

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

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
AND
SHRI K.N. CHARY, JUDICIAL MEMBER
[Through Video Conferencing]**

ITA No.3332/Del/2016
Assessment Year: 2011-12

DCIT, Circle-16(1), New Delhi	Vs.	Maryan Apparel (P) Ltd., A-201, Vardhman Apartments, Mayur Vihar, Phase-1, New Delhi
		PAN :AAECM5087C
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Sh. Vipul Kashyap, Sr.DR

Date of hearing	09.08.2021
Date of pronouncement	25.08.2021

ORDER

PER O.P. KANT, AM:

This appeal by the Revenue is directed against order dated 31/03/2016 passed by the learned Commissioner of Income-tax (Appeals)-20, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2011-12 raising following grounds:

1. *Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition amounting to Rs.65,17,067/- on account of bad debts written off without*

appreciating that the assessee did not furnish any evidence to prove that bad debts were written off in the account of the assessee during assessment proceedings.?

2. *Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition amounting to Rs. 65,17,067/- on account of bad debts written off without appreciating the fact that the assessee failed to discharge the burden cast upon it to provide evidence to prove that bad debts are written off in the accounts of the assessee as upheld by the Hon'ble Apex court in case M/s TRF Ltd Vs CIT (2010) 323ITR 397?*
3. *Whether in the facts and circumstances of the case and in law, the Ld.CIT(A) is justified in restricting disallowance of expenses claimed to Rs. 10,00,000/- from Rs. 1,27,63,224/- on the basis of documents produced during appellate proceedings without appreciating the fact that during assessment proceedings the assessee failed to produce books of accounts and supporting vouchers in respect of the expenses claimed ?*
4. *Whether in the facts and circumstances of the case and in law, the Ld.CIT(A) is justified in restricting disallowance of expenses claimed to Rs. 10,00,000/- by admitting additional evidence under Rule 45A without giving opportunity of being heard to the AO as stipulated under Rule 45 A(3)?*
5. *That the order of the CIT(A) is erroneous and is not tenable on facts and in law on the above issues.*
6. *The appellant craves leave to add, amend, alter or forgo any ground(s) of the appeal either before or at the time of hearing of the appeal.*

2. Briefly stated facts of the case are that the assessee company was engaged in providing job-work to apparel industry. For the year under consideration, the assessee filed return of income on 29/03/2012, declaring nil income after adjusting brought forward losses. The return of income was revised subsequently to claim credit of Tax Deducted at Source (TDS). The return of income filed by the assessee was selected for scrutiny and statutory notices under Income Tax Act, 1961 (in

short 'the Act') were issued and complied with. According to the Assessing Officer, the assessee did not produce books of account and vouchers of expenses for verification and, therefore, the Assessing Officer completed assessment under section 144 of the Act (best judgment assessment). He made certain additions and assessed total income at ₹ 2,46,17,800/-. Aggrieved, the assessee filed appeal before the Learned CIT(A), who partly allowed the appeal. Aggrieved, the Revenue has preferred this appeal before the Tribunal, raising the grounds as reproduced above.

3. Despite notifying, none attended on behalf of the assessee and, therefore, the appeal has been adjudicated after hearing Learned Departmental Representative and perusal of the material available on record.

4. The ground Nos. 1 & 2 of the appeal relate to addition of bad debt amounting to ₹ 65,17,067/- deleted by the Learned CIT(A).

4.1 The Assessing Officer disallowed the claim of debtor's of ₹ 65,17,067/- written off in absence of any evidence that the assessee has actually written off the amount from the ledger account of those debtors and amount was irrecoverable. Before the Ld. CIT(A), the assessee filed debtors account and submitted that in view of the decision of the Hon'ble Supreme Court in the case of TRF Ltd. (supra), there is no requirement to establish that debt has become irrecoverable and it was enough if same is written off in the books of accounts of the assessee. The relevant part of finding of the Learned CIT(A) is reproduced as under:

"(5.3) I have considered the submission of the appellant and the assessment order. In this regard, the Apex Court has already decided in the case of TRF Ltd Vs CIT [2010] 323 ITR 387(SC). The operable part of the judgment is reproduced as under;

After the amendment of section 36(1) (vii) of the Income Tax Act, 1961, w.e.f. April 1, 1989, in order to obtain a deduction in relation bad debts, it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable: it is enough if the bad debts is written off as irrecoverable in the accounts of the assessee.

