

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

Before Sh. N. K. Choudhary, Judicial Member

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

ITA No. 1195/Del/2017 : Asstt. Year : 2009-10

Income Tax Officer, Ward-49(3), New Delhi	Vs	Sh. Sandeep Kumar Aggarwal, M/s Shiva International Apparels, A-38/3, Mayapuri Industrial Area, Phase-1, Mayapuri, New Delhi-110064
(APPELLANT)		(RESPONDENT)
PAN No. AAEP1449F		

Assessee by : Sh. Ashok Khandelwal, FCA

Revenue by : Sh. Abhishek Kumar, Sr. DR

Date of Hearing: 06.02.2020

Date of Pronouncement: 07.02.2020

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)-17, New Delhi dated 21.12.2016.

2. Following grounds have been raised by the revenue:

"1. That the CIT(A) has erred in law and on facts of the case in deleting the addition of Rs.2,90,96,962/- made on account of low G.P. rate by rejecting the books of accounts.

2. The Ld. CIT(A) has erred in ignoring the fact that the assessee being an exporter was also doing his business on wholesale basis, where the assessee is a wholesale dealer, failure to maintain stock accounts/register would be a substantial defects in the accounts justifying an inference that the account were maintained in a manner from which a true and correct profit were not deductible, as held in the

case of Amiya Kumar Roy & Bros. Vs CIT 1994 Tax LR 616 (Cal.)

3. The Ld. CIT(A) has erred in law and on facts of the case in deleting the disallowance of Rs.4,40,990/- made on account of claim of interest exp. attributable to interest free loans and advances.

4. That the CIT(A) has erred in law and on the facts of the case in deleting the 1/5th disallowance of Rs.83,101/- made out of claim of car and scooter maintenance and conveyance expenses."

3. Brief facts of the case are that the Income Tax Officer in para 1 of the assessment order dated 30.03.2015 made u/s 143(3)/263 of the I.T. Act 1961, has mentioned as under:

"Return declaring an income of Rs.10,23,140/- was filed. Original assessment u/s 143(3) was completed u/s 143(3) on 06.07.2011 at an income of Rs.11,06,240/-. Thereafter, order u/s 263 of the I.T. Act, 1961 has been passed by the CIT-IX on 18.02.2014 whereby he has quashed the assessment order dated 06.07.2011 and directed to pass a fresh order keeping in view of the directions contained therein."

4. The assessee filed an appeal before the ITAT against the CIT's order u/s 263 of I.T. Act 1961 dated 18.02.2014. The ITAT as per order dated 20.09.2017 in ITA No. 2321/Del/2014 quashed the order of the CIT u/s 263 of I.T. Act 1961. Copy of the order is enclosed which is perused. On further appeal the Hon'ble Delhi High Court as per order in ITA NO. 750/2018 dated 22.05.2019 confirmed the order of the ITAT. Copy of the order is enclosed which is perused. In view of these facts, the present appeal arising out of the assessment order under

appeal has become infructuous and accordingly being dismissed.

5. In the result, the appeal of the revenue is dismissed.
Order pronounced in the Open Court on 07/02/2020.

Sd/-

(N. K. Choudhary)
JUDICIAL MEMBER

Dated: 07/02/2020

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