. The potential administrative marketing and distribution cost for the sales made by the company is nil. The financial accounts of M/s Aero Club for the year ending 31st March 2012 were examined at it was noted that the firm has shown the profit of Rs.67,49,53,737. The business model of the company is entirely different as compared to M/s Aero Club and sells the product without incurring the administrative, marketing and distribution cost. The Aero club sells the garments through its exclusive retail outlets situated PAN India of the incurring the heavy administrative, marketing and distribution cost. The evidence adduced regarding the sales made by M/s Aero Club show that the readymade garments have been sold in the retail market at 40% discount. It is not the case of the Assessing Officer that any sales have been found to be suppressed or any expenditure has been inflated to reduce the*

*taxable profits. In view of the facts discussed above, the estimated addition of Rs.3,11,34,577/- made to the gross profit of the company is deleted."*

11. Since, the revenue has not brought anything on record to prove the suppression of the sales except financial recalculation of the GP, NP and expenses. The assessee does not incur any advertising, marketing and sales promotion expenses as the entire production of the goods is sold to M/s Aero Club. The assessee debited only the manufacturing expenses in their P&L account. All the advertising, marketing and promotion expenses are incurred by the M/s Aero Club, thus, indicating the business models of both the entities are different. We also gone through the competition of income of the M/s Aero Club and found it to be a tax paying company at maximum marginal rate. Hence, the revenue's allegation that the sale is a diversion of profit of scheme cannot be given any credence. Hence, keeping in view, the entire facts and circumstances of the case, we hereby decline to interfere with the order of the Id. CIT (A).

12. In the result, the appeal of the revenue is dismissed  
Order Pronounced in the Open Court on 20/12/2019.

Sd/-

**(H. S. Sidhu)**  
**Judicial Member**

**Dated: 20/12/2019**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**