In view of the apex Court ruling on this issue as mentioned above, the A.O is not justified in denying the benefit of section 36(1) (vii) of the Act with regard to bad debts to be written Off. Accordingly, the addition of Rs. 65,17,067/- on this account is deleted. Appellant's ground of appeal is allowed."

4.2 We find that the assessee has demonstrated before the Learned CIT(A) that bad debt was written off in the books of accounts of the assessee, therefore, we do not find any error in the order of the Learned CIT(A) in deleting the addition following the binding precedents of Hon'ble Supreme Court in the case of TRF Ltd (supra). The ground Nos. 1 and 2 of the appeal of the Revenue are accordingly dismissed.

5. The ground Nos. 3 & 4 of the appeal of the Revenue relate to disallowance of expenses of ₹ 1,27,63,224/- made by the Assessing Officer, which has been restricted to ₹ 10,00,000/-.

5.1 The Assessing Officer made disallowance at the rate of 20% of the expenses debited under job work, employee cost, administrative expenses and finance charges on estimates basis, in absence of books of accounts and vouchers produced by the assessee. The assessee produced bills/vouchers before the Ld. CIT(A), which were forwarded to the Assessing Officer for his comments, however, despite providing sufficient opportunity, no comment was made by the Assessing Officer. In the circumstances the Learned CIT(A) himself verified the bills and

vouchers of the expenses and after verification he restricted the disallowance to ₹ 10 lakh observing as under:

“(7.3) I have considered the submission of the appellant and the assessment order, appellant has claimed that it has produced all the bills and vouchers during the assessment proceedings. The submission of the appellant was sent to the A.O for his comments vide letter dated 20/10/2015 requiring him to send his comments by 29/10/2015. Another reminder was sent to the A.O vide letter dated: 11/02/2016 to send the comments latest by 22/02/2016. However, the A.O chose not to send his comments even after a lapse of more than 5 months. Therefore, I am constrained to adjudicate on the matter without the benefit of the A.O’s comments/report. I have gone through the bills/vouchers produced during the appellate proceedings. It has been noticed that some of the bills/vouchers do not have the signature/address of the recipients. Taking a reasonable view that the expenses so claimed by the appellant is on the requirement of the business undertaken by the appellant company during the year under consideration. Therefore, taking a broad and reasonable view, a disallowance of Rs.10 lakhs to cover the discrepancy with regard to unverified bills/vouchers for want of proper address/signature of the recipients.. Accordingly, the addition on this account is reduced to Rs. 10 lakhs. Appellant’s ground of appeal is partly allowed.”

5.2 In our opinion, the Ld. CIT(A) has duly provided the opportunity to the Assessing Officer and, therefore, the claim of the Revenue in the grounds that no opportunity was provided to the Assessing Officer is wrong and without any basis. The Learned CIT(A) has mentioned that a letter dated 20/10/2015 was sent to the AO and, thereafter, reminder was sent on 11/02/2016. The Learned DR could not controvert this factual finding recorded by the Learned CIT(A). After verifying the bills and vouchers of the expenses, the Ld. CIT(A) has restricted the disallowance to Rs. 10.00 lakhs to cover the discrepancies noticed by him. In our opinion, the finding of the Ld. CIT(A) on the issue

in dispute is justified and we do not find any error in the same. Accordingly, we uphold the same. The grounds raised by the Revenue are accordingly dismissed.

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

Order pronounced in the open court on 25th August, 2021.

Sd/-
(K.N. CHARY)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 25th August, 2021.

RK/-(DTPDC)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi