

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “C” BENCH

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER)**

**ITA. No: 2766/AHD/2017
(Assessment Year: 2014-15)**

DCIT Ahmedabad	Circle-3(1)(2),	V/S	Samir Synthetic Mills Plot NO. 395 to 402, GIDC Estate, Ahmedabad-382415
(Appellant)			(Respondent)

PAN: AADFS 1631A

**Appellant by : Shri L.P. Jain, Sr. D.R
Respondent by : None (Written Submission)**

(आदेश)/ORDER

Date of hearing : 13 -02-2020

Date of Pronouncement : 19-02-2020

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. This appeal filed by the Revenue is directed against the order of the Ld. CIT(A)-7, Ahmedabad dated 01.09.2017 pertaining to A.Y. 2014-15 and following grounds have been taken:

1. *The Ld.CIT(A) has erred in law and on facts in deleting the addition of Rs. 1,57,07,365/- made by the assessing officer on account of the suppression of job work income.*

2. *On the facts and circumstances of the case, the Ld. Commissioner of Income-tax (A) ought to have upheld the order of the Assessing Officer in respect of above issues.*

It is, therefore, prayed that the order of the Ld. Commissioner of Income-tax (A) may be set-aside and that of the Assessing Officer be restored.

2. Facts of the case are that the assessee is in the business of manufacturing Industry-Textiles, Handloom, Powerlooms.

3. Against the addition of Rs. 1,57,07,365/-, assessee preferred first statutory appeal before the ld. CIT(A) who granted relief to the assessee with following observation:

During the course of assessment proceedings it was gathered that the assessee is doing the business of job work of processing of clothes only. In the job work process any decrease or increase found in cloth pertains to the person who had sent the raw material for process. On verification of 3CD report it is gathered that the assessee had shown shortage of 1612778 meters in job work. The details of same are shown as under:

Finished Goods									
Sr .n o	Descri pt-ion of goods	units	Opening stock	Purchase s	Quantity manufact - ured	Sales	Closing stock	Shortage/ excess if any	Remark
1.	Grey cloth- job work	metre	3639099	45440503	45440503	44203221	3263603	-1612778	Shortage encompass the normal loss of production
	!	:							

3.1 *Since the shortage pertains to contractee, it is clear that the assessee had suppressed its job work income. Therefore, vide hearing/ order sheet entry dated*

16.11.2016 the assessee was asked to furnish month wise quantity produced and quantity for which bill raised. The assessee vide its letter dated 24.11.2016 has furnished the details which is as under:

Month	Quantity Produced	Quantity billed	Total amount of billing (Rs.)
April	3254122	3367764	27667469
May	3334043	3654095	28334224
June	3075294	2690853	20447402
July	3837411	3961872	29463521
August	4602516	4361505	32786352
September	5239881	4304899	33433059
October	4445423	4761114	37701950
November	2447960	2846828	22801716
December	3420841	3164768	26448035
January	4092579	3298402	26108097
February	3824512	3445918	27622686
March	3865921	4345203	36377378
Total	45440503	44203221	349191889

3.2 On verification of the details it is gathered that the assessee has produced 54,40,503 meters where as issued bills of 4,42,03,221 meters only. Thus the assessee had suppressed its job work charges for 16,12,778 meters (4.54,40.503 - 4.42,03,221). In view of above the assessee vide order sheet entry dated 16.11.2016 was asked to show cause as to why difference of processing charges on 16,12,778 meters should not be added to the income of the assessee.

3.3 The assessee vide its letters dated 15.11.2016 and 24.11.2016 has submitted its reply. Relevant portion of the reply is reproduced as under:

"As regard your requirement to justify production loss with reference to last two years for which we furnish herewith a chart showing details of production loss as suffered in the year under consideration to that with earlier two years. From the said chart, it can be seen that the production loss in terms of percentage for A. Y.2014-15 was 3.65% as compared to 3.9% in A. Y.2013-14 and 3.86% in A. Y.2012-13. It may kindly be noted that a feeble attempt was made by the A.O. in A. Y.2013-14 by making an impugned addition on account production loss treated as suppression of

job work charges in the assessment order passed for A.Y.2013-14 by rejecting the explanation of the assessee that it was production loss suffered during the job work process which was normal practice. Moreover, it was also contended that such production loss was normal in the business of job work process and in support, production loss suffered in A.Y.2011-12 and in A.Y.2012-13 were also submitted. However, the A.O. without countering or contradicting such evidences placed on records, simply made an impugned addition for the alleged suppression of job work receipts. Being aggrieved with such impugned addition, an appeal to CIT(A) -9 was filed and the said CIT(A)-9 vide appeal order dated 03-10-2016, deleted the impugned addition entirely by holding that production loss is normal feature of the business of the assessee and also held that there was production loss in earlier years viz. A. Y.2011-12 and A. Y.2012-13 which was accepted by the A.O. and have not held production loss as suppression of job work income. For your ready reference, we file herewith a copy of the C.I.T.(A) -9 order as an evidence and in support of our above stated contention.

furnish herewith a chart showing details of production loss of 1612778 in meters which was included in delivery meters (Sales) in Annexure-15 to Tax Audit Report along-with month-wise receipt of Grey cloth from clients and delivered to them leaving thereby production loss of 12778 in meters which is worked out in terms of amount by dividing total billed amount by total delivery in meters. Kindly note that this details are furnished without prejudice and without admission as to the allegation made in the assessment order for A. Y.2013-14 in this regard. Moreover, we rely on our explanation and evidences furnished in reply dated 15-11-2016 under Para-12. "

3.4 The reply of the assessee has been considered carefully. The same is found not acceptable. The assessee is doing the business of processing of clothes on job work basis. Assessee receives raw material i.e. grey cloth from various customers and after processing finished clothes returns to the person. This work is done in lumps. Ownership of this lumps are always with the customer of the assessee. Shrinkage and expansion (increase) during the process of converting grey cloth to finished clothes pertains to the customers of the assessee. Therefore, shortage is not attributable to the assessee. From the chart furnished with letter dated 24.11.2016, it is clear that the assessee had produced 4,54,40,503 meters clothes. However, the assessee had dispatched only 4,42,03,221 meters cloth and

billed for it. Thus, shortage shown by the assessee is either to be shown as closing stock or income of the same may have been recorded in the books of accounts of assessee. Closing stock of the assessee is decreased by 3,75,496 meters (op. stock 36,39,099 - ci. stock 32,63.603). The assessee had manufactured 4,54,40,503 meters grey cloth. Out of this the assessee had recorded only 4,38,27,725 meters (4,42,03.221 -3,75,496). Job work charges received by the assessee are for its entire production. The assessee had produced 4,54,40,503 meters cloth. Therefore, the bill is to be raised for 4,54,40,503 meters cloths not for 4,38.27,725 meters (4,42,03.221 - 3,75.496) cloth. Thus, the assessee had not recorded job work charges for 19,88,274 meters (16,12,778 + 3,75,496 meters) which is produced during the year under consideration. Thus, the assessee had suppressed its job work income of 19,88,274 meters. Average price of job work per meter is worked out as under:

$$= \frac{\text{Total Amount of billing}}{\text{Quantity billed}}$$

$$= \frac{34,91,91.889}{4,42,03,221}$$

$$= \text{Rs. 7.90 per meter}$$

3.5 In view of above it is clear that the assessee had suppressed its job work income by amount of Rs. 1,57,07,365/- (19,88,274 x Rs. 7.90). Therefore, an amount of Rs. 1,57,07,365/- is added to the income of the assessee.

4. That on identical issue immediately preceding year i.e. 2013-14 as well, wherein the ld. CIT(A) -9/441/DCIT Cir-3(1)(2)/15-16 granted relief to the assessee with following observation:

" It is seen that identical issue was the subject matter of appeal in the immediately preceding year i.e. Asst Year 2013-14 as well, wherein the CIT(A) vide his order No. CIT(A)-9/441/DCIT Cir-3(l)(2)/15-16 dated 03.10.2016 has held as under:

"5. I have carefully considered rival contentions, case law relied upon as well as observations made by the A.O. in the assessment order. It is

observed that A.O. has made an addition of Rs.1,10,23,501/- on account of suppressed sales through job work done. According to the A.O. on verification of quantity produced and quantity billed by the appellant, appellant has suppressed its job work charges for 14,58,135 meters. On show caused, appellant mentioned that difference in processing charges is due to production loss and hence difference of 14,58,135 meters cannot be added as income. However, A.O. has not accepted the contention of the appellant and by charging Rs.7,56 per meter on average price of job work per meter, made addition of Rs.1,10,2,501/- as appellant's suppressed job work income. During the appellate proceedings appellant has submitted that production loss during the job work process is a normal practice. There have always been a difference or shortage on the quantity produced and quantity billed. It has also submitted that appellant had been regularly showing this genuine shortage in previous years also. According to the appellant in A.Y. 2010-11 there was production loss of 12,89,067 meters on the total job work of 3,97,76,939 meters in A. Y. 2011-12, there was production loss of 14,64,034 meters on the total job work of 4,37,99,698 meters. Similarly for A.Y. 2012-13 there was production loss of 13,88,785 meters on the total job work of 4,07,42,824 meters and in A.Y. 2013-14 there was production loss of 14,58,135 meters on the total job work of 4,23,90,157 meters. It is seen that in all these years production loss had varied from 3% to 3.5%. In the earlier A.Y. the A.O. have accepted production loss and have not held production loss as suppression of job work income. Considering the above facts and circumstances, I am of the considered opinion that production loss is normal feature of the business of the appellant. Therefore, A.O. was not justified in holding that production loss amounts to suppression of job work income. Thus, addition of Rs.1,10,23,501/- is hereby directed to be deleted. This ground of appeal is allowed."

3.2.1 Considering that the addition made this year is identical to the one made in the earlier year and in view of the facts of the case, I am of the view that production loss would be a normal feature of the business of the appellant and following the order in the appellant's own case for Asst. Year 2013-14, the addition of Rs.1,57,07,365/- made by the Assessing Officer is deleted.

5. Now Revenue has come before us. Assessee has filed his written submission in support of its contention and cited an order of Co-ordinate Bench in the assessee's own case in similar facts and circumstances for Assessment Year 2013-14 wherein appeal of the Revenue was dismissed with the following observation:

7. We have heard the rival contentions and perused the materials available on record. From the preceding discussions we find that the addition was made by the Id. AO solely on the basis of the shortage of quantity reflected in the tax audit report. As per the Id. AO, the shortage on quantity was representing the suppressed sale which was not billed to the customers as well as not disclosed in the income tax return.

7.1 On perusal of the order of the Id. AO, we note that there was no whisper/remarks suggesting that the assessee had made sales outside the books of accounts. The Id. AO was aware of parties/customers for whom the assessee was carrying out the manufacturing activities but the Id. AO did not make any inquiry before reaching to the conclusion that the assessee has suppressed sales.

7.2 Even it is presumed that the assessee has suppressed sales then the Id. AO, should have rejected the books of accounts of the assessee but the Id. AO has not done so.

7.3 We also find that books of accounts of the assessee were duly audited and there was no defect or whatsoever was pointed out by the Id. AO during the assessment proceedings. We also note that the assessee during the assessment proceedings has furnished all the necessary details with regard to the shortage of quantity shown in the tax audit report but the same was rejected by the Id. AO, without pointing out any reason thereon.

7.4 We also find similar kinds of losses were also shown by the assessee in the earlier years but the Revenue has not made any kind of addition on account of such shortage of quantity happened during the manufacturing process.

In view of the above, we are of the view that the addition has been made by the Id. AO on Surmises and Conjectures without bringing any tangible material available on record. Therefore, we are inclined not to interfere in the findings of Id. CIT(A), hence, the ground of appeal of Revenue is dismissed.

8. In the result, appeal of the Revenue is dismissed.

6. Thus in parity with the Co-ordinate Bench order wherein on similar facts and circumstances in assessee's own case for immediate preceding year appeal of the revenue was dismissed. Therefore in this case as well, appeal of the Revenue is dismissed.
7. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in Open Court on 19 - 02- 2020

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER True Copy
Ahmedabad: Dated 19/02/2020

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad